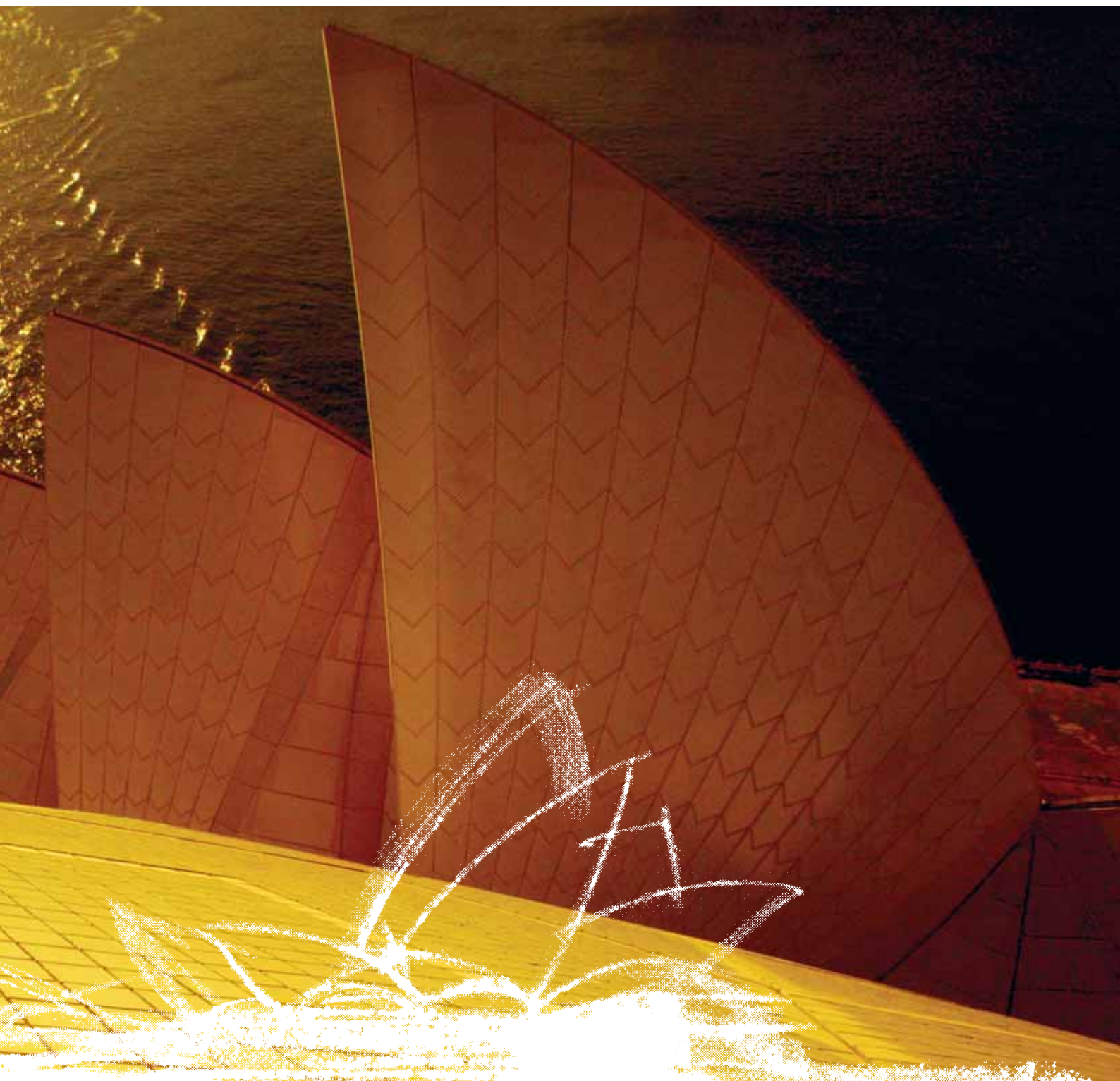




SYDNEY OPERA HOUSE  
NOMINATION BY THE GOVERNMENT OF AUSTRALIA  
FOR INSCRIPTION ON THE WORLD HERITAGE LIST 2006



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## **SYDNEY OPERA HOUSE NOMINATION FOR WORLD HERITAGE LISTING**

### **EXECUTIVE SUMMARY**

#### *Introduction*

The Sydney Opera House is nominated for the World Heritage List as representing a masterpiece of human creative genius under criterion (i) of the *Operational guidelines for the implementation of the World Heritage Convention*. The building fulfils the definition of 'monument' in the *World Heritage Convention* as an architectural work of outstanding universal value for both art and science. These values are demonstrated in the building's recognition as:

- a masterpiece of late Modern architecture;
- outstanding achievements in structural engineering and technological innovation; and
- a world-famous iconic building of the 20th century.

The Sydney Opera House has a high level of integrity and authenticity. The physical fabric of the property is in good condition and the impact of deterioration is rigorously controlled by government funded measures. The property continues to be used for its original purpose. The conservation and management of the building is guided by a robust conservation planning framework that uniquely includes a set of design principles by the building's architect Jørn Utzon. The design principles assist in preserving the authenticity and integrity of the building as the building evolves, while maintaining its place as a world class performance centre.

#### *Description*

The Sydney Opera House is a masterpiece of modern architecture and an iconic building of the 20<sup>th</sup> century, admired internationally and treasured by the people of Australia. The building is situated at the end of Bennelong Point, a prominent peninsula projecting into the world famous Sydney Harbour and within close vicinity to the Sydney Harbour Bridge. The massive concrete sculptural shells that form the Sydney Opera House appear like billowing sails filled by the sea winds, with sunlight and cloud shadows playing across their shining white surfaces. In this magnificent setting the building rises up like a Gothic cathedral that people can never tire of and will never be finished with.

The building comprises three groups of interlocking vaulted 'shells' that form the Sydney Opera House's roof and are set upon a vast terraced platform ('the podium'). It is surrounded by terrace areas that function as pedestrian concourses. The tallest shell reaches the height of a twenty storey building above the water and the shell structure covers nearly two hectares. The simple and gigantic geometric shapes of the shell structure are Modern but an organic influence is also strong. The shells are faced in glazed off-white ceramic tiles that constantly change in a myriad of colours and hues at different times during the day and the seasons. The tiles were inspired by ancient buildings such as the domes and minarets rising above Islamic villages and by the art of contemporary Asian ceramics. Influenced by the ancient Mayan step-pyramids, the podium is clad in earth-toned, reconstituted granite panels. Its monumental scale forms an artificial promontory that offers continuity with the harbour-side landscape. The two main halls are arranged side by side, oriented north-south with their axes slightly inclined. The north and south ends of the shells are hung with topaz glass walls that

project diagonally outwards to form foyers, offering views from within and without. Visitors are mesmerised by the towering glass walls that flood the building with sunlight and open it to the spectacular views of the city and harbour by day and night.

The Sydney Opera House functions as a world-class performing arts centre, a great urban sculpture and as a public venue for community activities and tourism. It is not a simple, singular entity but is more akin to a walled city, alive with citizens and urbanity. The building complex includes more than a thousand rooms, most of which are located within the podium, together with virtually all the technical functions of the arts centre. The Sydney Opera House has performed its original function as a performing arts centre since it opened in 1973. It is the home to traditional performing arts and national institutions and its role has expanded to encompass an extensive range of cultural performances of appeal to the community.

#### *Justification for inscription*

The Sydney Opera House fulfils the definition of ‘monument’ according to Article 1 of the *World Heritage Convention* as an architectural work of outstanding universal value from the point of view of both art and science. The Sydney Opera House meets criterion (i) set out in paragraph 77 of the *Operational guidelines for the implementation of the World Heritage Convention*.

#### *Statement of outstanding universal values*

The Sydney Opera House is of outstanding universal value as a masterpiece of 20th century architecture. Its significance is demonstrated by its unparalleled and seminal design and construction; its exceptional engineering achievements and technological innovations; and its position as a world-famous icon of architecture. The Sydney Opera House broke with the formal traditions of modernism defining a new expressive form for civic monuments. It is a daring and visionary experiment that has had an enduring influence on the emergent architecture of the late 20th century and beyond.

The human creative genius represented in the Sydney Opera House is attributed to Utzon and to the ingenuity of other architects, engineers and building contractors. The genius of Utzon’s design has been internationally acknowledged by the Pritzker Prize and other awards, as well as by architectural historians and practitioners around the world. Utzon’s original design concept and his unique approach to building gave impetus to a collective creativity. Ingenuity and technical innovation flourished in collaborative teams of architects, engineers and builders. The realisation of Utzon’s design concept demanded outstanding engineering feats by Ove Arup & Partners whose work has also been internationally acclaimed. New technologies, approaches and materials evolved to create unique architectural forms and a building of rare quality and character.

The design of the Sydney Opera House is exceptional. Utzon’s design represents an extraordinary interpretation and response to the setting in Sydney Harbour. The juxtaposition of the massive, hollow podium and the light, sculptural superstructure of the shells is unmatched in 20th century architecture and engineering. The originality of the design lies in the exceptional way that Utzon unified a diverse range of architectural and cultural traditions from ancient to modern times in a single building. Utzon successfully contrasted and married seemingly antithetical ideas and styles. This is encapsulated in the shells where the strong and dramatic character of the concrete

geometrical shapes simultaneously contrasts and merges with their equally irrepressible qualities of sculpture, lightness and poetry and their place as an elemental part of the natural landscape. While the Sydney Opera House is an outstanding representative of late modernism, it may also be seen as a rare specimen that defies and resists simplistic categorisation into a singular architectural style.

The setting of Bennelong Point and Sydney Harbour forms an intrinsic part of the outstanding universal value of the Sydney Opera House. Utzon's design is a sensitive and brilliant response to the landscape creating a grand urban sculpture with its platform and cave-like shells that invite inhabitation. Utzon used architecture to create a unique landscape form. Sydney Harbour is one of the world's most magnificent harbours and the design produces wonderful vistas that are experienced both from inside and outside the building.

The Sydney Opera House is of outstanding universal value for its achievements in structural engineering and building technology. Utzon's genius is evident in his experimental methodology and work style which were inextricably linked to his radical design. His approach helped to inspire engineering solutions and technological innovations that were necessary to transform the initial design into a reality. The construction of the gigantic podium and the unprecedented and complex shell structure with ceramic tile cladding and hanging glass walls were all exceptional technological triumphs. They were made possible by the pioneering of new building methods and machinery and innovative structural engineering analysis and testing using new computerised technology and processes. These feats enabled Utzon's radical design concept to become a reality. The Sydney Opera House represents one of the most demanding and innovative structures in modern architecture.

The Sydney Opera House is an exceptional representative of late modernism that was evolving at the time. It endures as one of the world's most highly acclaimed buildings of that architectural trend. Utzon's design was a most significant step in the history of modern architecture. The Sydney Opera House exudes creativity, emotion and feeling along with its spectacular sculptural, functional and powerful geometric forms.

The Sydney Opera House is an outstanding example of 20th century cultural heritage. Its power to fascinate and excite is universal and it belongs to the world as a great artistic monument and an iconic building. The Sydney Opera House has become a building that inspires and delights people around the world and attracts people to explore its many remarkable features. It could be seen as making a contribution to architecture as an expression of universal culture. Like the Finnish master Alvar Aalto, Utzon created a building that is accessible to society at large. The Sydney Opera House has been influential in architecture with others striving to replicate its success.

### *Comparative analysis*

Since its opening more than three decades ago, the Sydney Opera House has attracted widespread and intense commentary, discussion and analysis across a number of professional disciplines and in popular culture. Architects, engineers, cultural theorists and architectural historians have dissected the building and assessed Utzon's contribution to the history and development of modern architecture. As with the history of the Sydney Opera House, this outpouring has been marked by energy, enthusiasm and



debate; yet there is overall agreement that the Sydney Opera House is one of the great buildings of the 20th century.

The Sydney Opera House is unique for its diverse and outstanding architectural and cultural heritage values as a masterpiece of modern architecture, as an internationally famous icon, and for its great engineering feats and technological achievements. It is outstanding for the unique composition of all these features. Architectural historian Richard Weston has described the Sydney Opera House as 'the most recognisable contemporary man-made structure in the world' which is, quite simply, one of a kind. The image and tectonic integrity of the Sydney Opera House are powerful, original and unrepeatable.

The Sydney Opera House can be compared with a small number of modern buildings that have either reached a comparable outstanding level of design understanding, architectural excellence, poetic expression and human inspiration or achieved advances in architectural thinking and practice equal to those of Utzon and the collaborative teams of architects and engineers who worked on the Sydney Opera House. These include the following:

- *outstanding examples of late modern architecture* like Le Corbusier's Notre-Dame-du-Haut Chapel at Ronchamp and Frank Lloyd Wright's Solomon R Guggenheim Museum in New York, Oscar Niemeyer's city of Basilia and Richard Meier and Partners' Getty Centre in Los Angeles;
- *masterpieces of structural engineering and technology* such as Pier Luigi Nervi's Exhibition Buildings at Turin and Eero Saarinen's TWA Terminal Building in New York; and
- *world famous iconic buildings of the modern era* and other periods such as Antonio Gaudi's Sagrada Familia in Barcelona, Le Corbusier's Villa Savoye in Poissy and Frank Lloyd Wright's 'Fallingwater' at Bear Run.

#### *Protection and management of the property*

Comprehensive statutory and associated frameworks are in place across three levels of Australian government to maintain the building to an exceptional conservation standard. These frameworks ensure that the distinctive character of the Sydney Opera House and the identified heritage values of its various components will be retained for future generations.

The Sydney Opera House is listed as a heritage place on national, state and local government heritage lists and registers. The property is maintained and preserved through regular and rigorous repair and conservation programs, as well as scrutiny at the highest levels including by the Australian Government, the New South Wales Government and the Sydney Opera House Trust.

An overall management plan has been established under state and national legislation which includes the *Sydney Opera House Conservation Plan* ('the *Conservation Plan*'), developed by one of Australia's leading heritage consultants, Dr James Semple Kerr. The *Conservation Plan* is at the core of all levels of government custodianship: it is enshrined in state government heritage legislation; and also forms part of a bilateral agreement between the Australian Government and NSW Government. The

*Conservation Plan* identifies the heritage values associated with the Sydney Opera House and its setting and provides policies to manage development or actions that could impact adversely on the heritage values.

The management framework is also uniquely augmented by the *Sydney Opera House Utzon Design Principles*, developed by the building's original architect. These principles guide the future evolution of the place in so far as it involves new design elements or changes to design of the building. Together, the *Conservation Plan* and the *Sydney Opera House Utzon Design Principles* provide for the ongoing care of the building in a manner that ensures the authenticity and integrity of the property.



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# SYDNEY OPERA HOUSE

NOMINATION BY THE GOVERNMENT OF AUSTRALIA  
OF THE SYDNEY OPERA HOUSE FOR INSCRIPTION  
ON THE WORLD HERITAGE LIST 2006

PREPARED BY THE AUSTRALIAN GOVERNMENT AND THE NEW SOUTH WALES GOVERNMENT











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## PREFACE

Australia is pleased to present the Sydney Opera House for inscription on the World Heritage List. The nomination has been prepared jointly by the Australian Government and the State Government of New South Wales. Many others have assisted in the preparation of the nomination and their assistance is gratefully acknowledged.

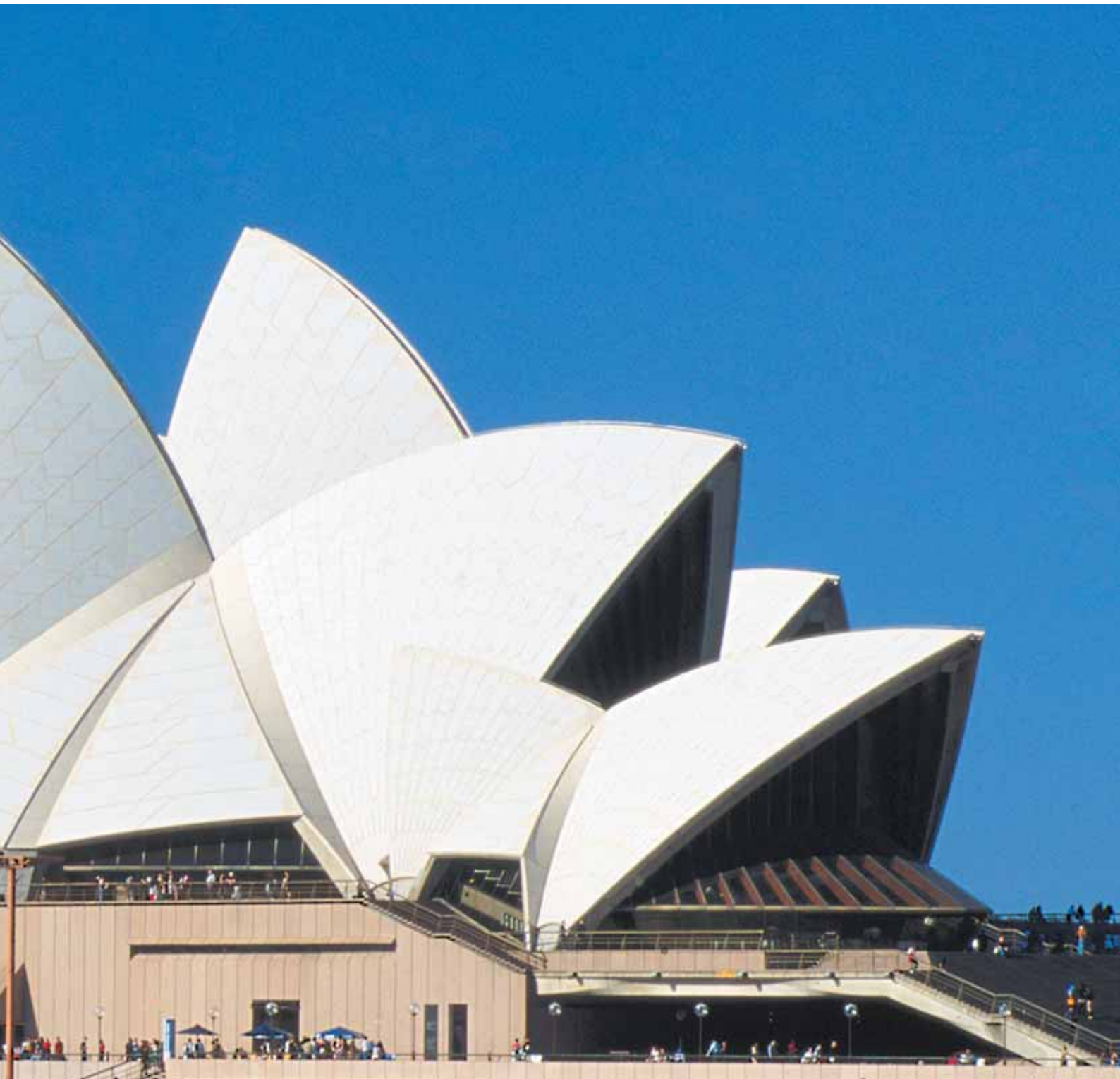
The Sydney Opera House is an extraordinary building set in a stunning harbour. Since its inception it has captured the imagination of people the world over and has become a cultural symbol not only of the city in which it stands but of the Australian nation.

This place is an outstanding human creation, an influential masterpiece of architecture that has unified landscape and architecture in one monument.



# PART 1. IDENTIFICATION OF THE PROPERTY





### 1.A COUNTRY

Country–Australia

### 1.B STATE, PROVINCE OR REGION

State–New South Wales

### 1.C NAME OF PROPERTY

Sydney Opera House

### 1.D GEOGRAPHICAL COORDINATES TO THE NEAREST SECOND

The Sydney Opera House is located on Bennelong Point at East Circular Quay in the city of Sydney, in the state of New South Wales, on the south-east coast of Australia, at latitude 33° 51' 35" S and longitude 151°12' 50" E.

#### Property description

The description of the property is detailed below:

- Lot 5 in Deposited Plan 775888 at Bennelong Point, Parish of St. James, county of Cumberland, city of Sydney; and
- Lot 4 in Deposited Plan 787933 at Circular Quay East, Parish of St. James, county of Cumberland, city of Sydney.





### 1.E MAPS AND PLANS

Plans are provided at Figures 1.2, 1.3 and 1.4.

### 1.F AREA OF NOMINATED PROPERTY AND PROPOSED BUFFER ZONE

Area of nominated property: 5.8 hectares

Buffer zone: 438.1 hectares

Total: 443.9 hectares

The map below shows the location of Sydney within Australia.



Figure 1.2 Location map

The topographic map shows the location of the Sydney Opera House and buffer zone within the city of Sydney. The scale is 1:25 000. In the event that the Sydney Opera House is inscribed on the World Heritage List, a buffer zone designed to protect its World Heritage values in relation to its setting on Sydney Harbour will come into effect.

The buffer zone centres on the inner waters of Sydney Harbour. It includes places around Sydney Harbour within a radius of 2.5 kilometres that have been identified as offering critical views to and from the Sydney Opera House that contribute to its World Heritage significance. See Part 5D for information on the proposed buffer zone.

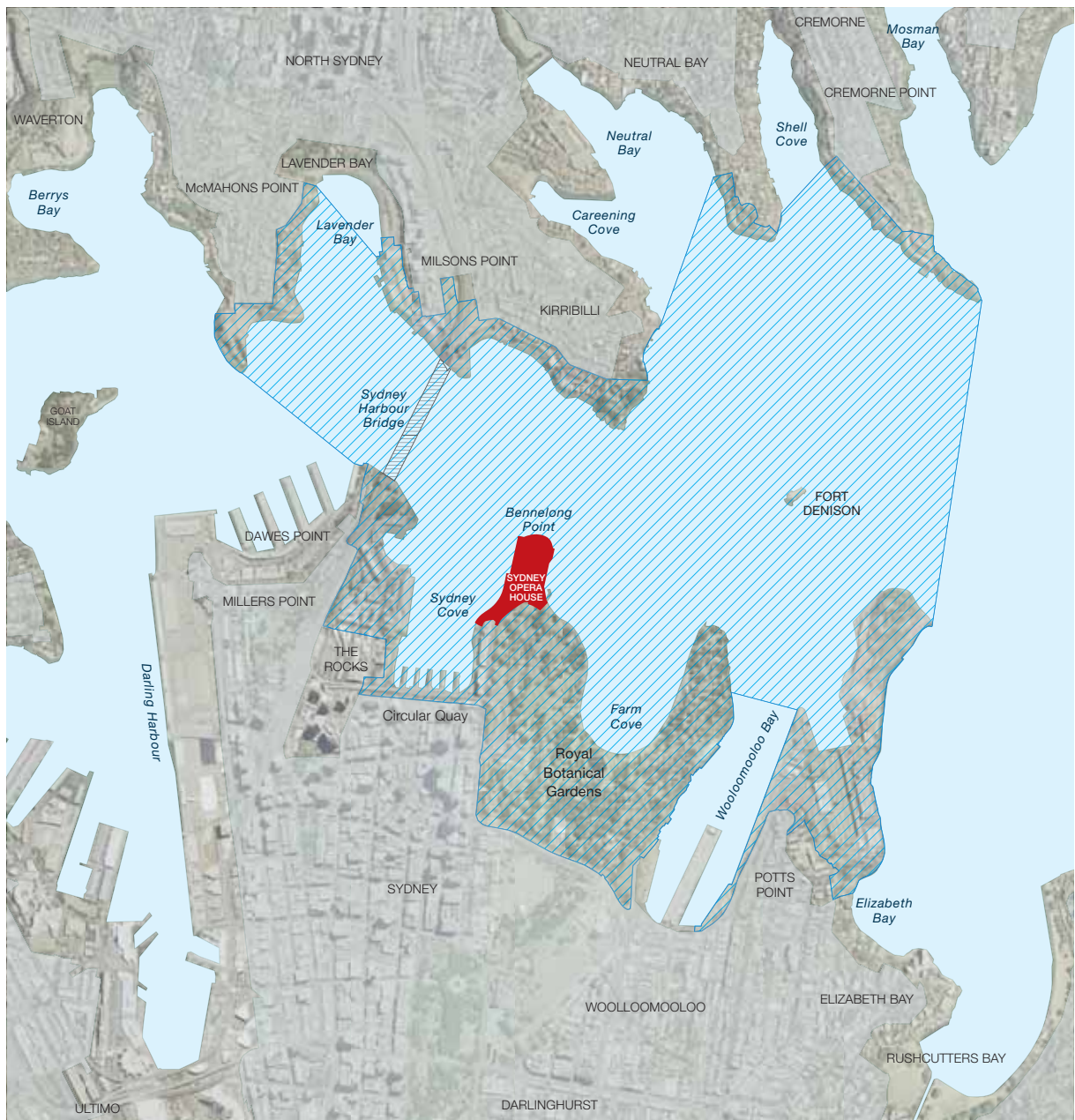
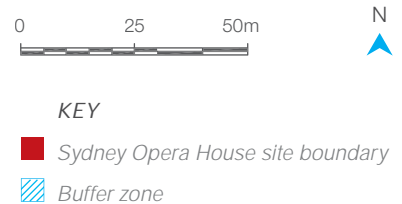


Figure 1.3 Topographic map of the site and buffer zone



The following site plan shows the property boundary of the Sydney Opera House under the *Sydney Opera House Trust Act 1961* (NSW). The boundary of the World Heritage nomination of the Sydney Opera House encompasses land on Bennelong Point owned by the Government of New South Wales and managed by the Sydney Opera House Trust. The extent of the site is shown by the red boundary line.

Additional plans, sections and elevations of the Sydney Opera House are provided at Appendix 10.E.

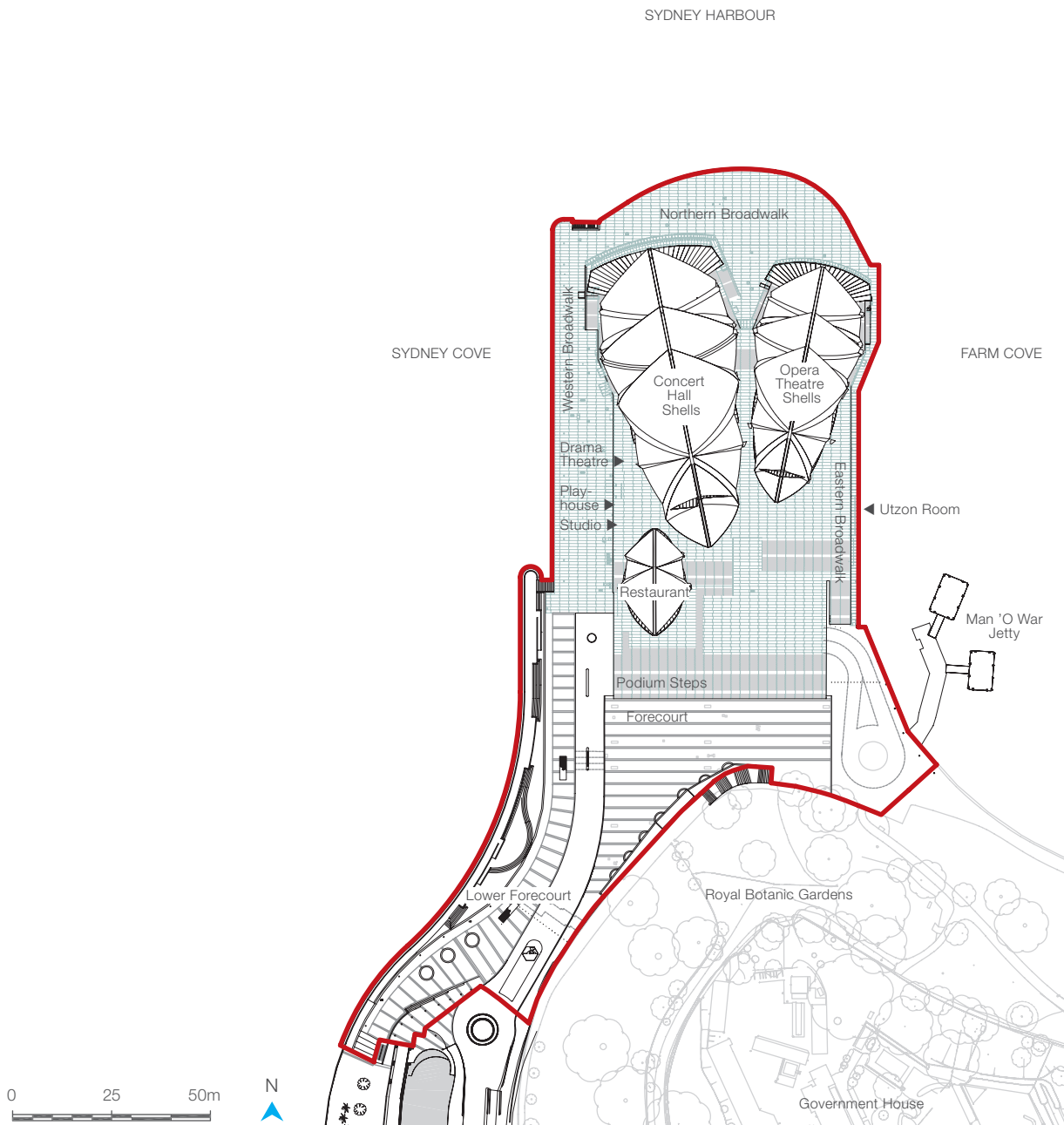
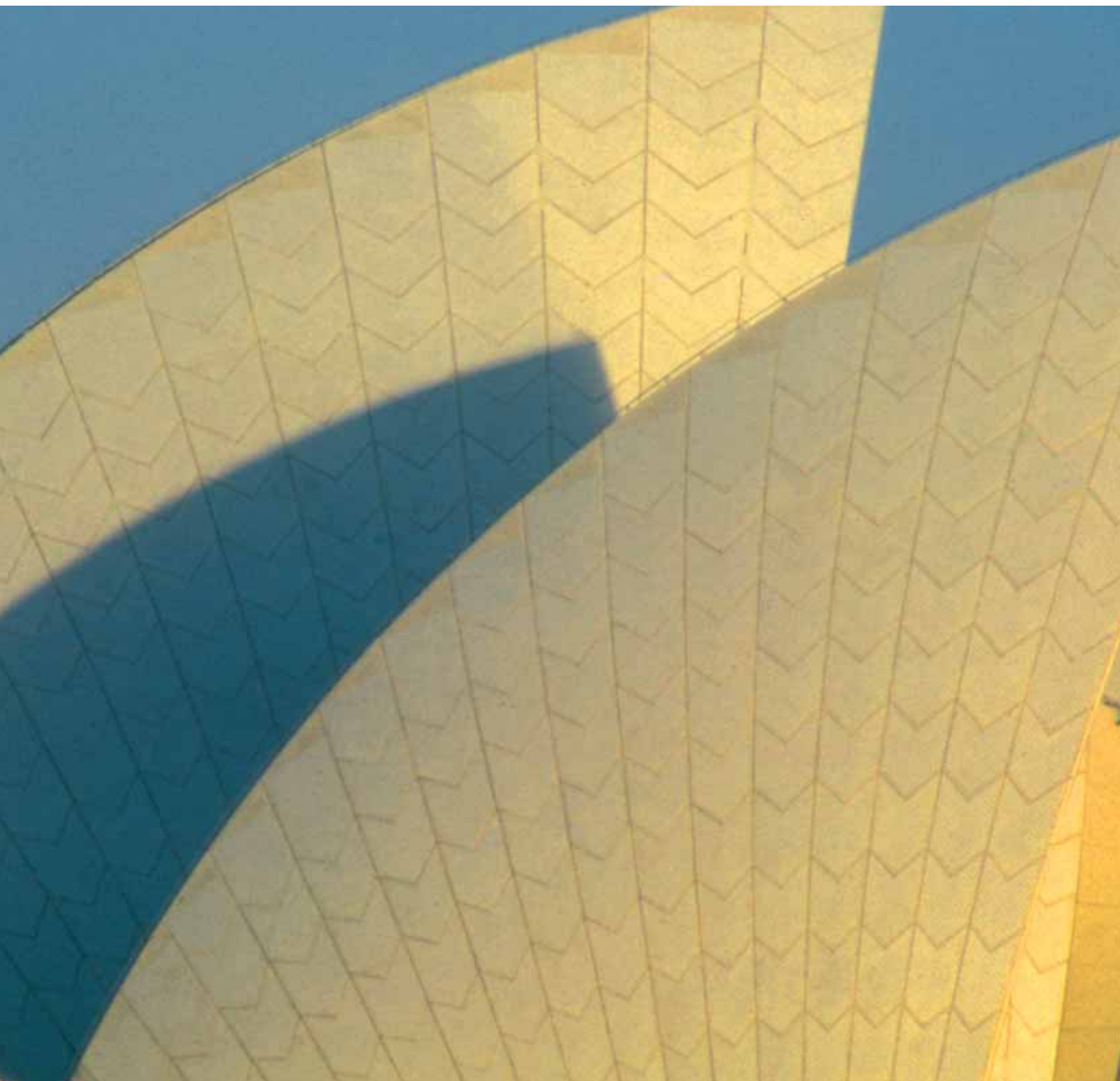


Figure 1.4 Site plan

PART 2. DESCRIPTION







The sun did not know how beautiful its light was, until it was reflected off this building (Louis Kahn quoted in Utzon 2002: 18).

## 2.A DESCRIPTION OF PROPERTY

The Sydney Opera House is a masterpiece of late modern architecture and an iconic building of the 20th century. It is admired internationally and treasured by the people of Australia. Created by an architect who had been an avid sailor and understood the sea, the Sydney Opera House inhabits the world-famous maritime location on Sydney Harbour with such grace that it appears that the building belongs there naturally. The massive concrete sculptural shells that form the Sydney Opera House's roof appear like billowing sails filled by the sea winds with the sunlight and cloud shadows playing across their shining white surfaces. As its Danish architect Jørn Utzon envisaged, it is like a Gothic cathedral that people will never tire of and 'never be finished with' (Utzon 1965a: 49).

The Sydney Opera House represents a rare and outstanding architectural achievement: structural engineering that stretched the boundaries of the possible and sculptural architectural forms that raise the human spirit. It not only represents the masterwork of Utzon but also the exceptional collaborative achievements of engineers, building contractors and other architects. The Sydney Opera House is unique as a great building of the world that functions as a world-class performing arts centre, a great urban sculpture and a public venue for community activities and tourism. This monumental building has become a symbol of its city and the Australian nation. The Sydney Opera House 'is not a simple entity... [but] alive with citizens and urbanity' (Domicelj 2005).

The outstanding natural beauty of the setting of the Sydney Opera House is intrinsic to its significance. The Sydney Opera House is situated at the tip of a prominent peninsula projecting into Sydney Harbour (known as Bennelong Point) and within close proximity to the Royal Botanic Gardens and the world famous Sydney Harbour Bridge. Bennelong Point is flanked by Sydney Cove, Farm Cove and Macquarie Street (Figures 2.2 and 2.3). These sites saw the first settlement, farming and governing endeavours of the colony in the late 18th and early 19th centuries. Known as 'Jubgalee' by the traditional Aboriginal custodians (the Cadigal people), Bennelong Point was a meeting place of Aboriginal and European people during the early years of the colony.

The Sydney Opera House is an exceptional building composition. Its architectural form comprises three groups of interlocking vaulted 'shells', set upon a vast terraced platform ('the podium') and surrounded by terrace areas that function as pedestrian concourses (see Figure 1.4). The shells are faced in glazed off-white tiles while the podium is clad in earth-toned, reconstituted granite panels. The two main halls are arranged side by side, oriented north-south with their axes slightly inclined. The auditoria are carved out of the high north end of the podium so that they face south, towards the city, with the stage areas positioned between them and the entrance foyers. The north and south ends of the shells are hung with topaz glass walls that project diagonally outwards to form foyers, offering views from inside and outside. The tallest shell reaches the height of a 20-storey building above the water. The shell structures cover nearly two hectares and the whole site is nearly six hectares (Figure 2.4).





2.2

The complex includes more than 1000 rooms, most of which are located within the podium, as are virtually all the technical functions of the performing arts centre.

The public spaces and promenades have a majestic quality, endowed by powerful structural forms and enhanced by vistas across the harbour and the Royal Botanic Gardens (Kerr 2003: 32). Strolling along the open broadwalks surrounding the building, the public can experience the harbour setting of the Sydney Opera House, by day or night. The performing arts centre presents itself as an extraordinary sculpture in a magnificent city waterscape. Utzon envisaged that entering the Sydney Opera House would be a journey or transition, one that would intensify appreciation of the man-made performance landscape. For those who climb the stairs rising from the forecourt to the vast podium, the journey culminates on the top of a plateau where the audience meets the performers, in the ancient tradition of a procession culminating in a festival. Alternatively, those who enter via the covered lower concourse move upwards through the 'austere, low-lit, linear spaces of the stairway and booking hall under concrete beams of unusual span and form' in a transition that resembles 'passing from a low narthex or crypt to a grand Gothic cathedral—light, airy and with a tall sculptural rib vault above' (Utzon 2002: 9; Kerr 2003: 17).

*Figure 2.2* Sydney Harbour from 6,000 metres, 1972

*Figure 2.3* The Sydney Opera House projects into the harbour with the central business district of the city behind. The Royal Botanic Gardens are directly to the south and Circular Quay, the hub of Sydney's domestic maritime transport system, is to the west.



2.3



2.4

The Sydney Opera House does not operate solely as a venue for opera, but as a multi-purpose venue that hosts a wide range of performing arts and community activities. These include classical and contemporary music, ballet, opera, drama and dance, events for children, outdoor activities and functions of all kinds. It is used as a venue by a wide range of organisations including performing arts companies, commercial promoters, schools, community groups, corporations, individuals and government agencies. Since its opening in 1973 over 45 million people have attended more than 100 000 performances at the Sydney Opera House and it is estimated that well over 100 million people have visited the site.

*Figure 2.4* The three groups of interlocking shells of the Sydney Opera House are set on a vast terraced platform, 1979.



2.5

### Elements of the Sydney Opera House and its site (1957–1973)

... nowhere had anyone dared a monumentality on the scale of the great platform and tiled vaults soaring fifteen stories into the air (Weston 2002: 182).

The Sydney Opera House was designed by Utzon and completed by Australian architects Hall Todd & Littlemore, with Peter Hall as the principal designer. The engineers were Ove Arup & Partners and the building contractors were Civil & Civic for stage 1 and the Hornibrook Group for stages 2 and 3 (known as M.R. Hornibrook for stage 2). Utzon was re-engaged in 1999 to design and oversee the future evolution of the Sydney Opera House.

#### The podium with its concourses, steps and forecourt

The podium, with its origins in the ancient architectural idea of the raised platform, becomes in Sydney a continuation and evocation of the local natural terrain, building as landscape, in a manner similar in intention to that of other great Nordic architects, notably Asplund, Aalto and Pietilä (Carter 2005).

The base of the Sydney Opera House rises up as a massive monolith of reinforced concrete, a grand granite-clad podium. Its monumental scale forms an artificial promontory that offers continuity with the harbour-side landscape. The podium measures 183 metres by 95 metres rising to 25 metres above sea level and was the largest concrete form in the southern hemisphere in the 1960s (Murray 2004: 25). The podium lends a ceremonial aspect to the site and has been likened to a great stage or an altar of a majestic church. The inspiration for Utzon's design came from Mayan monuments, Chinese temples and Islamic mosques. Just as the stone platform of Mayan temples allowed worshipers to escape the jungle, the podium of the Sydney Opera House invites patrons and visitors to escape the city to a vantage point where they can explore the magnificent vistas and experience the building (Figure 2.6). Utzon's visits to the Mayan ruins on the Yucatan Peninsula in Mexico inspired his design for the podium and the wide stairs leading up to it:

The Mayan platform gave a new, cosmic dimension to the terrace by placing the Indians in touch with the sky and an expanded universe above the jungle... It was Utzon's conclusion that such stone jungle platforms were instruments for restoring the lost horizon (Drew 1999: 75–76).

*Figure 2.5* Tsunami relief concert on the Sydney Opera House forecourt, 2005





2.6



2.7



2.8



The forecourt is a vast open space from which people ascend the stairs to the podium. Utzon's vision was that the forecourt would be adaptable and function as a 'gathering place, a town square and outdoor auditorium' (Utzon 2002: 10). The forecourt is a focus for diverse and spectacular festivals and public events such as the 2000 Olympic Games and New Year's Eve celebrations.

Utzon's design created spectacular and dramatic sculptural elevations. The podium steps, which lead up from the forecourt to the two main performance venues, are a great ceremonial stairway nearly 100 metres wide and two storeys high. Visitors as well as patrons are welcome to ascend the stairway to view the spectacle of the city, bridge and harbour. The podium steps rest on prestressed folded concrete beams spanning 49 metres that created one of the largest prestressed concrete spans in the world at the time of construction in the 1960s. These beams form the low-lit and sculpturally beautiful ceiling to the lower concourse which provides covered access to the performance venues.

Utzon's design created an unconventional performing arts building in the way that it separated the performance and technical functions. The two main performance venues were placed beneath the vaulted roof shells, side by side upon the podium, while all the back-stage facilities and technical equipment for servicing these were hidden within the podium.

The idea has been to let the platform cut through like a knife, and separate primary and secondary functions completely. On top of the platform the spectators receive the completed work of art and beneath the platform every preparation for it takes place (Utzon quoted in DEST & DUAP 1996: 62).

*Figure 2.6* The architectural idea of the platform, utilised by Utzon at the Sydney Opera House, was inspired by great architectural traditions including the temples of the Yucatan peninsula.

This was a major departure from the traditional image and functioning of a performing arts centre and required the modification of established internal circulation patterns, technical spaces, mechanical services and seating arrangements (Tombesi 2005, see upper floor plan, Appendix 10.D). Elevators were used to enable access from below and to transport stage sets from within the podium.

#### The vaulted roof shells ('the shells')

The audience and the performance itself, all taking place on top of the plateau, should be covered with a 'light' sculptural roof, emphasising the heavy mass of the plateau below (Utzon 2002: 9).

The vaulted roof shells with their glistening white tiled skin set amidst the grand waterscape setting of Sydney Harbour are an exceptional architectural element. Utzon originally conceived them as 'single-layer, rib-reinforced parabolic shells' but they had to be refined during the design, engineering and construction process. The eventual design solution turned the shells into 'arched vaults' (Weston 2002: 130–132). The established usage continues to refer to them as 'shells'.

Designed by Utzon in collaboration with Ove Arup & Partners, the final shape of the shells was derived from the surface of a single imagined sphere, some 75 metres in diameter. This geometry gives the building great coherence as well as allowing its construction to benefit from the economies of prefabrication. Constructed ingeniously and laboriously by the Hornibrook Group, each shell is composed of precast rib segments radiating from a concrete pedestal and rising to a ridge beam. The ribs of the shells are covered with chevron-shaped, precast concrete tile lids – the shallow dishes clad with ceramic tiles.

*Figure 2.7* The forecourt is a 'gathering place, a town square and outdoor auditorium.'

*Figure 2.8* As the focal point of the city, the Sydney Opera House is used as a centrepiece for public celebrations, 2004.



2.9

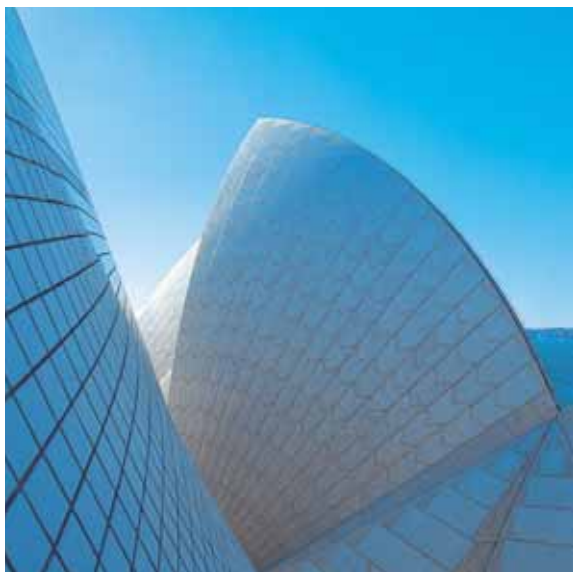
The main areas of the shells are covered in white glossy tiles with matt tiles edging each segment. This creates a beautiful and ever-changing effect so that the building shines without creating a mirror effect. The tiles change colour according to the light and the perspective and can be anything from salmon pink, ochre, the palest of violets and cream or ghostly white. The white glazed shells draw 'attention to their identity as a freestanding sculpture' (Drew 1999). The tiled surface of the shells is described in detail in Part 3.A.

The two main shell structures cover the two main performance venues, known as the Concert Hall and Opera Theatre. The third set of shells that overlooks Sydney Cove was designed specially to house a restaurant.

#### The glass walls

Utzon wanted the walls to be expressed as a hanging curtain, a kind of glass waterfall that swings out as it descends to form a canopy over the lounge terraces and foyer entrances. Indeed, the north terraces are really great verandas with a glass canopy cover overlooking the harbour (Drew 1999).

The glass walls of the Sydney Opera House are a special feature of the building. They were constructed according to architect Peter Hall's modified design, which is described more fully in Part 3.A. The open end and sides of the shells are filled by hanging glass curtain walls. The topaz glazed infill between the shells and the podium was built as a continuous laminated glass surface with faceted folds tied to a structure of steel mullions. 'A special feature is the canting out of the lowest sheets, which allows views out without reflections' (Ken Woolley quoted in DEST & DUAP 1996: 70).



2.10

*Figure 2.9 The Sydney Opera House in its harbour setting, Australia Day 1988*

*Figure 2.10 The shells of the Sydney Opera House*



2.11

*Figure 2.11 Inside the smallest shell is a restaurant.*



The glass walls flood the building with sunlight and open it to the evening views of the city and harbour. Visitors often stand in the foyers under the shells mesmerised by the towering glass walls and intrigued at how the walls are held upright.

#### Performance halls

The Sydney Opera House has two main performance halls, the Concert Hall and the Opera Theatre. Utzon likened the relationship between the performance spaces and the shells to the structure of a walnut: 'the walnut's hard shell' protects the kernel's 'slightly wobbled form' (Murphy 2004: 10–12). His original design conceived the halls as being largely constructed of plywood and hanging independently within the vaulted shells so that their forms could be adapted to create the best acoustical performance. During the final design and construction of the halls after Utzon's departure in 1966, plywood was used in only one of the halls.

The Concert Hall is the largest performance space of the Sydney Opera House and accommodates up to 2700 people. Fitted high on the southern wall behind the stage is one of the largest mechanical-action pipe organs in the world (Murray 2004: 135). Birch plywood, formed into radiating ribs on the suspended hollow raft ceiling, extends down the walls to meet laminated brush-box linings that match the floor.

The Opera Theatre is the Sydney base for Opera Australia and the Australian Ballet, and a regular venue for the Sydney Dance Company. Its walls and ceiling are painted black and the floor is brush-box timber.

The Drama Theatre, the Playhouse and the Studio were developed as new performance spaces after Utzon's departure. They are located in the podium.

#### Public and back of house interiors

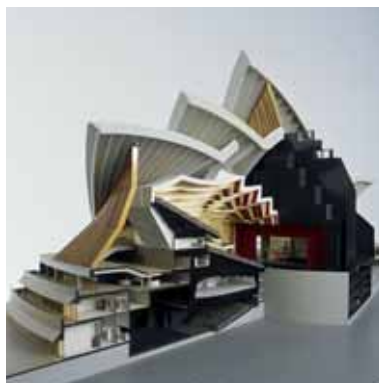
Peter Hall's design for the interiors used different finishes to distinguish the various spaces in the building. Utzon regarded the foyers as 'outside' spaces, designed to be seen clearly through the glass walls.

In keeping with Utzon's vision the foyer fabric was designed with the same natural palette of textures and colours as the exterior. Off-form concrete painted white was used for the internal podium walls. Other spaces that were to be used heavily by patrons, visitors, artists and staff were finished in the same white birch veneer as the Concert Hall.

The veneer, which was applied to ply panels moulded to a shallow 'U' shape, was used in various forms to conceal services, absorb sound and accommodate the changing geometry in the building. Affectionately known as 'wobblers', the panels were used throughout the complex, most notably in the Drama Theatre and the Playhouse and their foyers, the major corridor systems and toilet facilities. The white birch veneer in its various forms brought visual unity to the performers' and staff spaces within the podium (Kerr 2003: 70).



2.12



2.13



2.14

Figure 2.12 The glass walls to the northern foyers

Figure 2.13 Model of the Sydney Opera House in Utzon's studio, 1966

Figure 2.14 The interior of the Concert Hall



2.15



2.16



2.17

### Utzon Room

The Utzon Room is a multi-purpose venue overlooking Farm Cove that is used for music recitals, productions for children, lecture programs and functions. Formerly the Reception Hall, the room was transformed in 2004 under Utzon's design guidance in association with his architect son, Jan Utzon, and Australian architect Richard Johnson. It was the first project in the Sydney Opera House's upgrade program after Utzon was re-engaged to work on the Sydney Opera House in 1999 (see Part 3.D for information on Utzon's re-engagement). The room was renamed in the architect's honour and is presented as an authentic Utzon interior, both in its structure and interior design.

The room is enlivened by a specially commissioned tapestry designed by Jørn Utzon and woven in Australia by the Victorian Tapestry Workshop under the supervision of his daughter Lin Utzon, a renowned textile artist.

To improve the room's acoustics Utzon has designed a tapestry inspired by the Hamburg Symphonies of Carl Philipp Emanuel Bach. The originality of Bach's symphonies has influenced generations of composers, and Utzon's design transforms the music's unexpected contrasts and silences into an optical experience ... Measuring 14 metres in length, the tapestry is visible externally through the long window of the podium's side, so inscribing the façade symbolically with the representation of music and connecting it with the life of its interiors (Murphy 2004: 13).

### Western loggia

The creation of the western loggia is the first major structural work to the exterior of the building since the opening of the Sydney Opera House. It was designed by Utzon following his re-engagement with the Sydney Opera House in 1999. The western loggia comprises a colonnade (45 metres long and five metres wide) opening into the western side of the podium facing towards the Sydney Harbour Bridge. Nine openings have been created to open up the foyers of the Drama Theatre, the Studio and the Playhouse to natural light and to allow access to harbour and city views (Hale & Macdonald 2005: 18–19). New bar and food facilities facing Sydney Harbour Bridge will create an impressive outdoor place for visitors to enjoy the building in its harbour setting.

Utzon's design for the western loggia was inspired by the colonnades found in Mayan temples, which were one of the original design sources for the Sydney Opera House. The western loggia also reinforces Utzon's initial design by connecting the foyers of the lower performance venues to the harbour setting, as is the case with the upper performance venues (the Opera Theatre and the Concert Hall).



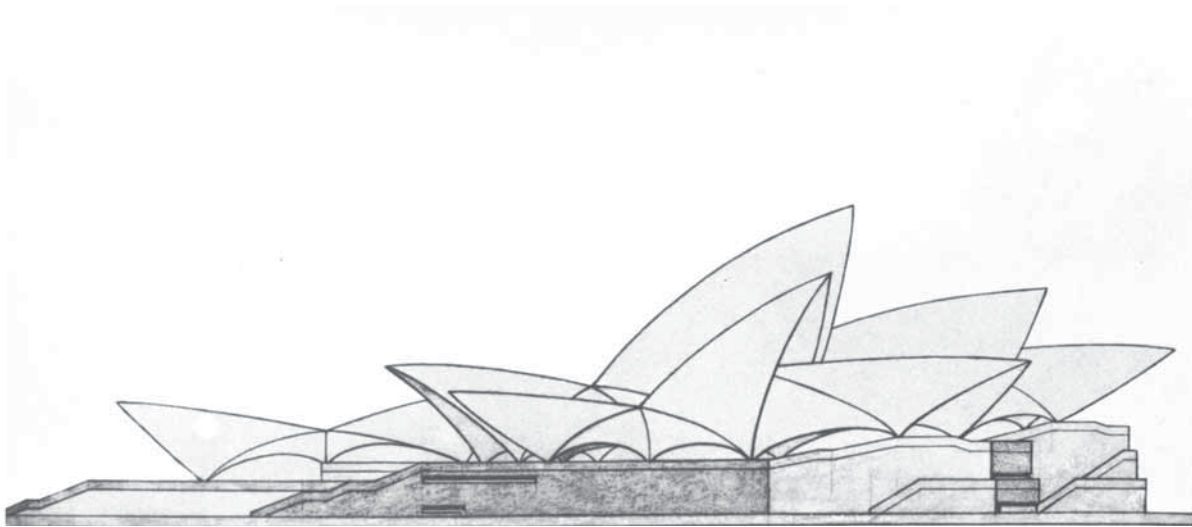
2.18

*Figure 2.15* The approach to the theatres from the lower concourse

*Figure 2.16* Jørn Utzon with Norman Gillespie, Chief Executive Officer of the Sydney Opera House Trust, and Utzon's design for the tapestry for the Utzon Room

*Figure 2.17* The recently refurbished Utzon Room, 2004

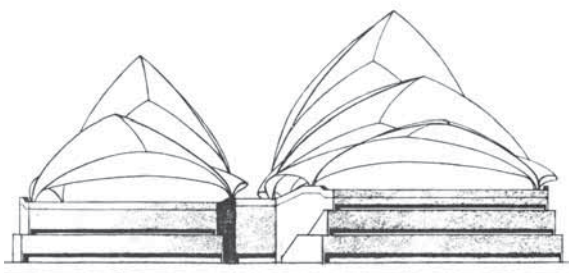
*Figure 2.18* The new loggia to the western elevation



2.19

Further detail concerning the Sydney Opera House. A comprehensive description and evaluation of the Sydney Opera House complex and its elements, including their level of heritage significance, are outlined in James Semple Kerr's *Sydney Opera House: a plan for the conservation of the Sydney Opera House and its site* (referred to as 'the Conservation Plan (SOH)' in this nomination). A virtual tour of the Sydney Opera House is available on its web site at <<http://www.sydneyoperahouse.com/sections/tours/virtualtour/vrtour2.asp>>.

Additional information on the elements of the Sydney Opera House that represent some variations to Utzon's original design concept (such as the glass walls and the interiors) is given in the Conservation Plan (SOH) and in Part 3.D. The Conservation Plan (SOH) and the virtual tour (CD format) are provided as accompanying documentation to this nomination.



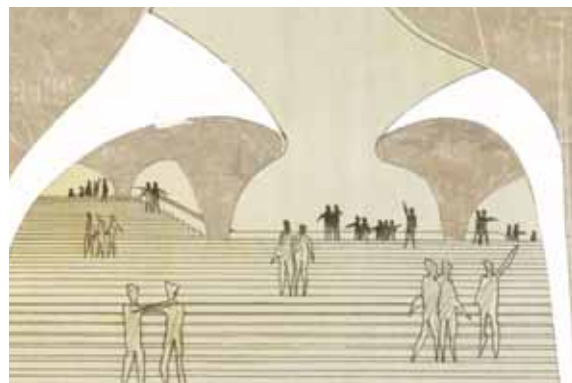
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**Figure 2.19** Utzon's original competition drawing of the east elevation, 1956

**Figure 2.20** Utzon's original competition drawing of the north elevation, 1956

## 2.B HISTORY AND DEVELOPMENT

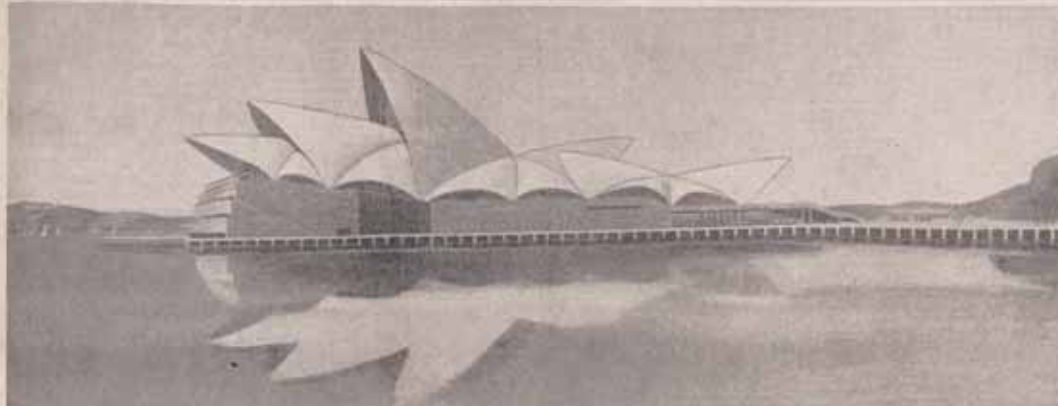
The history of the Sydney Opera House is as extraordinary and complex as the building. It is a story of vision, courage, belief, dedication, challenge, controversy and triumph. Its many remarkable elements include the submission of a visionary design that the judges courageously selected as winner; the collaborative partnership of architect and engineer that triumphed over enormous odds to produce a solution to the construction of the shells that was as groundbreaking as the design was ingenious; the breach created by Utzon's departure from the project in 1966 in the face of controversial cost and time overruns; and Utzon's re-engagement with his project three decades later to oversee future changes to the Sydney Opera House.



2.21

**Figure 2.21** Utzon's competition drawing of the podium looking towards the major and minor halls, 1956





## DANE'S CONTROVERSIAL DESIGN WINS OPERA HOUSE CONTEST

Joern Utzon, 38, of Hellebaek, Denmark, has won the £5,000 first prize in a world-wide contest for a design for a National Opera House to be built at Bennelong Point.

His Opera House, estimated to cost £3,500,000, would have an unusual roof consisting of a series of shell vaults of concrete covered on the outside with white tiles.

The judges, in their report issued yesterday, said: "Because of its very originality, it is clearly a controversial design. We were, however, absolutely convinced about its merits."

Controversy has already begun. One architect said last night that the winning design was "a piece of poetry... a masterpiece."

### "CHEAPEST TO BUILD"

Assessing the architectural art in a series of studies... The design is... The estimated cost... The design is... The estimated cost... The design is... The estimated cost...



MR. J. UTZON

Designed for... The building is... The design is... The estimated cost...

### LATE NEWS

#### New Liner On Proving Flight

1,100-hp. jet engine... The liner is... The design is... The estimated cost...

#### Other Stories On Design

• Building... • Design... • Design... • Design...

#### BURBAN TEST

... The test is... The design is... The estimated cost...

#### "How To The Great Buildings Of World"

... The book is... The design is... The estimated cost...

### PHONE TALK TO WINNER

Mr. Joern Utzon, the Danish architect who won the first prize in a world-wide contest for a design for a National Opera House to be built at Bennelong Point, is expected to be contacted for his design.

He said "The Sydney Morning Herald" is a beautiful publication and I am very glad to have been in touch with the people of Sydney.

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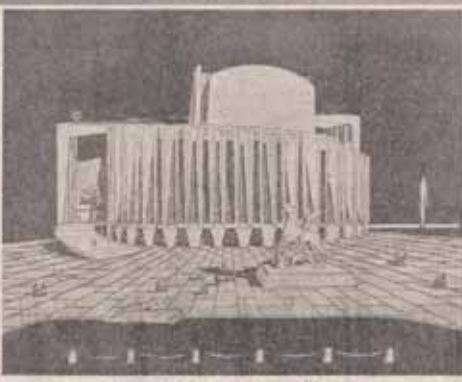
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• Second prize-winning entry by a group of U.S. architects.



• Third prize-winning entry by a firm of English architects.

### Rocket Range Talks Started

WASHINGTON, Jan. 29 (A.P.)—The British and U.S. defense forces are expected to discuss the possibility of a joint rocket range in the Pacific area.

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### Boy Drowns After 25ft Fall In Pool

A 6-year-old boy was drowned when he fell 25 feet into a deep rock pool at Wollomoolloo yesterday afternoon.

The boy, who was playing in a park, fell from a high rock ledge into a deep pool of water.

The boy, who was playing in a park, fell from a high rock ledge into a deep pool of water.

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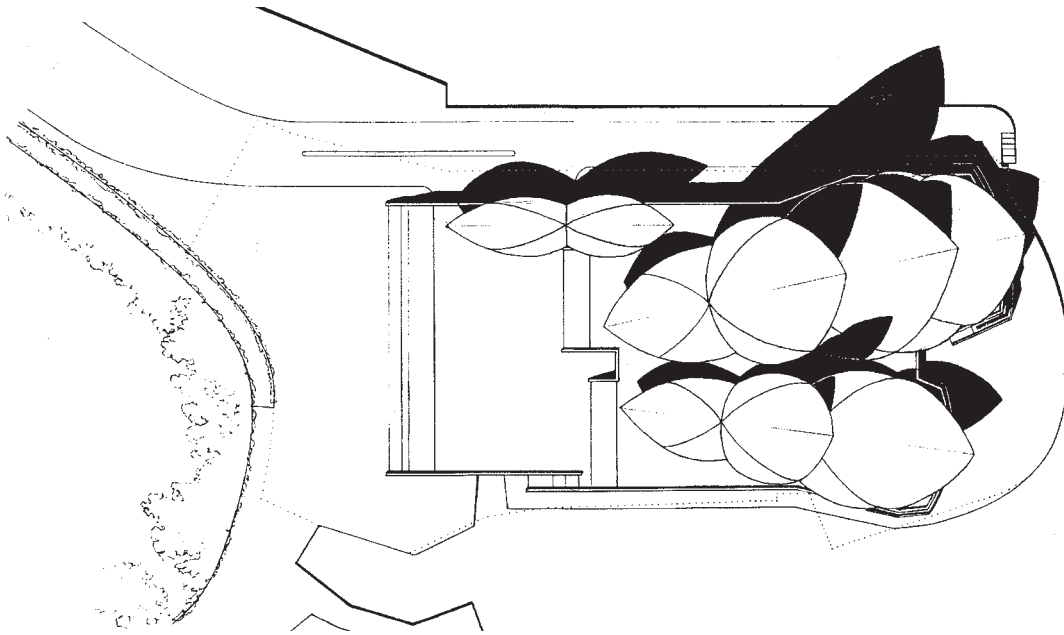
The British and U.S. defense forces are expected to discuss the possibility of a joint rocket range in the Pacific area.

• Continued from page 1

2.22

Figure 2.22 The front page of the Sydney Morning Herald, 30 January 1957





2.23

### International design competition 1956

A major cultural centre for Sydney and its siting at Bennelong Point had been discussed since the 1940s. Eugene Goossens, the British-born conductor of the Sydney Symphony Orchestra, first proposed this site in 1948, a recommendation that was later accepted by the New South Wales Premier, John Joseph Cahill. In 1956 the New South Wales Government called an open-ended international design competition and appointed an independent jury, rather than commissioning a local firm. The competition brief provided broad specifications to attract the best design talent in the world. Open to all architects from around the globe, it did not specify design parameters or set a cost limit. The main requirement of the competition brief was a design for a dual function building with two performance halls. The competition generated enormous interest in Australia and overseas: 933 architects registered of whom 233 (mostly from overseas) submitted a design on a strictly anonymous basis (Messent 1997: 60–99).



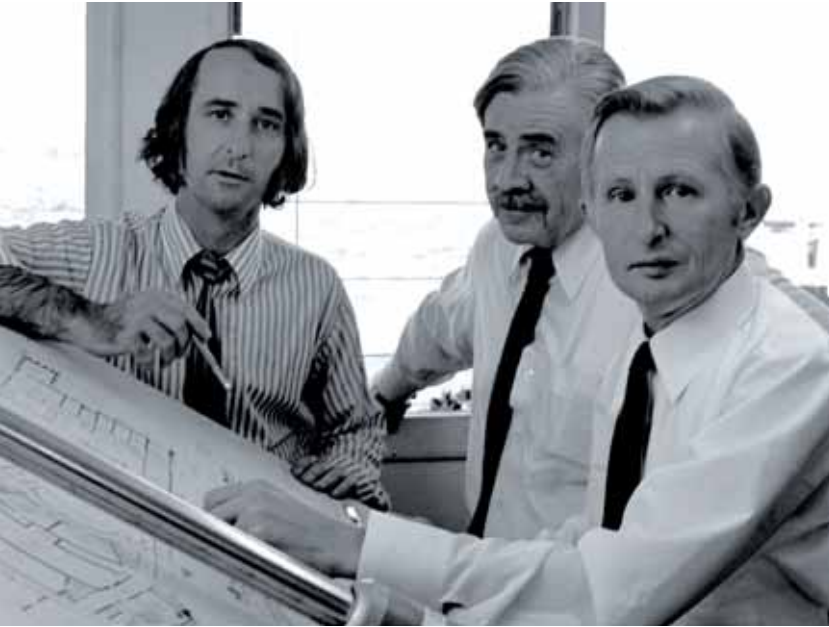
2.24

The New South Wales Government's decision to commission Utzon as the sole architect was unexpected, bold and visionary. There was scepticism as to whether the structure could be built given Utzon's limited experience, the rudimentary and unique design concept and the absence of any engineering advice. The competition drawings were largely diagrammatic, the design had not been fully costed and neither Utzon nor the jury had consulted a structural engineer (Murray 2004: 13).

Utzon's design concept included unprecedented architectural forms and demanded solutions that required new technologies and materials. Utzon was only 38 years old and while he was starting to gain a reputation as an innovative designer he had just a handful of small-scale works to his credit. This was quite young for an architect to tackle such a large and complex building, particularly given the failure of several talented but inexperienced winners of other international competitions (Weston 2002: 119). The New South Wales Government also faced public pressure to select an Australian architect.

Figure 2.23 One of Utzon's original competition drawings, 1956

Figure 2.24 The competition judges with the design, from left to right: renowned English architect Leslie Martin; Cobden Parkes (NSW Government Architect); eminent American-based Finnish architect Eero Saarinen, and H Ingham Ashworth, Professor of Architecture, University of Sydney.



2.25

Yet there was a spirit of adventure and willingness to explore new ideas in the postwar years in Australia. There was an impetus in some circles to transform Sydney into a new cultural metropolis and this escalated following the decision to hold the 1956 Olympic Games in Melbourne (Murray 2004: 2). Another key driving force behind the genesis of the Sydney Opera House was Premier Cahill's strong commitment to create the Sydney Opera House as a 'People's Palace' (Weston 2002: 114).

### Construction of the Sydney Opera House

The Sydney Opera House is often thought of as being constructed in three stages and this is useful in understanding the history of the three key elements of its architectural composition: the podium (stage 1: 1958–1961), the vaulted shells (stage 2: 1962–1967) and the glass walls and interiors (stage 3: 1967–1973). Architect Jørn Utzon conceived the overall design and supervised the construction of the podium and the vaulted shells. The glass walls and interiors were designed and their construction supervised by architect Peter Hall supported by Lionel Todd and David Littlemore in conjunction with the then New South Wales Government Architect, Ted Farmer. Peter Hall was in conversation with Utzon on various aspects of the design for at least 18 months following his departure (Hall 1967). Ove Arup & Partners provided the engineering expertise for all three stages of construction, working with building contractors

*Figure 2.25 Peter Hall, Lionel Todd and David Littlemore*



2.26

Civil & Civic on stage 1 and the Hornibrook Group on stages 2 and 3.

Design and construction were closely intertwined and this was a distinctive feature of the Sydney Opera House. Utzon's unique design together with his radical approach to the construction of the building fostered an exceptional collaborative and innovative environment. His collaborative model marked a break from conventional architectural practice at the time.

The separation of architecture and engineering that had begun in the 19th century was not responsive to the complex nature of modern architecture. The striving for new architectural forms using new materials demanded new methodologies and architects in some countries had started seeking more creative input from engineers. Utzon took this one step further with the distinctive approach he employed for the Sydney Opera House. This is described in more detail in Part 3.A.

The scale of construction of the Sydney Opera House was enormous. Over 30 000 cubic metres of rock and soil had to be removed from the site and the construction of the shell structure required the world's largest crane. The design solution and construction of the shell structure took eight years to complete and the development of the special ceramic tiles for the shells took over three years.

*Figure 2.26 Ove Arup's team from left to right: Mick Lewis, Ove Arup and Jack Zunz on site*

The Sydney Opera House literally became a testing laboratory and a vast, open-air precasting factory. Examples of engineering and technological feats and other innovations are described in Part 3.A.

The Sydney Opera House took 16 years to build at an estimated cost of A\$102 million. This was six years longer than scheduled and 10 times more than its original estimated cost (Murray 2004: xv). Weston points out that it was miraculous that Utzon was given so much freedom to explore, experiment and succeed in building the structure at all (Weston 2002: 184).

Certainly it was expensive and difficult to build, but so were Gothic cathedrals and many other major buildings, and part of their appeal is the feeling of embodied energy and effort expended in achieving a great work ... [But] as the first and still unrivalled modern 'blockbuster building', it must have paid for itself many times over by giving Sydney and Australia an unrivalled and instantly recognisable emblem—'the greatest public-relations building since the pyramids' to quote an Australian MP (Weston 2002: 184).

Probably the most significant feature of the whole Sydney Opera House story is the astonishing reality that in a modern society with all its checks and balances, its accountants and accountability, its budgets and budgetary controls, a folly of this scale could be contemplated. In other words it is nothing short of miraculous that it happened at all (Zunz 1973: 2).



2.27

*Figure 2.27* Paul Robeson sings to the construction workers in 1960

### The Sydney Opera House as a performing arts centre

Many famous artistic performers from Australia and overseas have been associated with the Sydney Opera House. The first performance at the Sydney Opera House took place in 1960, long before it officially opened, when the American actor and singer Paul Robeson climbed onto the scaffolding at the construction site to sing to the workers. Thirteen years later the first official performance was given in the Opera Theatre on 28 September 1973 by the Australian Opera Company. On 20 October 1973 the Sydney Opera House was officially opened by Queen Elizabeth II. During the period immediately after the opening some 300 journalists arrived from all over the world 'to see if the Sydney Opera House was to be a white elephant or a sacred cow' (Kerr 1993: 25). A Los Angeles correspondent wrote:

This, without question, must be the most innovative, the most daring, the most dramatic and in many ways, the most beautifully constructed home for the lyric and related muses in modern times (Kerr 1993: 25).

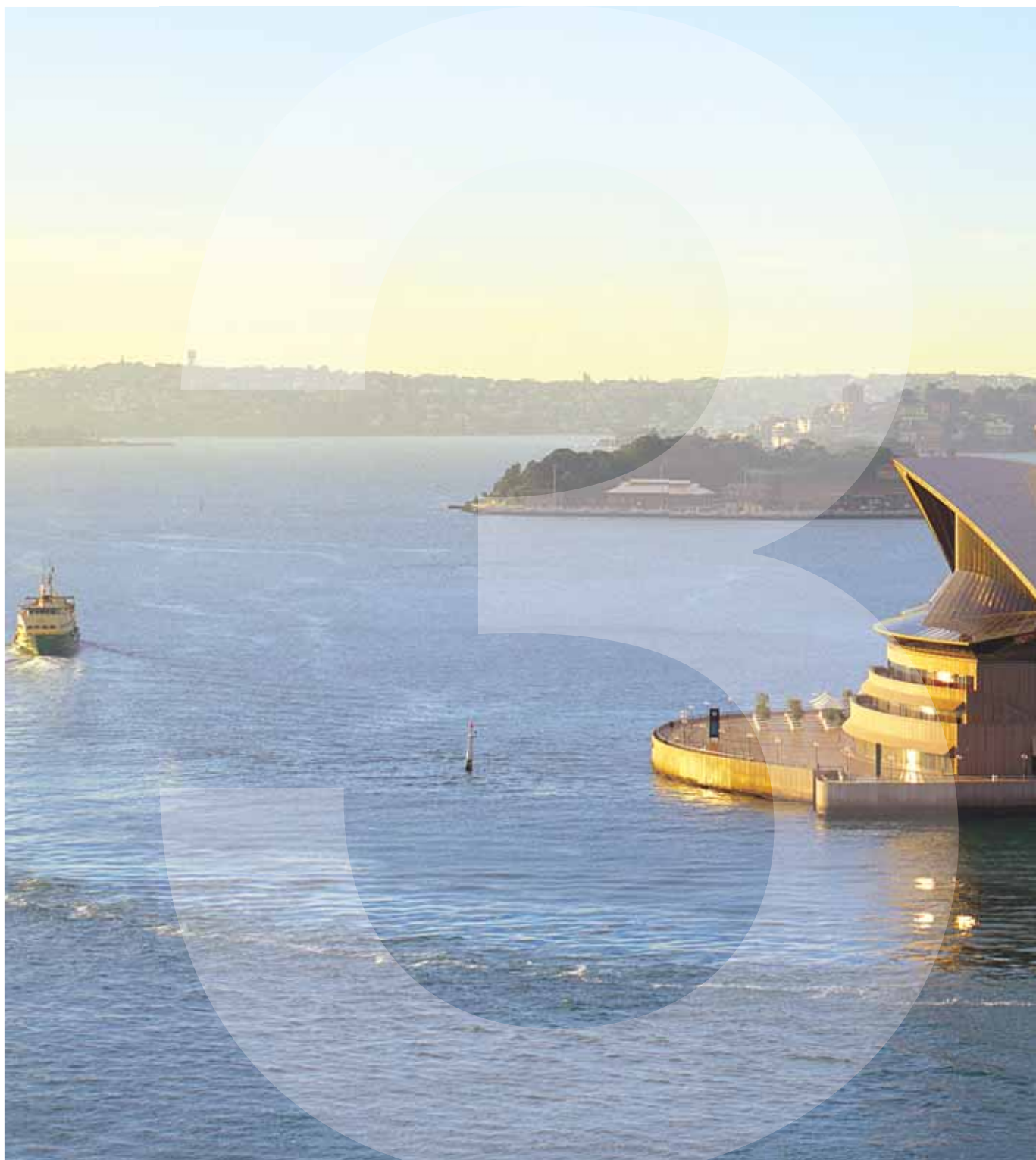
A timeline of the Sydney Opera House is at Appendix 10.D.



2.28

*Figure 2.28* Aerial view of the Sydney Opera House during its opening on 20 October 1973

## PART 3. JUSTIFICATION FOR INSCRIPTION







... we're here to nudge forward the frontiers of science (Utzon quoted in Murray 2004: 152).

### 3.A CRITERIA UNDER WHICH INSCRIPTION IS PROPOSED AND JUSTIFICATION FOR INSCRIPTION

The Sydney Opera House fulfils the definition of 'monument' according to Article 1 of the World Heritage Convention (UNESCO 1972) as an architectural work of outstanding universal value from the point of view of both art and science. The Sydney Opera House meets criterion (i) set out in paragraph 77 of the *Operational guidelines for the implementation of the World Heritage Convention*.

The Sydney Opera House is a work of human creative genius, and a masterful architectural and engineering achievement. It represents an outstanding conjunction not only of architecture and engineering but also of sculpture, landscape design and urban design. It is an ensemble that has reconfigured the way public architecture can define a city's identity in the form of an iconic signature building (Goad 2005). It was a turning point in the late Modern Movement, a daring and visionary experiment resulting in an unparalleled building that defied categorisation and found an original style in which to express civic values in monumental public buildings. The influences that resulted in the Sydney Opera House's unique form include organic natural forms and an eclectic range of aesthetic cultural influences, brilliantly unified in the one sculptural building. This was made possible through engineering innovation on a grand scale. Moreover, the Sydney Opera House's significance is intrinsically tied to its harbour-side site. Utzon's design, an extraordinarily appropriate response to its site, created an enormously successful urban focus for the city of Sydney and captured the imagination of the world. The pioneering collaborative design approach also set a precedent for best practice in building and the engineering research to solve the unprecedented challenges was virtually unknown in the building industry.

The outstanding universal values of the Sydney Opera House are demonstrated in the building's recognition as:

- 3.A (i) a masterpiece of late modern architecture;
  - multiple strands of creativity,
  - a great urban sculpture,
  - masterful synthesis of architectural ideas,
- 3.A (ii) outstanding achievements in structural engineering and technological innovation;
- 3.A (iii) a world-famous iconic building of the 20th century.

These values are the result of the collective genius of Utzon and the team responsible for the building's construction.





3.2

### 3.A (i) A masterpiece of late modern architecture

The Sydney Opera House is a great architectural work of the 20th century. Its values are best demonstrated through the specific characteristics of its architecture and will be discussed under the following headings: multiple strands of creativity, a great urban sculpture and a world famous iconic building.

#### Multiple strands of creativity: Utzon and collective ingenuity

The Sydney Opera House was the result primarily of the creative genius of Jørn Utzon, as well as the ingenuity of a collaborative team of architects, engineers, building contractors and manufacturers. The Sydney Opera House was acclaimed as ‘a masterpiece—Jørn Utzon’s masterpiece’ by the Pritzker Prize jury in 2003 (Pritzker Prize web page 2005). It is also renowned as Utzon’s masterwork. Utzon’s unique design concept and his distinctive approach to the construction of the building fostered an exceptional collective creativity and demanded exceptional engineering and technological feats. Outstanding design and construction solutions were achieved by London-based engineers Ove Arup & Partners, Australian architects Hall Todd & Littlemore and many others in the construction industry.

Utzon, Ove Arup and engineer Peter Rice were awarded the Royal Institute of British Architects’ Gold Medal for Architecture (1978, 1966 and 1992 respectively), which includes among its recipients other internationally distinguished architects and engineers such as Le Corbusier, Pier Luigi Nervi, Oscar Niemeyer and Frank Gehry. See Appendix 10.A for biographies of Jørn Utzon and Ove Arup.

Utzon’s design represented an exceptional response to the challenges set by the 1956 international competition and clearly marked him out from the other entrants. His composition was based on a simple opposition of three groups of interlocking shell vaults resting on a heavy terraced platform. The design was the only one that arranged the two performance halls side by side—the other entrants placed them end to end. This arrangement helped to give the building a sculptural appearance that could be experienced and appreciated from land, sea and air as one moved around the building. The beautiful shells juxtaposed against the massive podium were radically new and particularly impressed the jury. Utzon’s composition also created a unique design for a concert hall that has been described as ‘original to the point of being revolutionary ... [it] had absolutely no association with the classical design of concert halls’ (Danish acoustics consultant Jordan quoted in Murray 2004: 67).

Figure 3.2 The Sydney Opera House at dusk



Utzon's design modified the established internal circulation patterns, seating layouts and positioning of technological and functional requirements of the conventional arts centre (Tombesi 2005). The design also provided a highly original response to the harbour setting, inspired by the site, people and nature together with an assortment of themes refined from other architecture, particularly ancient forms and styles (Weston 2004a: 28, 34–35). The jury was impressed that the 'white sail-like forms of the shell vaults relate as naturally to the harbour as the sails of its yachts' (Murray 2004: 10). Another important aspect was the design of the massive open platform and cave-like shells to entice visitors to inhabit and explore them (Weston 2004a: 34–36). The Sydney Opera House was very much designed to be a people's building. These and other outstanding elements of the design are described below.

Utzon's unique design was acclaimed as the work of a genius in Australia and internationally but it also attracted critics. The competition jury was convinced that Utzon's design was 'the most original and creative submission ... capable of being one of the great buildings of the world' (New South Wales Government 1956: 2). Jury member Eero Saarinen was, reportedly, immediately alert to the brilliance of Utzon's design and played a role in convincing the jury of its uniqueness.

The design was hailed as exhilarating and brilliant in Australia and overseas. For Saarinen, it clearly was 'a work of genius' (quoted in Weston 2002: 114). Inevitably, the originality of the design also drew detractors from some world-famous architects and engineers, such as Mies van der Rohe, Frank Lloyd Wright, Pier Luigi Nervi and Felix Candela, on architectural grounds and as an unbuildable masterpiece (Weston 2002: 114, 118; Murray 2004: 11). Utzon's groundbreaking design did pose architectural, structural and technological challenges that pushed the boundaries of creativity and science.

...his public architecture always seeks a heroic dimension. Utzon, like a new Hercules constantly engaged in fighting the Nemean Lion or winning the Golden Apples of the Hesperides, exerts himself to resolve the seemingly impossible: prefabricating the fantastical forms of the Sydney 'shells'; giving the cement coffering in Silkeborg the softness and delicacy of a mollusk; weightlessly suspending the roofs in Elviria and Zurich' (Moneo 2004: 88).



3.3

*Figure 3.3* Jørn Utzon's studio in Denmark, 1960



3.4

*Figure 3.4* Utzon's sketches of the shells, 1961





## 3.5

Utzon's original design was integrally linked to his radical way of working (Weston 2004: 180). He established an exceptional design-engineering-construction environment that fostered a collective creativity and outstanding innovation during the building of the Sydney Opera House. His distinctive approach was marked by an early and close integration between design and engineering; exploring the possibilities of industrial production and the building crafts; a passion for working at 'the edge of the possible'; and an uncompromising pursuit of perfection (Murray 2004:137–144). He was consumed by a passionate drive to create the world's perfect opera house with only the best structural forms and finishes.

The construction site was characterised by an outpouring of plans and drawings, the building and testing of numerous prototypes, and architects and engineers working together over months and even years to solve the many complex challenges that arose. Utzon had a special inventive style and he sought an intriguing marriage of experimentation with new materials and technologies and diverse architectural styles including modern and organic forms. Utzon was renowned for constantly changing things in his drive to reach perfection. This continual pushing of the boundaries of human endeavour turned the Sydney Opera House into 'a test bed' of new technologies and stretched everyone to the limit—professionally, personally and psychologically' (Murray 2004: xvii; 41).

Examples of the design, engineering and construction challenges and the outstanding solutions developed by Utzon and his collaborative teams are described on page 35 in *Outstanding achievements in structural engineering and technological innovation*.

#### A great urban sculpture

The Sydney Opera House, with its soaring white shells set upon a massive podium and encircled by harbour waters, is a spectacular sight—a monumental urban sculpture, from whatever angle it is viewed by day or night. Sited on a prominent peninsula in Sydney Harbour, with a backdrop of city skyscrapers and the Sydney Harbour Bridge, the design of the Sydney Opera House expressed the genius of Jørn Utzon. Utzon understood that the Sydney Opera House would be viewed from all sides due to its exposed maritime site: from water and land as well as from above where the city's tall buildings and the nearby Sydney Harbour Bridge provide viewing platforms for thousands of Sydney workers and commuters. He knew this required a sculpturally beautiful roof which he described as its 'fifth façade' (Utzon 1965a: 49). An extraordinary elevated form in a beautiful setting, the Sydney Opera House is a vibrant public building and meeting place that has been likened to a modern-day acropolis (Weston 2002: 114; Carter 2005).

Figure 3.5 The Sydney Opera House from the air

In the Sydney Opera House Jørn Utzon realised the great synthesis of earth and sky, landscape and city, vista and intimacy, thought and feeling, in terms of a unity of technological and organic form. Hence we may safely say that the Sydney Opera House represents a masterpiece of human creative genius, and a most significant step in the history of modern architecture (Norberg-Schulz 1996: 172).

Utzon's design was an exceptional response to the harbour setting. He drew heavily from his childhood exposure to shipbuilding and his experiences as a sailor. He also studied sea charts of Sydney Harbour, explored the qualities of the promontory at Bennelong Point from photographs and pictures, visited various harbour environs in Denmark and Sweden and studied Greek sites from aerial photographs. 'It is a mark of his genius that he so brilliantly interpreted the location, the light and the landscape with its sculptural forms' (Murray 2004: 1). The outstanding success of the building today is in large part due to the way it is grounded in the site: 'It appears to rise out of the ground as a landform almost as though it were a geological extension of the earth itself' (Frampton 2004: 21).

Utzon's design was also a brilliant response to the cultural purpose of a performing arts centre, a place that excites the human imagination. It did not just provide a new performing arts venue but offered the dream of a cultural centre for the city, a place in which the imaginative life and culture of the people might flourish. It is today as Utzon envisaged it in 1959 when he predicted: 'The Sydney Opera House will perform its own exciting drama on the harbour' (Australian Heritage Commission 1980: Appendix 1).



3.6

*Figure 3.6* The Sydney Opera House is a brilliant response to its maritime setting.

It is largely due to the cultural excitement generated by its sculptural form that the Sydney Opera House is one of the busiest performing arts centres in the world. In 2004 the Sydney Opera House hosted over 1700 performances for more than one million theatre patrons, while an estimated three million more people were drawn to the site to closely examine its form. The Swiss architectural historian Sigfried Giedion wrote:

One must see the Sydney Opera House as a totality, and above all, how it fulfils its human purpose. Its only goal is to prepare the audience for a festival. Whoever visits the theatre at Delphi in Greece, high above the sanctuaries, must first experience a long slow climb up the winding sacred way. In the theatre itself he first experiences the full majesty of the landscape. On a smaller scale, something similar is attempted at Sydney (Giedion 1965: 44).

One of the great architectural contributions of the Sydney Opera House is the introduction at a civic scale of the podium as a means of affording views of the surrounding landscape. The podium offers continuity with the peninsular landscape and also functions as a ceremonial stage, a high altar to the arts and culture of Australia.



3.7

*Figure 3.7* The Sydney Opera House is also an outstanding response to its cultural purpose.



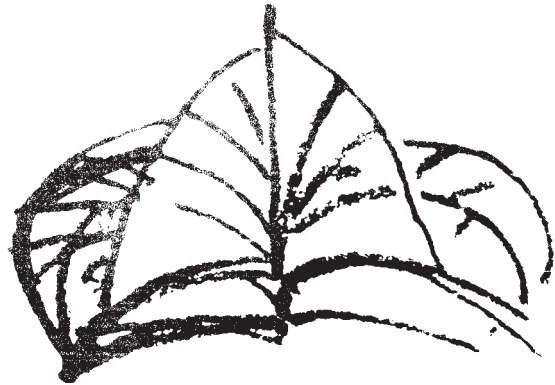
3.8

The roofs hover over platforms, 'leaving the spaces between free, like in Japanese houses' suggesting an elemental contrast of rock against cloud (Norberg-Schulz, 1996: 168). This opposition is a theme within Utzon's work and is skilfully realised in the Sydney Opera House where the visually solid, earthy podium supports the vaulted white shells that rise into the sky. In Utzon's works the earthbound base has become a 'free' man-made continuation and interpretation of the site, whereas the roof is understood as a visualisation of the qualities of the sky (Norberg-Schulz 1996: 168).

The sculptural form of the Sydney Opera House has stimulated a richness of imagery and metaphors in popular culture and architectural history. It invites both playful and serious comparisons with all manner of things. American architectural historian Charles Jencks has analysed the 'superabundance' of the building's metaphorical associations, varying from the sublime to the humorous (Jencks 1984: 43–44; 2005: 206). These include not only sails and shells, but also clouds, space ships, flowers unfolding, turtles making love, barnacles, the glistening skin of fish-scales, a scrum of nuns and a dish rack full of crockery:

As with the Eiffel Tower, ambiguous meanings have finally transcended all possible functional considerations ... This is a rare class of sign, like a Rorschach test ... [which] happily receives projected meaning from everyone (Jencks 1984: 43).

*Figure 3.8* An Opera House in every home, lino cut by Eric Thake, 1975



3.9

Like a great work of art the Sydney Opera House resists being fixed with any one meaning. The sculptural beauty and metaphorical richness of the Sydney Opera House and its allusions to ancient architectural forms, elemental natural oppositions and morphological and maritime forms are among the reasons for the widespread and enduring affection it inspires. The success of the building can also be credited to the fundamental principles underlying its design: the creation of 'an architecture that is predominantly experiential in character' and an architecture that draws 'inspiration from nature for organic form' (Utzon 2002: 57).

#### Masterful synthesis of architectural ideas

Utzon's brilliance—genius, if you like—is in his multiple-problem-solving ability. He analyzes the complex, conflicting series of problems, which constitute practically any architectural brief and he comes up with a single answer which solves all of them simultaneously (Boyd 1973: 54).

Utzon's creative genius is exemplified in his masterful synthesis of different architectural ideas and aesthetic cultures within a single building. The building represents a defining moment in the search by architects in the mid 20th century for an appropriate formal, structural and material vocabulary to reflect monumentality and civic value in contemporary architecture (Goad 2005).

*Figure 3.9* Utzon's sketch of the shells in 1958, alluding to the palm leaf

Utzon's reading and use of historical forms, particularly those of ancient China, is a clue to his originality. In Sydney, these diverse facets seemed to unfold, to expand, and find their expression in a unique synthesis driven by a process of conceptual invention, undertaken in a state of grace (Françoise Fromonot 2000: 7–8).

With the demise of the classical language of architecture as the basis for monumental works that express civic values after World War II, the Sydney Opera House is the culmination of the search for an alternative means of expression that had preoccupied progressive architects since the 1920s (Goad 2005).

Utzon's design was inspired by an eclectic suite of ideas from ancient through to modern times that included Mayan, Japanese, Chinese, Indian, Islamic and western cultures. The influence of the ancient Mayan step-pyramids in Mexico on the podium of the Sydney Opera House and the analogy of Chinese temples with their 'floating' roofs is well documented. Utzon's use of ideas borrowed from other places and times is also apparent in many other aspects of the design.

The site resembles the Athenian Acropolis to the extent that the 'artificial landform ... becomes the site—surmounted by two great "temples" ' (Weston 2002: 114). Several architectural historians have highlighted Utzon's genius in making the architecture and landscape appear as one (Moneo 2004: 88). The use of tiling on the shells was inspired by the glistening domes and minarets rising above Islamic villages and also by Utzon's studies in the art of Chinese and Japanese ceramics (Weston 2002: 148, 184–186). Utzon's construction methods incorporated insights from the 12th century Chinese treatise *Ying Zao fa shi*, which advocated the assemblage of prefabricated components and informed his theory of 'Additive Architecture' (Weston 2002: 186; Goad 1997: 139).



3.10



3.11



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3.13

Figure 3.10 Clouds over the sea, Jørn Utzon, 1962

Figure 3.11 Sketch of a Japanese house, Jørn Utzon, 1962

Figure 3.12 Preliminary sketch for the vaults of the Sydney Opera House, 1958

Figure 3.13 Concept sketch for the Sydney Opera House, 1958

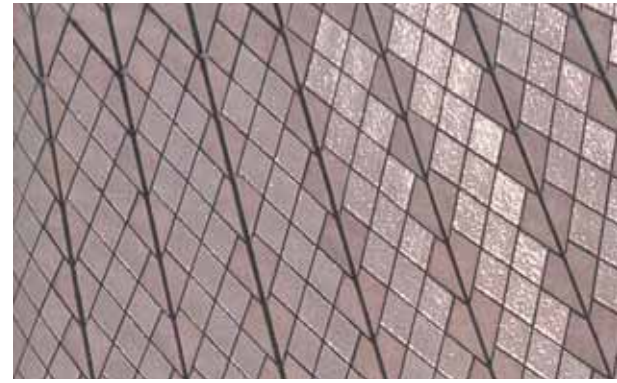




3.14



3.15



3.16

Utzon's design unified morphological forms and this is partly responsible for the remarkable liveliness of the building. Nature was a vital source of inspiration for Utzon both as he experienced it personally and from his studies of organic structure (Weston 2002: 130). He drew heavily on D'Arcy Wentworth Thompson's *On growth and form* (1917) which had been an influential treatise for engineers interested in shell and three-dimensional architecture since the 1920s (Addis 2005).

The use of nature is evidenced in Utzon's frequently cited analogies to natural forms such as the 'palm leaf' structure of the vaulted shells and the idea of the 'walnut kernel' for the performance spaces within the shells (Weston 2002: 132). Living things as a source of inspiration also extended to the human body. Utzon described the contrast between the shells' gloss tiles and their edging of matt tiles using the metaphor of 'fingernails' surrounded by skin (Messent 1997: 411). He also conceived the structure holding the vaulted shells as ribs and the pathway for service delivery between the two main halls within the podium as the spine.

While drawing on ancient and exotic architectural traditions, the Sydney Opera House also represents an exceptional expression of many of the ideals of the late Modern Movement. Some of the ideals are conveyed in a populist and visually accessible way. Others embrace what art critic Robert Hughes refers to as 'the shock of the new' in its refusal to conform to conventional expectations as dictated by the traditional shape of European arts centres (Hughes 1988). Utzon approached the project with a freshness and determination to design something uniquely suited for the Sydney site.

*Figure 3.14* An extraordinary elevated form in a uniquely beautiful setting, the Sydney Opera House is a vibrant public building and meeting place that has been likened to a modern-day acropolis.

The Sydney Opera House is an exceptional testament to the modern ideal of using prefabrication that realised a unified theme that remained flexible, economic and incremental (Utzon quoted in Frampton 2004: 18–19). Prefabrication was used for the concrete ribs that constitute the shells, the mass-produced ceramic tiles that constitute the surface of the shells and the moulded granite blocks that pave the podium. Utzon's quest for architecture of standardised elements used prefabrication not only as a means of achieving economies but also for achieving the perfection of a machine-made object in a way that retained the qualities of hand-made articles (such as the roof tiles). His design created strong but beautiful architectural elements that were an admirable reflection of some of the ambitions of Modernism. These elements include the amazing geometric shell structure that provides the huge spans for public spaces uninterrupted by the confines of structural elements and the exceptional use of materials such as concrete and glass in their most organic and crafted forms.

Utzon's application of the elemental unity and structural strength of geometry aligns the Sydney Opera House with many of the iconic works of the Modern Movement in architecture. In *Precedents in architecture* (1985), the Sydney Opera House is featured as a key example of 'geometric derivatives' alongside Gunner Asplund's Snellman House (1917–1918), Frank Lloyd Wright's Herbert Jacobs House (1948) and Robert Venturi's Guild House (1961) (Clark & Pause 1985). Critic Kenneth Frampton observed that Utzon's work displays 'that rare capacity of combining organic with geometric form and creating the former out of the latter' (Frampton 1996: 267).

*Figure 3.15* The use of tiles in Islamic architecture was an important influence on Utzon at the Sydney Opera House. The Friday Mosque in Isfahan, Iran, also influenced Utzon's early designs for the Major Hall.



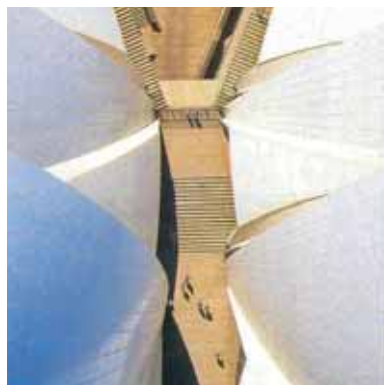
3.17

Utzon's genius is manifested in the many outstanding elements of the Sydney Opera House. The podium and shells exemplify his masterful synthesis of the different architectural styles and aesthetics: the simple and gigantic geometric shapes of the shell structure which are emphatically modern but also have an organic origin; and the external cladding of ceramic tiles inspired by ancient buildings and the art of contemporary Asian ceramics. These are described in detail in the following sections.

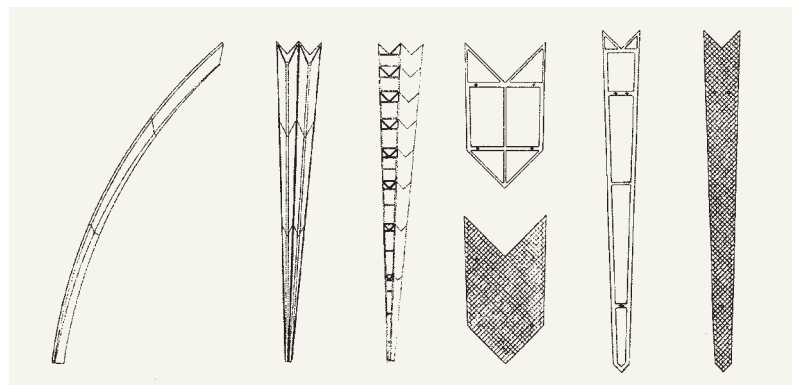
The result is stunning, one of the most radiant and alive surfaces in architecture, thoroughly modern in its abstraction and technically impossible before its day—authentic Our Time Style—yet utterly timeless. As passing clouds, the sun or viewer move by, the shells glow, gleam or flash with light. Stand closer and incline your head to left or right—Cezanne's approach to his motif and Monet's 'Series' paintings inevitably come to mind—and waves of tiles scintillate like diamonds or tiny stars. Devoid of colour, yet uniquely receptive to the colours of light and the surroundings, the shells present an ever-changing spectacle (Weston 2004a: 156).

Amongst Utzon's most remarkable achievements was his creation of a magnificent sculptural form that simultaneously conveys a sense of having emerged organically from the natural landscape. The building exudes a special presence: it appears to the viewer to be absolutely an 'obvious, immediate and evident' part of the landscape and 'as though only his typical "shells" could occupy Bennelong Point' (Moneo 2004: 88).

*Figure 3.16* The matt and glossy roof tiles took three years to develop with the manufacturer. The textured surface of the glossy tiles creates a surface that responds to the changing light.



3.18



### 3.A (ii) Outstanding achievements in structural engineering and technological innovation

The Sydney Opera House is not the kind of building which often comes within the orbit of the structural engineer. It is an adventure in building ... Because the circumstances under which it is being built are so unusual, and because its problems are so difficult, it has created unique opportunities, both in the design office and on the site ... The structure now standing in Sydney Harbour is the result not only of much toil and sweat but also of an unprecedented collaboration between architect, engineer and contractor ... we stretched ourselves to the limits of our skills (Arup & Zunz 1988: 3–5).

The Sydney Opera House is of outstanding universal value for its engineering and technological achievements and other innovations. Its value derives in part from Utzon's unique design and his distinctive approach which included the integration of design, engineering and construction (see above and Part 2.B). A vibrant and creative interaction emerged between architects, industrial designers, engineers, manufacturers and the construction industry—all striving to meet the challenges of his unprecedented design concept as well as the constantly evolving designs and exacting requirements during the construction of the building. His radical approach demanded the development of innovative new techniques and materials and anticipated the methods of eminent late 20th century architects Norman Foster and Renzo Piano (Weston 2002: 180).

*Figure 3.17* The 'spine' between the vaulted roof shells constructed of prefabricated ribs

*Figure 3.18* Drawing of the prefabricated ribs and tile lids from the Yellow Book 1962



3.19

A vital element of Utzon's approach was the fusion of, and interplay between, the aesthetic, scientific and abstract, and between the traditional crafts of the building industry and new materials and technologies.

'I like to be on the edge of the possible,' is something Jørn Utzon has said. His work shows the world that he has been there and beyond—he proves that the marvellous and seemingly impossible in architecture can be achieved. He has always been ahead of his time. He rightly joins the handful of Modernists who have shaped the past century with buildings of timeless and enduring quality (Pritzker Prize citation 2003).

Utzon's collaborative model, that was closely aligned with Ove Arup's own multi-disciplinary approach, was also maintained by Hall Todd & Littlemore after Utzon's departure. Arup's approach, known as Total Architecture, involved the holistic consideration and integration of decisions on architecture, engineering and construction. This approach had its origins in his work with Berthold Lubetkin and Tecton in England in the 1930s.

*Figure 3.19 The Sydney Opera house from the air during construction. The Sydney Opera House is a significant feat of engineering and technology involving ingenuity and creativity in many aspects of its design and construction.*



3.20

Initially there was some scepticism about whether Utzon's radical design could ever be built. Utzon's competition entry was little more than a lyrical image: there were no perspective drawings and engineering advice had not been sought (Murray 2004: 13). His design, which included unprecedented architectural forms such as the shells, required new solutions including new technologies and materials. In addition, Utzon's tendency not to document his ideas and the constant evolution of designs during the construction process also posed problems. These challenges were resolved through the collaborative efforts of Utzon and the engineering and construction teams.

The outstanding contribution of engineers Ove Arup & Partners (led by Danish engineer Ove Arup) who worked on the building for 16 years was pivotal to the realisation of Utzon's design. In some cases ground-breaking research and development were needed in several engineering fields involving close collaboration between the engineering design team and university teams in Britain and Australia. While this approach was common in the aerospace industry, it was (and still is) rare in the building industry where tried and tested technologies were usually favoured (Addis 2005). Examples of engineering and technological feats that helped to transform Utzon's design into a built reality are detailed below.

*Figure 3.20 The prestressed beams to the underside of the podium*



### The podium

The construction of the podium was a significant design and engineering achievement. The challenge was to construct a podium that simultaneously created a sense of the continuation of the natural landscape and a bold modern structure of continuous reinforced concrete that rose out of the ground and overlooked the harbour (Weston 2002: 129). Utzon's initial design concept was for the concourse to be supported by a number of columns. Ove Arup investigated ways to better reflect Utzon's precepts: 'Express honestly the characteristics of the materials used' and 'Let the structure speak for itself' (Murray 2004: 25). The bold solution was a beam that integrated the techniques of folded plate structures and prestressing. The single span design created both a sculptural and efficient form (Murray 2004: 26–27). This design provided the ability long sought by architects to provide huge spaces unencumbered by structural supports. Utzon credited the design as 'Ove's invention' (Murray 2004: 27).

### The shells

After many attempts at fulfilling the promise that the competition proposals promised, an intensive collaboration between architects and engineers ended with an absolutely clear solution with ball geometry that gave the right answer to all the many problems that such a huge and complicated task could throw up. We had no precedent to go on ... only through [a] series of experiments did we come to understand all aspects and find ourselves able to reach the result. It was like climbing Mount Everest for the first time (Utzon quoted in Weston 2004a: 131).

The design solution for the shells was a major feat by Utzon and Ove Arup & Partners. Experimentation with new concrete forms such as shell and large-scale concrete structures had been going on since the early 20th century. However, the construction of a shell structure comparable to Utzon's design had not previously been undertaken. Hence, there was no precedent for Utzon, his architects or the engineers to follow in developing a design solution for the shells.



3.21

*Figure 3.21 The formwork for the folded beams that form the lower concourse*





3.22

Intensive efforts were made to retain the integrity of the initial design comprising shell roofs that remained self-supporting without reinforcements.

Ove Arup & Partners undertook extensive engineering research and calculations over four years, including 'tens of thousands of man-and-computer-hours' at their London office (Weston 2002: 130).

They proposed over a dozen different geometries for the shells and different ways of studying them, starting with parabolic surfaces, moving to ellipsoid schemes and then on to circular arc rib proposals. In late 1961, Utzon was struck by the idea that all the roof shapes could be derived from a single sphere. Sharing a common radius, the segments could be broken into individual components, prefabricated and then assembled on site (Murphy 2004: 6). Utzon acknowledged that all the work of the previous years had contributed to reaching the new 'magnificent solution' (Nobis 2004: 47).

Building the shell structure was a significant engineering and construction achievement that overcame challenges and fostered innovations. The unprecedented structure required complex, repetitive research and exacting structural analysis. The interplay of the shape with the amount and method of stiffening required a complex and delicate balance that the structural engineers had to find (Addis 2005). It was not possible to calculate the correct geometry for shell architecture until the forces and bending moments were known; but these could not be calculated until the precise geometric form was established. Engineers using specialised computer equipment carried out tests lasting almost a year on a physical model located at Southampton University (England).

Figure 3.22 Jørn Utzon's spherical model for the shells

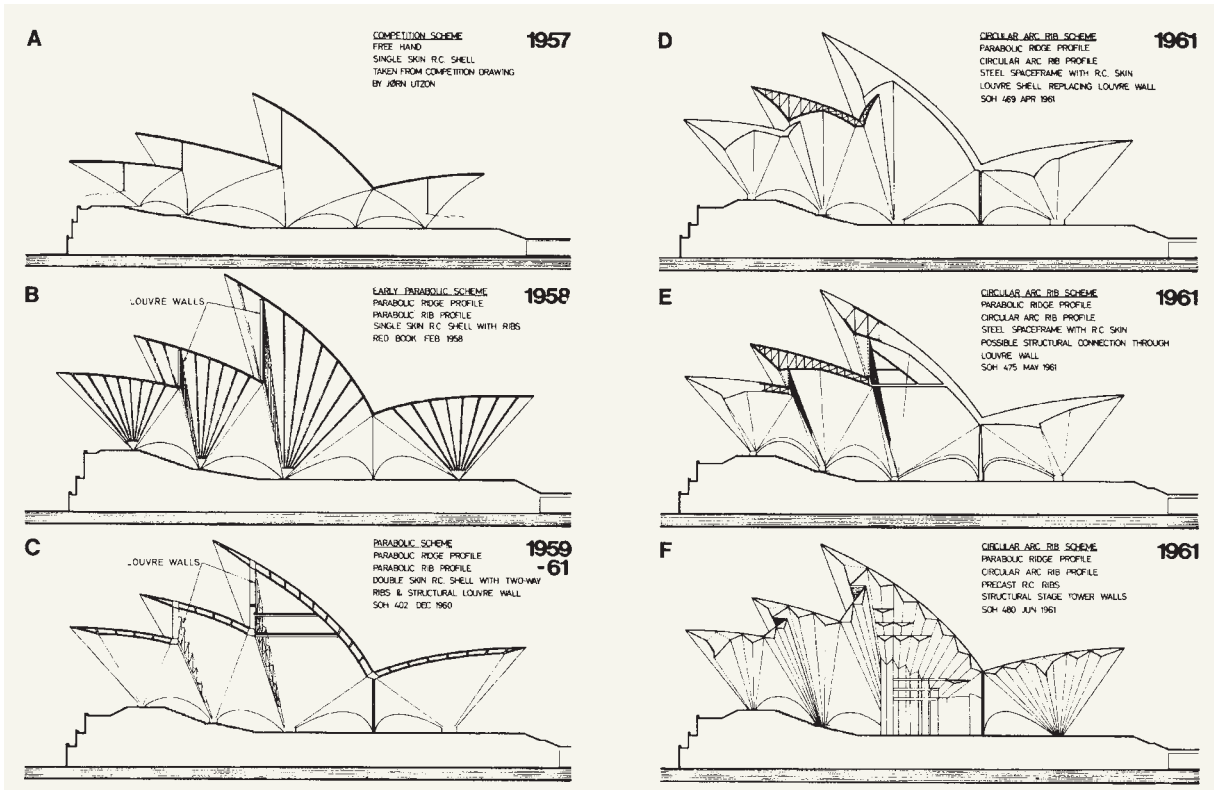
The analysis demanded a precise, computer-generated mathematical description of the geometrical form of the shells in order to undertake more precise calculations of stresses, forces, bending moments and deflections. The Sydney Opera House was one of the first buildings in the world to make use of computers in its construction process. It can be seen as a precursor to the complexity of architectural constructions that have now become possible by means of computer-aided design (Carter 2005).

Another significant innovation was Ove Arup & Partners' use of wind tunnel testing during the construction of the shells. To investigate the magnitude and direction of the wind forces on the shells, a model of the building was tested in a wind tunnel. This was a pioneering use of wind tunnels in building design and has since become normal practice for large buildings (Addis 2005).

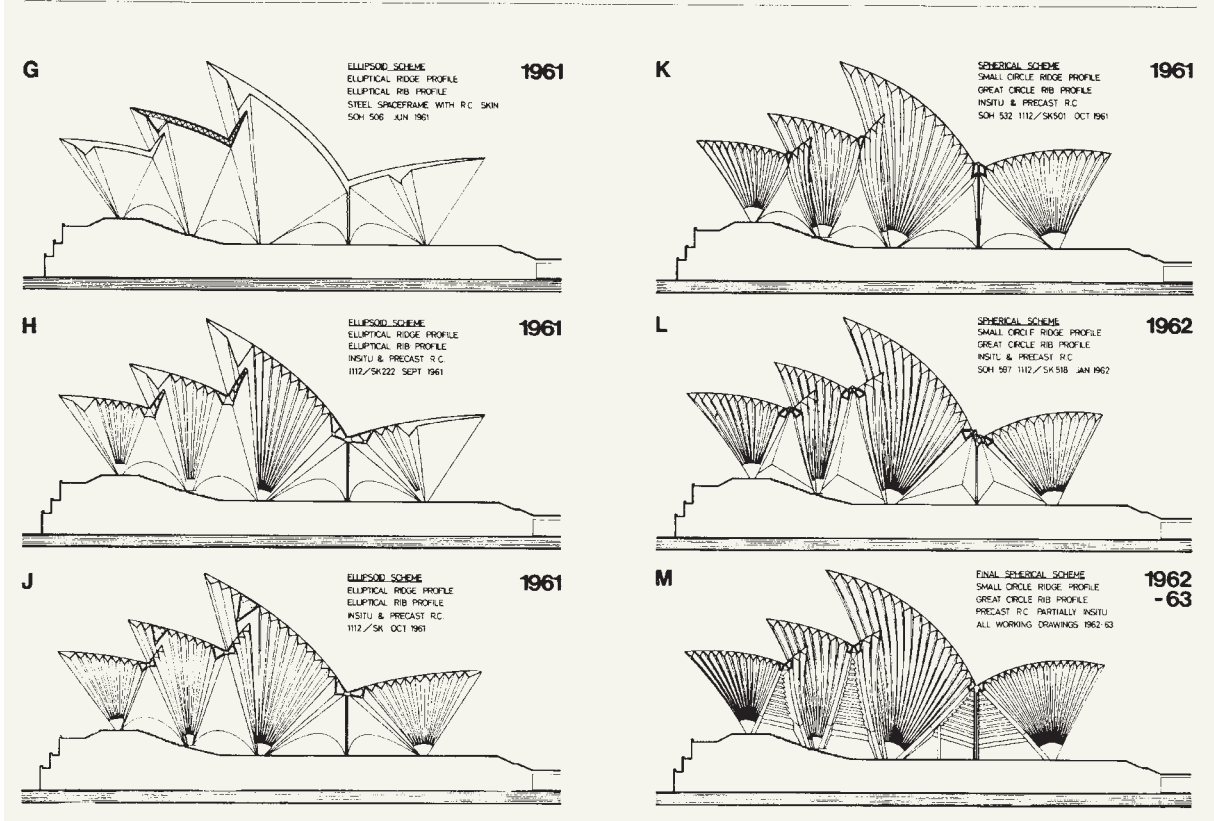


3.23

Figure 3.23 The cover of the Yellow Book 1962, showing the spherical solution to shell geometry, drawn by the young Rafael Moneo who worked in Utzon's Hellebaek office.



**Fig. 17**  
History of development of roof design : 1957-1961



**Fig. 18**  
History of development of roof design : 1961-1963

3.24

Figure 3.24 Arups' summary of the different schemas developed for the roof structure between 1957 and 1963

The placement of the prefabricated ribs demanded the use of new building methods and computer technology. An adjustable mounting and assembly steel erection arch was invented especially for the project by a French engineer working for the building contractor the Hornibrook Group (Weston 2002: 140). This invention removed the need for a mass of scaffolding to support the prefabricated shell ribs that were to be built on site. The 4.5 metre precast rib segments were lifted into place by one of three tower cranes that travelled on rail bridges, progressing along the axis of the shell as each rib segment was completed. An innovative epoxy resin process was developed for bonding the segments together, following extensive research by the Cement and Concrete Association (England) and the University of New South Wales (Australia).

This achieved a smooth concrete effect which was vital for Utzon's design as the concrete surfaces of the shells would remain exposed in many of the building's interiors. The use of epoxy in concrete construction was in its infancy at the time and much research was undertaken to develop a suitable resin with the necessary strength, appearance and weathering characteristics (Murray 2004: 53; Addis 2005).

It was an emotional moment when the shells eventually took solid form. The realisation of the colossal human and technological achievement struck home for all who had been involved in its creation. Architect Peter Myers remembers 'being on site when the plywood forms were removed from the concrete beams that arc up either side of the northern foyers like the ribs of a fan. The concrete was perfect, the edges were pure, there wasn't a blemish,' Myers said. He turned to see tears running down Utzon's face. 'And then I saw that

the tough Italian workers were crying too. Their pride in workmanship was being acknowledged, and we were all transported by what had been achieved' (*The New Yorker*, 17 October 2005: 100).

#### The glass walls

The design solution for the glass walls pushed the boundaries of contemporary technology to the limit and took eight years to complete. Such a design was unprecedented and Utzon had not completed a design solution prior to his departure. Architects Hall Todd & Littlemore and engineers Ove Arup & Partners devoted much time to the complex design and engineering challenges posed by Utzon's design concept. Extensive research, experimentation and testing were undertaken to resolve the problems which involved calculation of the load-bearing characteristics of the glass; design of a supporting framework that would load the glass to a degree it could withstand; investigation of structural materials for the mullions; and construction and erection of prototypes under the shells. The final solution was a design of planar glazing with minimal external mullions and internal steel structure set back from the glass.

The glass walls were a considerable design and engineering achievement. They were the first large-scale example of the use of glass in a building both as a structural material and as a window and became 'the precursor of a style of enclosure that has now become commonplace' (Murray 2004: 129). The Sydney Opera House was the forerunner of many dramatic glass walls that have been constructed since, notably the glass wall at La Villette in Paris by Peter Rice (who worked for Ove Arup & Partners on the Sydney Opera House) and the engineered glass structures of the eminent German



3.25



3.26



3.27

*Figure 3.25* A special mounting system was invented to place the precast concrete ribs.

*Figure 3.26* The roof shells with their prefabricated ribs take shape, 1965.

*Figure 3.27* The glass walls to the northern foyer





3.28

engineers Jorg Schlaich and Werner Sobel (Addis 2005). The walls won Ove Arup & Partners an award for engineering excellence in 1972 from the Association of Consulting Engineers of Australia.

The external tile cladding of the shells

The spectacular tiled surface of the shells represents a great architectural triumph and exemplifies Utzon's marriage of craft and technology, tradition and the search for new forms of expression. Utzon believed that the covering for the gigantic curved forms of the shells would have 'the greatest influence on the visual impact' of the building (Weston 2002: 148). The right materials were needed to create an appearance that would match and emphasise the simple and

powerful geometry of the shell structure. After investigating materials used in ancient buildings, Utzon chose ceramic tiles partly because of their beautiful, harmonious patina. Utzon determined the colour and finishes for the tiles following his studies of the art of ceramics in China and Japan and after examining the textures, colours and glazes of samples that he brought back to Australia.



3.29



3.30

*Figure 3.28 The Sydney Opera House by night*

*Figure 3.29 The lightweight tile lids were constructed of a thin slab of concrete reinforced with wire mesh. This system was developed by Pier Luigi Nervi and enabled the thinnest possible slab.*

*Figure 3.30 The precast tile lids awaiting placement*



The Sydney Opera House is 'one of the great iconic buildings of the twentieth century, an image of great beauty known throughout the world' (Lord Rothschild, Pritzker jury chairman).

The Swedish tile manufacturer Höganäs was commissioned to produce the highly specialised tiles as no standard product was available. Research and experimental work were undertaken to develop a tile that would produce the colour, surface texture and pattern specified by Utzon and meet other technical requirements. Tests, using a full-scale mock up of a corner of a shell, revealed that normal pressed tiles gave a very dull effect compared with the livelier reflection of extruded tiles.

It took three years of experimentation to achieve the right quality and finish: a white transparent glaze and uneven texture for the tiles for the main areas, creating a diffused and softer reflection of the sun than the hard image created by a standard glaze; and a matt, off-white tile for the edges. Höganäs pioneered a special process of coating, firing and glazing that gave the tiles 'a beautiful lustre or sheen, a surface that would retain its visual qualities even when the tile became dirty' (Utzon 2002: 20–22).



3.31

*Figure 3.31* Victor Hugo likened the Notre Dame cathedral in Paris to 'a great ship embedded in the mind', a simile that could be appropriated for the Sydney Opera House (Sharp 2005).

A new design solution then had to be devised to successfully bond the tiles to the curved shell structure. Changes to the shell structure meant that the original design to fix the tiles directly to the shells was no longer feasible. A solution was found using 'tile lids' which modified a Swedish process and used an unusual glue process to create a recess between each two tiles in order to define the edges.

Around 4253 precast large chevron-shaped panels were manufactured and the tiles were bonded diagonally by a machine to produce a perfect uniform surface. Drawing the layout of each individual tile was an enormous feat—there were more than one million tiles and 41 types of edge tile. Ove Arup & Partners prepared 350 detailed drawings for the tile panels alone.

### 3.A (iii) A world-famous iconic building of the 20th century

The Sydney Opera House is one of the most internationally acclaimed iconic buildings in the world today and is instantly recognised by people around the globe. The building signifies not only the city of Sydney but the whole nation. The Pritzker Prize formally recognised that the Sydney Opera House was 'one of the great iconic buildings of the twentieth century' and that it was 'an image of great beauty known throughout the world'. Architectural historians have noted that the building achieved iconic status even before its completion (Weston 2002: 185).

That the Sydney Opera House was immediately, and radically, novel is self-evident: it was instantly spectacular, and remains so for all those who see it for the first time (and for many of us who see it often) (Smith 2002: 19).



3.32

The Sydney Opera House holds a special place in the history of modern architecture as both an architectural masterpiece and a mass-cultural icon, both iconic and 'canonic'. It is a multifaceted public monument that is simultaneously 'high-brow' and 'low-brow', captivating and stirring the hearts and minds of everyone who experiences it (Goad 2005). As British architectural historian Dennis Sharp remarked, the Sydney Opera House is not just another attention-seeking structure but a building that is widely revered (Sharp 2005). Utzon designed a building that would provoke a transformative experience, a sense of curiosity, wonder and pride and would make people feel different. Weston highlights Utzon's success in achieving this:

Like most great works of art that achieve wide popularity [the Sydney Opera House's] appeal is visceral and optical more than cerebral. A sublime flower with primitive roots, it is one of very few twentieth-century buildings to be measured against the achievements of past civilizations (Weston 2002: 186).

The Sydney Opera House has an international reputation as one of the iconic greats. As Weston highlights, the Sydney Opera House is 'almost universally popular—it is the only twentieth century building guaranteed to appear on lists of "all time greats"' (Weston 2002: 185). It is consistently featured in architectural publications about the world's great iconic buildings as well as in popular culture such as journal and web site listings of the most popular and great buildings of the world. Some of these references are listed in Part 7.

Utzon 'rightly joins the distinguished company of a handful of Modernists who shaped the most notable buildings of our time' (Pritzker executive Bill Lacy).

It is widely thought that the Sydney Opera House was the origin of the influential late 20th century trend to erect a 'signature building' in order to create a focal point in a city that could become an internationally recognised symbol of that city. The era of the iconic building may have emerged with Utzon's design of the Sydney Opera House (Sharp 2005; Jencks 2005: 11; Goad 2005). Frank O Gehry's Guggenheim Museum in Bilbao, Spain (1997) is perhaps the best known example of the use of a signature building. See Part 3.C for a comparison with other signature buildings.

Figure 3.32 Looking towards Circular Quay

### 3.B PROPOSED STATEMENT OF OUTSTANDING UNIVERSAL VALUE

The Sydney Opera House is of outstanding universal value as a masterpiece of 20th century architecture. Its significance is demonstrated by its unparalleled and seminal design and construction; its exceptional engineering achievements and technological innovations; and its position as a world-famous icon of architecture. The Sydney Opera House broke with the formal traditions of Modernism defining a new expressive form for civic monuments. It is a daring and visionary experiment that has had an enduring influence on the emergent architecture of the late 20th century and beyond.

The human creative genius represented in the Sydney Opera House is attributable to Danish architect Jørn Utzon and to the ingenuity of other architects, engineers and building contractors. The genius of Utzon's design has been internationally acknowledged by the Pritzker Prize and other awards, as well as by architectural historians and practitioners around the world. Utzon's original design concept and his unique approach to building gave impetus to a collective creativity. Ingenuity and technical innovation flourished in collaborative teams of architects, engineers and builders. The realisation of Utzon's design concept demanded outstanding engineering feats by Ove Arup & Partners whose work has also been internationally

acclaimed. New technologies, approaches and materials evolved to create unique architectural forms and a building of rare quality and character.

The design of the Sydney Opera House is exceptional. Utzon's design represents an extraordinary interpretation and response to the setting in Sydney Harbour. The juxtaposition of the massive, hollow podium and the light, sculptural superstructure of the shells is unmatched in 20th century architecture and engineering. The originality of the design lies in the exceptional way that Utzon unified a diverse range of architectural and cultural traditions from ancient to modern times in a single building. Utzon successfully contrasted and married seemingly antithetical ideas and styles. This is encapsulated in the shells where the strong and dramatic character of the concrete geometrical shapes simultaneously contrasts and merges with their equally irrepressible qualities of sculpture, lightness and poetry and their place as an elemental part of the natural landscape. While the Sydney Opera House is an outstanding representative of late Modernism it may also be seen as a rare specimen that defies and resists simplistic categorisation into a singular architectural style.



3.33

*Figure 3.33 The Sydney Opera House in its magnificent waterscape setting*



3.34

The setting of Bennelong Point and Sydney Harbour forms an intrinsic part of the outstanding universal value of the Sydney Opera House. Utzon's design is a sensitive and brilliant response to the landscape creating a grand urban sculpture with its platform and cave-like shells that invite inhabitation. Utzon used architecture to create a unique landscape form. Sydney Harbour is one of the world's most magnificent harbours and the design produces wonderful vistas that are experienced both from inside and outside the building.

The Sydney Opera House is of outstanding universal value for its achievements in structural engineering and building technology. Utzon's genius is evident in his experimental methodology and work style which were inextricably linked to his radical design. His approach helped to inspire engineering solutions and technological innovations that were necessary to transform the initial design into a reality. The construction of the gigantic podium and the unprecedented and complex shell structure with ceramic tile cladding and hanging glass walls were all exceptional technological triumphs. They were made possible by the pioneering of new building methods and machinery and innovative structural engineering analysis and testing using new computerised technology and processes. These feats enabled Utzon's radical design concept to become a reality. The Sydney Opera House represents one of the most demanding and innovative structures in modern architecture.

*Figure 3.34* The Sydney Opera House is a significant work of structural engineering and technology.



3.35

The Sydney Opera House is an exceptional representative of late Modernism that was evolving at the time. It endures as one of the world's most highly acclaimed buildings of that architectural trend. Utzon's design was a most significant step in the history of modern architecture. The Sydney Opera House exudes creativity, emotion and feeling along with its spectacular sculptural, functional and powerful geometric forms.

The Sydney Opera House is an outstanding example of 20th century cultural heritage. Its power to fascinate and excite is universal and it belongs to the world as a great artistic monument and an iconic building. The Sydney Opera House has become a building that inspires and delights people around the world and attracts people to explore its many remarkable features. It could be seen as making a contribution to architecture as an expression of universal culture. Like the Finnish master Alvar Aalto, Utzon created a building that is accessible to society at large. The Sydney Opera House has been influential in architecture with others striving to replicate its success.

*Figure 3.35* The powerful geometric forms of the Sydney Opera House



### 3.C COMPARATIVE ANALYSIS

Since its opening more than three decades ago, the Sydney Opera House has attracted widespread and intense commentary, discussion and analysis across a number of professional disciplines and in popular culture. Architects, engineers, cultural theorists and architectural historians have dissected the building and assessed Jørn Utzon's contribution to the history and development of modern architecture. As with the history of the Sydney Opera House, this outpouring has been marked by energy, enthusiasm and debate; yet there is overall agreement that the Sydney Opera House is one of the great buildings of the 20th century.

The Sydney Opera House is unique for its diverse and outstanding architectural and cultural heritage values as a masterpiece of modern architecture, as an internationally famous icon, and for its great engineering feats and technological achievements. It is outstanding for the unique composition of all these features. Architectural historian Richard Weston has described the Sydney Opera House as 'the most recognisable contemporary man-made structure in the world' which is, quite simply, one of a kind (Weston 2004b). The image and tectonic integrity of the Sydney Opera House are powerful, original and unrepeatable (Frampton 2004: 21).

The Sydney Opera House can be compared with other masterpieces around the world on the basis of architectural excellence and outstanding engineering achievement. The following discussion compares it with a small number of modern buildings that have either reached a comparable outstanding level of design understanding, architectural excellence, poetic expression and human inspiration or achieved advances in architectural thinking and practice equal to those of Utzon and the collaborative teams of architects and engineers who worked on the Sydney

Opera House. The buildings discussed fall into one or more of the following groupings: outstanding examples of late Modernism; masterpieces that challenged accepted norms of building expression, siting or planning; masterpieces that stretched the boundaries of the possible and demanded exceptional architectural, engineering or construction feats; and international iconic buildings.

#### 3.C (i) Masterpieces of late modern architecture

##### Third generation Modernism

Utzon is today widely recognised as one of the leading architects in a creative architectural current known as 'the third generation' of Modernism. The Sydney Opera House is his masterwork. Swiss architectural historian Sigfried Giedion added a new and lengthy chapter on Utzon and the 'third generation' to the fifth edition (1967) of his seminal history *Space, time and architecture*. This group built on the traditions of Modernism and share common characteristics that are manifest in the Sydney Opera House. These characteristics include: a powerful relationship between architecture and its environment (the *genius loci*); the elevation of monumental architecture to a great urban platform; a synthesis of traditions from the past to provide continuity with previous cultural ideals; and a relaxation of the Modernist ideology of 'form follows function' resulting in expressive forms, sculptural responses and spatial freedom.

According to Giedion and Norwegian architectural historian Christian Norberg-Schulz, the Sydney Opera House realised the synthesis of the humanisation of modern architecture, the next necessary step in the functional achievements of early Modernism (Norberg-Schulz 1996: 172). Utzon's achievement in the Sydney Opera House, his masterwork, is what clearly marks him out from many of his contemporaries. The holistic vision of Utzon's work—the synthesis of organic



3.36

qualities and precise, geometric definition—was a clear departure from what went before him. Giedion claimed that, for Utzon, the machine is subordinated to the creative process in a way that other modern architects had not previously accomplished (Giedion 1967: 694). Norberg-Schulz wrote a compelling argument for the rightful place of Utzon in a line of great modern masters including Frank Lloyd Wright, Le Corbusier, Mies van der Rohe, Alvar Aalto and Louis Kahn. Utzon's Sydney Opera House represented an important contribution to the emergence of 'a new monumentality' and 'new regionalism' in modern architecture (Norberg-Schulz 1996: 172).

The poetic and environmental ambitions of the third generation are exemplified in two masterpieces—Utzon's Sydney Opera House and Le Corbusier's Notre-Dame-du-Haut Chapel at Ronchamp (France 1950–1955). Neither building can be separated from its outstanding landscape setting. In each case, the outcome is a product of the timelessness of intense beauty, form and the meticulous care and attention apparent in all parts of its design and assembly. The design of both buildings is exceptional, defining architecture in terms of 'sun, shade, size, form, light and colour' (Sharp 2005: 6). Both buildings display the same outstanding qualities of imagination, splendour and poetry. Peter Blake went so far as to say that the Ronchamp Chapel had a 'plastic inventiveness and grandeur comparable with the most powerful monuments produced by man since the beginnings of recorded history' (Sharp 2005: 6; Blake 1960: 136). Richard Weston has identified Ronchamp as the 'closest modern sibling' of the Sydney Opera House and has noted that each is a compelling and outstanding expression of a new organic form in architecture (Weston 2004b).

*Figure 3.36* Le Corbusier's Notre-Dome-du-Haut Chapel, Ronchamp, 1950–1955



3.37

The Sydney Opera House elegantly embodies the highest aspirations of this new expressionism, elevating a public building to a monumental position reserved in traditional architectural practice for buildings with spiritual meaning.

The Sydney Opera House has become one of the popular faces of modern architecture. Norberg-Schulz is clear about the magnitude of Utzon's achievement—'in the Sydney Opera House, Jørn Utzon realised the great synthesis of earth and sky, landscape and city, vista and intimacy, thought and feeling in terms of a unity of technological and organic form ... [It is] a most significant step in the history of modern architecture' (Norberg-Schulz 1996: 172).

The Sydney Opera House also shares specific architectural qualities with other masterpieces of late Modernism, notably Frank Lloyd Wright's Solomon R. Guggenheim Museum (New York 1956–1959). The Guggenheim Museum has become an urban icon because of its striking form and as one of the more publicly accessible works of Frank Lloyd Wright. Like the Sydney Opera House, the Guggenheim Museum occupies a prime site near the heart of its city and is an exceptional symbolic focus and showcase for human achievement in the arts. According to Charles Jencks, it has taken on an importance usually reserved for a great city hall or temple primarily because of its formal and spatial contrast to the rest of New York City (Jencks 1973: 137).

*Figure 3.37* Frank Lloyd Wright's Solomon R Guggenheim Museum, New York, 1956–1959

The Sydney Opera House and the Guggenheim Museum are equally imaginative resolutions of complex program requirements and technical performance standards. But the Sydney Opera House makes a different kind of contribution to the urban landscape. Part of the magic of the Sydney Opera House derives from its unique setting and the special qualities of Sydney Harbour. With its 'superfluity of sunshine and a keenness of light ... the harbour appears as a huge island of seawater dramatically wedged into a hilly, rocky coastline' (Metcalf 2001: 16). With its splendid natural setting, the composition and location in the city of Sydney and the harbour give the Sydney Opera House a remarkable urbanity and sense of style and inclusiveness that is unique.



3.38

*Figure 3.38* Alvar Aalto's Town Hall and Centre, Säynätsalo, Finland, 1949–1952

The Sydney Opera House marks an important step in the development of a new kind of monumentality within Modernism. Before World War II, Giedion and José Lius Sert explored the idea of the monument as a human landmark, triggering an architectural debate on a new monumentality. Some of these ideas were manifested after the war, in the buildings of Le Corbusier (Parliament buildings at Chandigarh 1953–1962), Alvar Aalto (Town Hall and Centre at Säynätsalo 1949–1952), Mies van der Rohe (Seagram Building in New York 1954–1958) and Saarinen (Gateway Arch at St Louis 1948). Le Corbusier's Parliament buildings in Chandigarh created a new urban form on a greenfield site, while Aalto's Town Hall and Centre created a courtyard that has been equated to a harbour at the building's heart around which the community could gather (Curtis 1994: 299).

Utzon's Sydney Opera House made a significant contribution to this development in broadening the modern vision of new civic forms of architecture. The Sydney Opera House can be seen as achieving the promise of the new monumentality that had not previously been realised (Goad 2005; Norberg-Schulz 1996). It is a spectacular civic building in the heart of the city and represents 'a living core, a place where life is revealed as being meaningful ... as a place where culture *takes place*' (Norberg-Schulz 1996: 172). At the Sydney Opera House it is the site that enables the evolution of this architectural ideal to reach its high point.



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### Masterpieces of the 20th century that challenged conventional norms of building expression, siting and planning

A number of significant 20th century buildings have successfully challenged conventional imagery and architectural typologies in ways comparable to the Sydney Opera House. These include the city of Brasilia (Brazil 1957–1960), the Guggenheim Museum (Spain 1993–1997), the Getty Centre (United States 1997) and the Centre Georges Pompidou (France 1977).

The new capital city of Brasilia was inscribed on the World Heritage List in 1987 for the achievement of Oscar Niemeyer's architecture and Lucio Costa's town planning. Niemeyer respected all schools of architecture 'from the chill and elemental structures of Mies van der Rohe to the imagination and delirium of Gaudi' (Niemeyer 1988: 4)). His own design reflected the spirit of Brazil with 'beauty prevailing over the limitations of the constructive logic' (Niemeyer 1988: 5). Niemeyer's vast public buildings in Brasilia are dramatic free-standing architectural statements, sitting lightly on thin platforms and seeming to float above the flat ground. The delicate detailing of structural elements and the quality of execution and finish are remarkable for their time and place. Niemeyer was awarded the Pritzker Prize in 1988 (Pritzker web page 2005). Both Niemeyer and Utzon share that ability to find remarkable beauty and poetry in a structural form.

In the search by architects in the mid 20th century for an appropriate formal, structural and material language to describe monumentality and civic value for 20th century architecture, the Sydney Opera House represents a defining moment with respect to the opera house or cultural centre (Goad 2005). With the demise of the classical language of western architecture after World War II as the basis for monumental works that

might express civic values, the Sydney Opera House design represents a significant point in the search for alternative means of expression that had preoccupied progressive architects since the 1920s.

In terms of the opera house or cultural centre, Utzon's design needs to be seen against a range of similar complexes that were constructed after the war in Europe, Britain and the United States. When compared with the moderate Modernism of Robert Matthew and Leslie Martin's Royal Festival Hall in London (1949–1951), the free expression of Hans Scharoun's Berlin Philharmonie (1956–1963) and Avar Aalto's Finlandia Hall in Helsinki (1962, 1967–1972), the Sydney Opera House breaks new ground in terms of complex sources of architectural representation (see Parts 2.A and 3.A), innovation in structure and technology and an empathetic relationship between a large public building and its dramatic natural setting.

The success of the Sydney Opera House in creating a cultural centre as a monument or signature building has been recognised and emulated in a number of late 20th century cultural buildings. These include Frank O Gehry's Guggenheim Museum in Bilbao (Spain 1993–1997) and Richard Meier and Partners' Getty Centre in Los Angeles (United States 1997). The Guggenheim Museum (Bilbao), perhaps the best known example of the use of a 'signature building' as a deliberate urban design strategy, was strongly modelled on the Sydney Opera House. Gehry was asked in the brief from the Guggenheim Foundation for 'an equivalent to the Sydney Opera House to transform a fading industrial city through the marriage of Basque cultural aspiration' (Thiele-Silling 1998: 182). The city got 'one of the most talked about buildings in years' (Guggenheim-Bilbao web site 2000).

*Figure 3.39* Oscar Niemeyer's National Congress Chambers, Brasilia, 1957–1960

*Figure 3.40* Hans Scharoun's Berlin Philharmonie, 1956–1963

*Figure 3.41* Frank O Gehry's Guggenheim Museum, Bilbao, 1993–1997





3.42

The Getty Center is an important cultural building that provides a remarkable visual focus for the surrounding city, in a similar way to the Sydney Opera House. It sits atop a hillside, merging landscape and architecture in what amounts to a small township that attempted to highlight nature and culture (The Getty web site 2005). Unlike the Sydney Opera House, which provides a grand celebratory public space for the people of the city, the Getty Center remains separate and aloof from the city below.

The Sydney Opera House stands alongside Renzo Piano and Richard Rogers' Centre Georges Pompidou in Paris as an outstanding architectural form and a building that transformed the city in which it is located. The Centre Georges Pompidou defied traditional building forms while still demonstrating architectural integrity and social and urban design innovation. Discarding the rule books for its building type, the radical external expression of structure, services and circulation make the Pompidou an engineering *tour de force*. The building returns to the modern ideal of 'form follows function' in the most literal manner, while the Sydney Opera House explores a new form of expression for its functions resulting in a great sculptural work. Both the Sydney Opera House and the Centre Georges Pompidou are ground breaking examples of 20th century architecture.

### 3.C (ii) Masterpieces of structural engineering and technology that stretched the boundaries of the possible

Tombesi has compared the Sydney Opera House to a number of exceptional buildings dating from early times to the present that all share the same outstanding characteristics of architectural, engineering and construction innovation (Tombesi 2005). Two buildings with similar types of materials and structure that are particularly noteworthy include Pier Luigi Nervi's Exhibition Buildings at Turin (Italy 1948–1949) and Eero Saarinen's TWA Terminal Building at Kennedy Airport in New York (United States 1956–1962) (Tombesi 2005). These buildings, along with the Sydney Opera House, pushed the boundaries of the reinforced shell typology to new limits, realising the vision of the 'first generation' architects for reinforced concrete.

Nervi's Exhibition Buildings are internationally recognised as 'masterpieces of logical structure and sculptural precision' (Richards 1977: 228). Nervi stated that the thin prefabricated concrete roofs of the buildings at Turin 'would have been impossible without a simultaneous invention of the structural method' (Joedicke 1989: vii). He set out to interpret and command the 'mysterious laws of nature' and thereby to express their 'majestic eternity' (Jencks 1973: 73). The work of Nervi is visually characterised by the tapering or modelling of concrete beams and columns to reflect the complex structural forces within. Nervi's designs were driven by structural integrity and his engineering combined clear logic with remarkable aesthetic sensitivity. Like Nervi, Utzon was

Figure 3.42 Richard Rogers' and Renzo Piano's the Centre Georges Pompidou, Paris, 1974–1976



3.43

also inspired by the laws of nature—‘my laboratory is the beach, the forest, the sea and the seashore’ (Weston 2002: 278). But in abiding by these laws, Utzon found room for a poetry and lyricism that is missing in some of Nervi’s Exhibition Buildings. Utzon and engineer Ove Arup matched Nervi’s innovations with quantum leaps in engineering science, the design and erection of prestressed concrete and the precision of precasting and formworking made possible through an innovative use of new computer technologies.

In comparing the Sydney Opera House with Saarinen’s TWA Terminal it is clear that the buildings share some common origins in terms of the combinations of architectonics and structural engineering and similarity of roof shapes. Both represented outstanding architectural design and engineering achievements. Saarinen took in situ concrete construction to its practical limit in the TWA Terminal, using the curvature of the thin roof covering to provide both span and rigidity. The theme of futuristic motion extends to all parts of the building including metaphorical ‘feet’ where the wings come down to earth. Necessary movement joints between the shells become shafts where natural light is brought deep into the building. Saarinen stated that it was a ‘fully designed environment in which each part arises from another’ (The Great Buildings Collection web site 2005). Sharp has noted that Saarinen’s evocative building at the gateway to the United States ‘alarmed the remaining purists of modern architecture’ (The Great Buildings Collection web site 2005).

The TWA Terminal is without doubt a dramatic building, particularly for people moving within its sinuous concrete shells. Its free-form plasticity is exceptional and not unlike Saarinen’s well-known ‘tulip’ chairs and fibreglass tables. Saarinen’s amazing building achievement is evoked by the many references to its ‘soaring spaces’ and ‘birds in flight’.

The Sydney Opera House bears important similarities to the buildings of Nervi and Saarinen. It is a dramatically strong work in terms of its siting within the landscape, its structural design and construction and its complex architectural meaning even in comparison to the buildings of Nervi and Saarinen discussed above. All the buildings share amazing technological feats in the use of large clear spans and the extensive use of concrete. But the functional simplicity of the Nervi and Saarinen roofs serves to highlight the complex structural and architectural expression of the roofs of the Sydney Opera House. For Utzon, designing and building the shell roofs was only the start of the adventure.

As Carter has noted, the use of differing glazes for the roof tiles gave Utzon the ‘combination of matt snow and shining ice’ he was looking for and resulted in one of the ‘most radiant and alive surfaces in architecture, thoroughly modern in its abstraction and technically impossible before its day’ (Sharp 2005; Whittick 1980: 589; Carter 2005).

*Figure 3.43* Eero Saarinen’s TWA Terminal, Kennedy Airport, New York, 1956–1962



3.44

### 3.C (iii) Iconic masterpieces

The Sydney Opera House is 'widely considered to be the most notable monument of the twentieth century' (Pritzker juror Ada Louise Huxtable).

The Sydney Opera House is one of the most enduring images of the 20th century and a world renowned monument that traverses time and place. It has outstanding universal appeal to the architectural and engineering community and to the general public. The Sydney Opera House sits admirably in the company of world-famous iconic buildings of the modern era and other periods such as Antonio Gaudi's Sagrada Familia in Barcelona (Spain 1926), Le Corbusier's Villa Savoye in Poissy (France 1929), Frank Lloyd Wright's 'Fallingwater' at Bear Run, Pennsylvania (United States 1936), John Nash's Royal Pavilion in Brighton (England 1815–1823), Schönbrunn Summer Palace (Austria 1680–1740), Blenheim Palace near Oxford (England 1705–1722) and the Chhatrapati Shivaji Terminal in Mumbai (India 1878–1888). All of these buildings are exceptional achievements of human creative genius and of outstanding universal value. The Sydney Opera House enjoys the same global reputation and success as these buildings for its unique architectural character and for being revered by people the world over.

The Sydney Opera House has been used as a prototype for a number of other buildings around the world from Gabon to the United Kingdom, Papua New Guinea to the United States and Hong Kong to Spain (Tombesi 2005). The influence of the Sydney Opera House on modern architecture has extended well beyond arts centres. Attempts to reproduce a 'Sydney Opera House effect' can be seen in different types of buildings including convention centres, religious structures, educational spaces and large-scale infrastructure (Tombesi 2005).

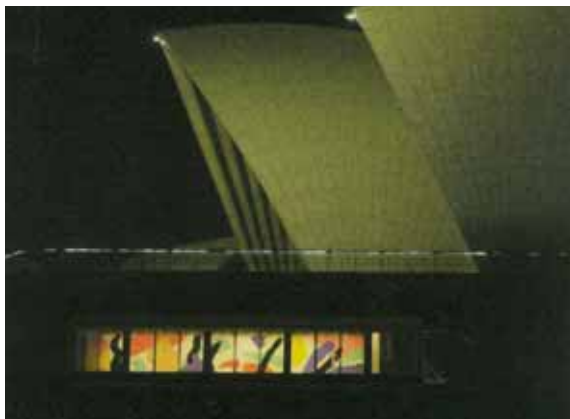
The great poetic and technological achievement of Jørn Utzon and collaborative teams of architects, engineers and the construction industry

The Sydney Opera House is unquestionably the great poetic statement and technological achievement of Jørn Utzon and his collective team. This has been affirmed by architectural historians, architects and awards and is demonstrated by the comparative analysis above.

Adrian Carter, Director of the Utzon Institute in Aalborg, Denmark situates the Sydney Opera House as a legacy of Gunnar Asplund and the progressive values of the early Nordic Modern Movement in architecture. Romaldo Giurgola has likewise described the significant impact on Utzon of the 'balanced, disciplined juxtaposition of Asplund, the imaginative gestures of Aalto, and the organic structures of Frank Lloyd Wright'. But Giurgola also found that Utzon's own work 'matured in an absolutely singular way, with poetical statement strengthened by a professional skill and a spontaneous dedication to those infinite manifestations of human life that make architecture' (Giurgola 1980: 407).

The Sydney Opera House is by any measure one of the great architectural achievements of the 20th century. Comparison with other outstanding examples of modern architecture confirms the importance and singularity of Utzon's achievement along with those many others involved in its creation. The Sydney Opera House is indeed a rare and unique achievement as a piece of 'architecture that touches people ... [Utzon's] work will live as long as architecture is valued, and his ultimate legacy is ethical, not formal: a way of working, not a repertoire of form' (Weston 2002: 407).

*Figure 3.44 Frank Lloyd Wright's 'Fallingwater', Bear Run, Pennsylvania, 1936. Fallingwater pre-empted Utzon's achievement of the conjuncture between architecture and landscape, albeit on a domestic scale.*



3.45

### 3.D INTEGRITY AND AUTHENTICITY

The Sydney Opera House meets the test of integrity and authenticity as required under the *Operational guidelines* (UNESCO 2005) and described in the *Nara document on authenticity* (UNESCO 1995).

#### 3.D (i) Statement of integrity

The conditions of integrity of the Sydney Opera House and its attributes of wholeness and intactness fulfil the requirements in the *Operational guidelines* (paragraph 87). All elements necessary to express its outstanding universal value are included within the boundaries of the nominated site and buffer zone. This will ensure the complete representation of its significance as an architectural object of great beauty in its waterscape setting. The buffer zone will retain the relationship between the Sydney Opera House and its setting that has been identified as contributing to its World Heritage values. National legislation also protects the Sydney Opera House from any future activity that could adversely affect its National Heritage or World Heritage values regardless of where that activity might be.

All elements of the property that contribute to its heritage significance have been identified and policies developed to sustain their significance into the future. The physical fabric of the property is in good condition, the impact of deterioration processes is controlled (see Parts 4 and 5) and the dynamic processes present in the building as an active, living place are maintained (UNESCO 2005: paragraph 88).

#### 3.D (ii) Statement of authenticity

The outstanding universal value of the Sydney Opera House is that it represents a masterpiece of human creative genius. The heritage values of the property specified under criterion (i) are truthfully and credibly expressed through its attributes. Extensive documentation is available on the construction of the property to the present day and the people who were directly involved in the building's creation are accessible today. The re-engagement of Utzon to write design principles for the ongoing conservation of the property is unique and affords the opportunity to maintain the authenticity of the Sydney Opera House to an extraordinary extent. The Conservation Plan (SOH) has been directly influenced by and tested against the architect's vision and the spirit of the design, material and substance of the building (see Parts 4.A and 4.E). Also, Utzon as the creator understands the building as others see it, in its historical context.

#### Form and design

This nomination proposes that the Sydney Opera House is a masterpiece of human creative genius. This genius was primarily attributable to Utzon but was also the collective ingenuity of engineers, builders, other architects and manufacturers. Utzon designed and supervised the construction of the podium, stairs and the shells, which together establish the spectacular exterior and interior form and structure of the building. Utzon together with Ove Arup & Partners conceived the system of precast concrete ribs for the shells and the matt and gloss interlocking glazed tiles.

*Figure 3.45* View to the Utzon Room at night, with Utzon's tapestry, 2004





3.46

Utzon worked for several years on the complex designs for the major and minor halls and the glass walls which he envisioned would be suspended like waterfalls to close the shells. These elements were finally designed and built by Hall Todd & Littlemore amid public controversy (see Part 2.A). Conservation issues have arisen from this multiple authorship. However, Utzon's re-engagement in 1999 has allowed many of the issues to be discussed and resolved with far greater understanding of the building's design than is typically the case. In recent years, detailed attention has been given to ways to conserve the building and retain its authenticity which culminated in the Conservation Plan (SOH) and the Utzon Design Principles. These principles 'can be used to clarify original design intent, to manage proposals for change and influence planning controls for the precinct' (Joseph Skrzynski quoted in Utzon 2002: 3). The principles are described in detail in Parts 4, 5 and 6.

The Conservation Plan (SOH) provides guidance for defining what is integral to the Sydney Opera House as a built structure. It includes many aspects of the Hall Todd & Littlemore completion work which have become central to the successful functioning and success of the Sydney Opera House. The Conservation Plan (SOH) explains that the policies in the plan are framed to fulfil many purposes, but that the first one is to 'recognise the primacy of Utzon's vision for the place and the value of Hall's hierarchy within the building which distinguishes the treatment of major public spaces, minor public spaces and performers' and staff areas, and service areas' (Kerr 2003: 41).

*Figure 3.46 The tiled shells*

### Materials and substance

The use and appearance of the materials of the property are fundamental to its authenticity. Utzon purposely used materials that provide both structure and architecture, true to the spirit of postwar architectural ideals. Exposed concrete, shaped to 'express the forces within the structure', the glazed matt and glossy tiles, the granite panels and bronze elements provide the basic palate of materials at the Sydney Opera House. The importance of the materials, their rationale, form and finishes are documented in the Conservation Plan (SOH) and the Utzon Design Principles. Policies in these documents detail the management, future repair and treatment of these materials. The rigorous management and conservation of the Sydney Opera House assist in retaining the material integrity and authenticity of the building. These policies and practices are described in Parts 4, 5 and 6.

### Use and function

The Sydney Opera House continues to perform its function as a world-class performing arts centre. Since the Sydney Opera House first opened in 1973, its role as a cultural performance centre has continued to grow. Not only does it continue to be home to traditional performing arts and national institutions, but its role has escalated over time to encompass an extensive range of cultural performances that appeal to a wide cross-section of the community.

The success of the Sydney Opera House requires the integration of new technologies for state of the art performance spaces and for audience and tourist management. This could create the potential to threaten or compromise authenticity in relation to maintaining and conserving the original material fabric of the building's structure. The Conservation Plan (SOH) specifies the need to balance the roles of the Sydney Opera House as an architectural monument and as a vibrant, state of the art performing arts centre:

[R]esidual tensions between the care of the structure as a monument and its function as a performing arts centre will always exist. It is therefore important to emphasise the degree to which the quality of the building and its site and the popular and financial success of the events within it reinforce each other. Neither can be neglected (Kerr 2003: 26).

Part of the Sydney Opera House's setting, the inner waters of Sydney Harbour, serves a wide range of maritime activities. The identified views and vistas which contribute to the outstanding universal value of the Sydney Opera House are protected by the buffer zone and by national protective legislation that is effective both within and beyond the buffer zone. These protective measures are described in Parts 4 and 5.



3.47

Figure 3.47 Australian Idol concert on the forecourt.



3.48

#### Location and setting, spirit and meaning

The Sydney Opera House is surrounded on three sides by a vibrant, busy harbour, which provides a natural safeguard from development of its waterscape setting. Immediately behind the Sydney Opera House are the Royal Botanic Gardens, the city's 'green lung' and an important backdrop to the site when viewed from the water. These aspects of the location are discussed in Part 4.

The history and associations of the harbour setting and the exceptional architectural quality of the podium and shells form a pivotal sculptural role in Sydney Harbour. As stated above, the integrity and authenticity of this setting will be protected by the buffer zone and by national protective legislation that is effective both within and beyond the buffer zone. These protective measures are detailed in Part 5. The Conservation Plan (SOH) contains policies to ensure the conservation of the setting and spirit. These policies protect the views and vistas, the open and uncluttered setting and the forecourt pedestrian and vehicle paths.

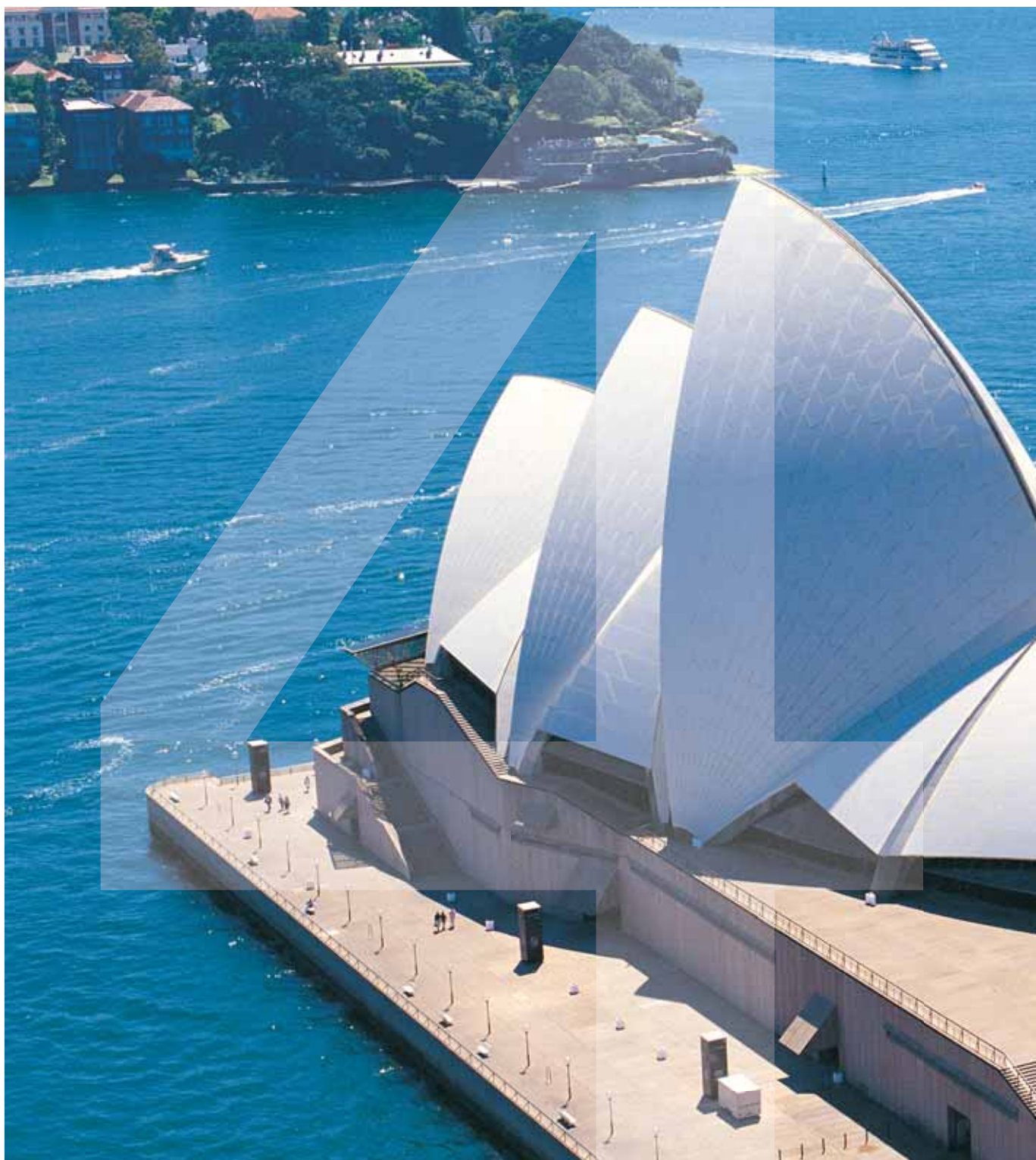
#### Information sources

Extensive information sources are available on the construction and changes to the property. International and local expertise on the history and significance of the building is referenced throughout the nomination and detailed in Part 7. The ability to engage the building's creator has provided unique opportunities to authenticate the outstanding universal values of the place and to integrate this vision into the management framework for the building. Part 2.A provides information on the adaptations to the property such as the Drama Theatre, the Playhouse, the Studio and the western loggia.

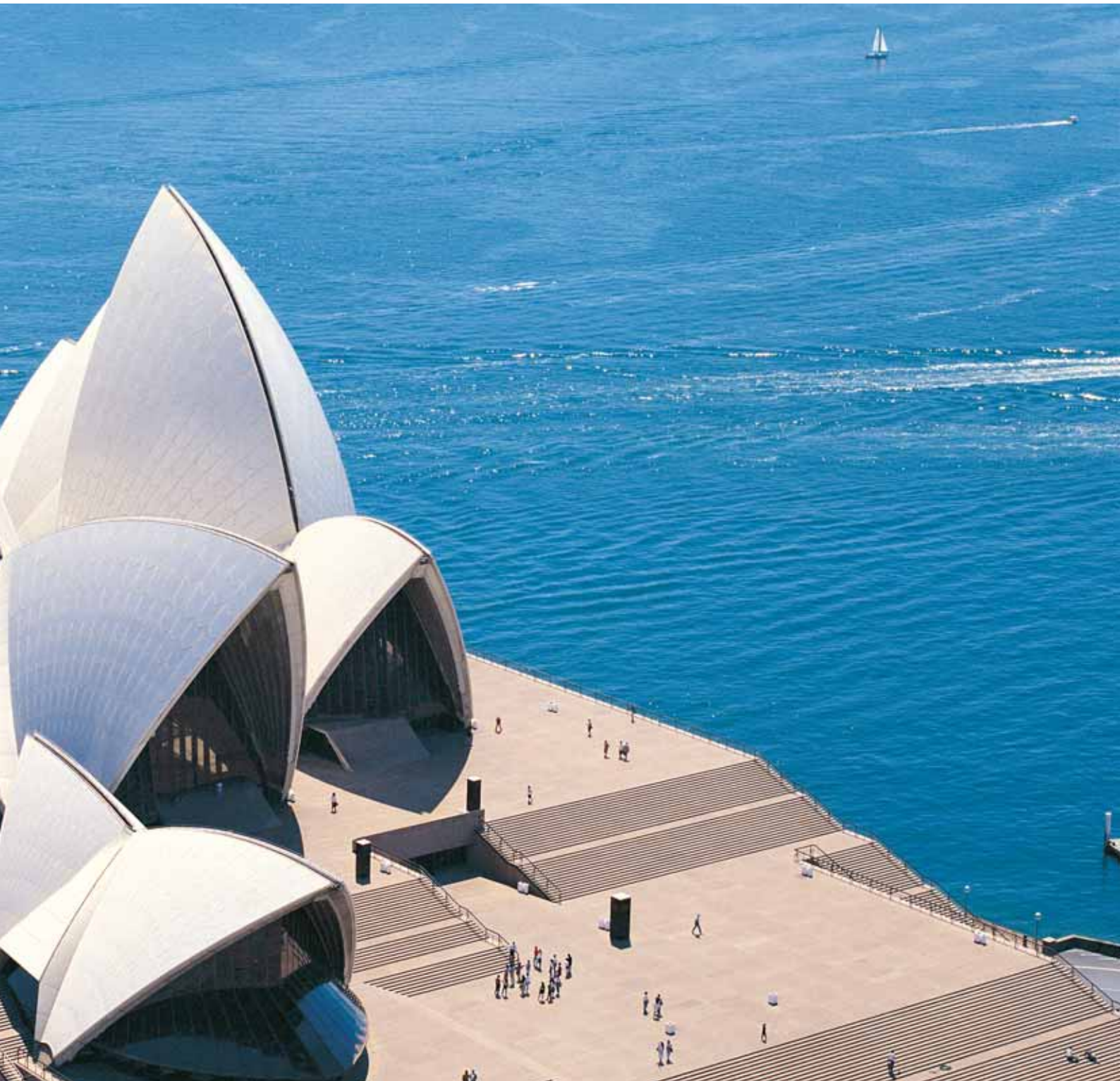
*Figure 3.48* The buffer zone protects the setting of the Sydney Opera House and ensures that it retains its supremacy as the focal point of the city from key vantage points.



## PART 4. STATE OF CONSERVATION AND FACTORS AFFECTING THE PROPERTY









#### 4.A PRESENT STATE OF CONSERVATION

Comprehensive statutory and associated frameworks are in place across three levels of government to ensure that the present condition of the property is maintained to an exceptional standard. These frameworks ensure that the distinctive character of the Sydney Opera House and the identified heritage values of its various components will be retained when appropriate changes are undertaken to the property. The property is maintained and preserved through regular and rigorous repair and conservation programs, as well as by scrutiny at the highest levels including the executive of the Sydney Opera House Trust and the Australian and New South Wales Governments. The Sydney Opera House is listed as a heritage place on national, state and local government heritage lists and registers which ensure it is protected under the various laws detailed in Part 5.B. A comprehensive conservation management plan (now in its third edition) has been developed by one of Australia's leading heritage consultants— James Semple Kerr's *Sydney Opera House: a plan for the conservation of the Sydney Opera House and its site* (referred to as 'the Conservation Plan (SOH)' in this nomination).

The Sydney Opera House was conceived in the spirit of achieving excellence in all aspects of its presentation and celebration as a focal point of a city and a nation. All elements of the building and the site are currently in good physical condition. For instance, carbonation and chloride testing of the precast granite and concrete exterior wall panels and the in situ concrete external structural walls of the building indicate that the concrete is in good condition. In addition, consistent with best practice in 21st-century building conservation, alternative sources have been located to replace original materials that are no longer available (such as the shell tile lids and reconstituted granite used on the building exterior).

The full suite of conservation and monitoring measures are detailed in Parts 5 and 6. The present condition of the various elements of the property and baseline data to monitor its future conservation are provided in the Conservation Plan (SOH) and the Building Condition Indices. These are discussed below (Parts 5.E, 5.G, 6.A and 7.B).

#### 4.B FACTORS AFFECTING THE PROPERTY

##### 4.B (i) Development pressures

The site of the Sydney Opera House provides substantial natural protection from development. The building is located on a promontory in Sydney Harbour, with water on three sides and the Royal Botanic Gardens to the south-east. The legislation creating the World Heritage buffer zone will give further protection to the property by requiring that developments proposed within the buffer zone do not adversely affect the World Heritage values of the Sydney Opera House. The buffer zone and the legislation are discussed in detail in Part 5.D.

There are demands for the Sydney Opera House to maintain its position as a state of the art performing arts centre. Occasional adaptation to the property is necessary to allow the Sydney Opera House to meet the technological and clientele requirements of a national and world-class performing arts centre. At the same time, the aspiration for functional excellence can complement and reinforce the performance arts aspect of its heritage significance. The Conservation Plan (SOH) emphasises the need to balance the different roles of the Sydney Opera House as a monument and a successful performance venue. Legislation and associated conservation mechanisms enable these twin objectives to be achieved in ways that preserve the property's heritage values. All changes to the building and the site are undertaken within a rigorous conservation planning framework.

The recent building works to the Sydney Opera House have been undertaken in accordance with the Conservation Plan (SOH) and the *Sydney Opera House Utzon design principles 2002* (Utzon Design Principles). This has ensured that the current improvements retain the authenticity of the building as a performing arts centre. Substantial work has been undertaken by the Sydney Opera House Trust and relevant New South Wales Government agencies to define an appropriate framework for both the day-to-day and the long-term conservation of the Sydney Opera House.

#### 4.B (ii) Environmental pressures

The Sydney Opera House is exposed to several environmental pressures but the means for managing their effects are in place.

Sydney is located on the south-eastern seaboard of the Australian continent facing the Pacific Ocean and is subject to 'El Niño' climatic effects. Over recent years,

Sydney has experienced reduced rainfall patterns but this has not had a measurable effect on the building. In its exposed position, the Sydney Opera House can also experience strong winds, with the strongest recorded being under 180 kilometres per hour. The building was designed to withstand wind loads of this level and higher. Pioneering wind-tunnel technology was used to test wind pressures during the construction of the building.

The Sydney Opera House is subject to a combination of environmental influences due to its exposed harbour-side location. These include salt water, wave action, high winds, atmospheric pollutants and solar radiation particularly in relation to the large roof and glass wall areas. The in situ and reinforced concrete structure of the Sydney Opera House, with its tile-clad shells and precast reconstituted granite-clad podium, is vulnerable to the problems of concrete decay typical for a building in a maritime environment. Exposed concrete poses specific technical challenges because the surface finish and the structure are integrated. Also, concrete repair is physically invasive and can have a significant visual impact if not managed carefully. Sophisticated testing and repair programs are in place to ensure that the concrete elements remain in excellent condition. These programs are discussed in Part 6.A.

Conservation challenges arising from environmental pressures have been comprehensively identified and managed at the Sydney Opera House. The original materials chosen were of a very high quality (such as the glazed tiles, concrete and bronze used in the handrails) and sophisticated construction techniques were used. A proactive and rigorous building maintenance program is in place to deal with the critical areas of material risk. Each critical item (such as the concrete, reconstituted pink granite, tiles and the bronze) has a conservation program identified





4.2



4.3



4.4

and implemented by on-site contractors engaged specifically to maintain critical building fabric to a high standard. For example, in order to minimise environmental effects on the exposed concrete it is steam cleaned annually to remove the organic growth that would otherwise contribute to the breakdown of the surface and facilitate the passage of water and oxygen through the concrete. Treatment methods have been carefully developed to minimise secondary risks from the treatments themselves. Changes in local environmental conditions are also carefully monitored for their effect on the property. Sydney's recent low rainfall has meant the infrequent natural cleaning of the tiles by rain, resulting in an unusual accumulation of atmospheric soiling and dulling of the tiles. The tiles have been washed to counter this visual effect and to maintain the shiny surface finish of the shells.

#### 4.B (iii) Natural disasters and risk preparedness

The Sydney Opera House is located in an area not generally prone to natural disasters such as cyclones, earthquakes or floods. In 1989 the building did not show any damage following a 5.6 Richter scale earthquake in Newcastle (300 kilometres north of Sydney). Nevertheless, as a consequence of heightened awareness of earthquake risk, new Australian standards for building construction have been introduced. Between 1996 and 2003 the fixings for the external cladding panels were upgraded to meet the Australian standard for earthquakes.

Consistent with international best practice, risk management is comprehensively embedded in the administration and management of the property. A number of documents have established protocols and procedures to identify and deal with a wide range of potential risks. The following are examples:

- The Sydney Opera House has comprehensive emergency and integrated security plans in place to manage and respond to unforeseen emergency situations. The plans comply with the *State Emergency and Rescue Management Act 1989* (NSW) and the Australian standard for risk management.
- The Conservation Plan (SOH) identifies current and foreseeable risks to the heritage values of the Sydney Opera House and specifies policies that seek to avoid or minimise these risks.
- A *Heritage risk management policy* and a *Heritage risk management plan* are currently being developed by the Sydney Opera House Trust. The documents identify foreseeable risks and strategies for maintaining the heritage values of the property. They form part of the *Management plan for the Sydney Opera House 2005* discussed in Part 5.E.

*Figure 4.2* Conservation works to the tiled shells

*Figure 4.3* A program of detailed investigation and research was undertaken in 2003–2004 to develop a suitable method for cleaning the exposed concrete. This included historical research and sourcing of equipment used in the Sydney Opera House construction as demonstrated here by Steve Tsoukalas who worked on the Sydney Opera House in the 1960s.

*Figure 4.4* Surfers assembling on the forecourt for the Australia Day surfboard challenge, 2004. The Sydney Opera House provides for a huge variety of functions, all overseen by the various management strategies in place.



#### 4.B (iv) Visitor/tourism pressures

The Sydney Opera House is one of the most popular visitor attractions in Australia. It is featured in promotional materials prepared by Tourism New South Wales and Tourism Australia as a symbol of the city of Sydney and an emblem of Australia. More than four million people visit the site each year and it is estimated that this figure will increase by approximately 4.5 per cent per annum.

Research into site visitors and a review by tourism industry professionals have led to strategic planning to address the estimated increase in visitors. Initiatives under consideration include the provision of a visitors' centre and an information booth. The expected increase in visitation is not expected to have any negative impact on the heritage values, given the size of the Sydney Opera House precinct and the management strategies being implemented.

#### 4.B (v) Number of inhabitants within the property and the buffer zone

There are no inhabitants within the property. About 650 permanent, part-time and casual staff work at the Sydney Opera House. An estimated 5500 residents live within the buffer zone (Australian Bureau of Statistics 2003) and a larger number of people work within this area of the city.

## PART 5. PROTECTION AND MANAGEMENT OF THE PROPERTY









## 5.A OWNERSHIP

The Sydney Opera House is publicly owned by the State Government of New South Wales. The administration and management of the property are vested with the Sydney Opera House Trust under the *Sydney Opera House Trust Act 1961* (NSW).

## 5.B PROTECTIVE DESIGNATION

Legislation and associated instruments have been established across national and state levels to ensure the comprehensive conservation and management of the heritage values of the Sydney Opera House. An overview table is provided below and detailed information is provided in Part 5.C.

Levels of government	Legislation and instruments	Policy and planning documents
Australian Government	<ul style="list-style-type: none"> <li>• <i>Environment Protection and Biodiversity Conservation Act 1999</i></li> <li>• <i>Australian Heritage Council Act 2003</i></li> </ul>	
New South Wales Government	<ul style="list-style-type: none"> <li>• <i>Environmental Planning and Assessment Act 1979</i></li> <li>• <i>State Environmental Planning Policy (Major Projects) 2005</i></li> <li>• <i>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Harbour REP)</i></li> <li>• <i>Sydney Opera House Trust Act 1961</i></li> <li>• <i>Heritage Act 1977</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Management plan for the Sydney Opera House 2005</i></li> <li>• <i>Sydney Opera House: a plan for the conservation of the Sydney Opera House and its site 2003</i></li> <li>• <i>Sydney Opera House Utzon design principles 2002</i></li> <li>• <i>Minimum standards of maintenance and repair</i></li> <li>• <i>State agency heritage guide</i></li> </ul>

**Table 5.1** Legislation for managing the heritage values of the Sydney Opera House (including its site and the proposed buffer zone)



### Regulatory designations

The Sydney Opera House and its site are protected by being listed on statutory heritage registers at all levels of government. These registers include specific provisions for managing the heritage values of the property:

- The Sydney Opera House was included in the National Heritage List on 12 July 2005 under the *Environment Protection and Biodiversity Conservation Act 1999* (Australian Heritage Database Place ID 105738).
- The Sydney Opera House was inscribed on the State Heritage Register of New South Wales on 3 December 2003 under the *Heritage Act 1977* (Heritage Item No. 1685).
- A buffer zone is proposed to protect the setting of the Sydney Opera House that will be managed through the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* ('Harbour REP'). This is discussed in Part 5.D.

In line with best practice, extensive public consultation was undertaken for each heritage listing. The implementation of this regulatory framework is discussed in Part 5.C.

### Other listings

On 21 October 1980 the Sydney Opera House was included in the Register of the National Estate which was established under the *Australian Heritage Commission Act 1975* and now maintained under the *Australian Heritage Council Act 2003* (Australian Heritage Database Place ID 2353).

The Sydney Opera House is included as a heritage item on the *Sydney Local Environmental Plan 2005* (CSI no. 1064, 2 East Circular Quay) enacted under the *Environmental Planning and Assessment Act 1979*.

The Sydney Opera House is listed on several other non-statutory heritage registers that indicate the esteem in which it is held within and outside Australia:

- Royal Australian Institute of Architects' Register of Significant Australian 20th Century Architecture, inscribed on 31 August 1990 (No. 4702929)
- National Trust of Australia (New South Wales) Register, listed on 21 November 1983 (No. 6088)
- International Working Party for Documentation and Conservation of Buildings, Sites and Neighbourhoods of the Modern Movement (DOCOMOMO) Register, formally listed by the Australian Working Party of DOCOMOMO on the Register in 2000
- DOCOMOMO International Advisory Report to ICOMOS entitled *The Modern Movement and the World Heritage List 1997* includes the Sydney Opera House on the list of modern buildings and sites suggested for the World Heritage List.

### 5.C MEANS OF IMPLEMENTING PROTECTIVE MEASURES

The heritage values of the Sydney Opera House, including its proposed buffer zone, are safeguarded through a robust protection and management regime. This includes a wide range of measures provided under planning and heritage legislation and policies of both the Australian Government and the New South Wales Government.

#### Australian Government legislation

Australia provides a high level of legal protection to its National Heritage and World Heritage properties. The *Environment Protection and Biodiversity Conservation Act 1999* established the National Heritage List to recognise and protect places of outstanding heritage value to the nation. The Sydney Opera House is a National Heritage place (see Part 5.B). In the event that the Sydney Opera House is inscribed on the World Heritage List, it will become a World Heritage property protected under the provisions of the *Environment Protection and Biodiversity Conservation Act 1999*. Any proposed action (for example, a development proposal) to be taken inside or outside the boundaries of a National Heritage place or a declared World Heritage property that may have a significant impact on these heritage values is prohibited without the approval of the Minister for the Environment and Heritage. The legislation requires that actions that may have a significant impact on National Heritage or World Heritage values must be subject to a rigorous assessment and approval process. The Minister makes the final decision on whether or not to approve the action.

Australia's obligations under the World Heritage Convention are reflected in the provisions of the *Environment Protection and Biodiversity Conservation Act 1999*. The Australian World Heritage management principles contained in this legislation promote a nationally consistent standard for the management of Australian World Heritage properties. Under the legislation the Australian Government may, through a bilateral agreement, delegate responsibility for conducting impact assessments and deciding whether to grant approval for any actions or proposals to a state or territory government. In 2005 the Australian Government and the New South Wales Government entered into a bilateral agreement for the Sydney Opera House. The agreement declares that actions approved by the New South Wales Government, in accordance with a bilaterally accredited management plan, do not require approval by the Australian Government Minister. The *Management plan for the Sydney Opera House 2005* that has been accredited under this legislation is discussed in Part 5.E.

The Australian Heritage Council was established under the *Australian Heritage Council Act 2003* and appointed by the Minister for the Environment and Heritage. The council is an independent body of heritage experts that provides advice to the Minister on a range of heritage matters. It provides advice on the conservation and protection of places on the National Heritage List including monitoring their condition. The council also provides advice on national policies relating to heritage issues.

### New South Wales Government legislation

The *Environmental Planning and Assessment Act 1979* provides for the proper management, development and conservation of the natural and built environment in New South Wales. The legislation requires that proposals comply with relevant planning controls and are environmentally and socially sustainable according to their nature and scale. Before a proposal can be undertaken on the Sydney Opera House site it is subject to rigorous assessment by qualified planners, urban designers and heritage experts. This process involves consultation with the public and interested parties and identifies all likely impacts. Approval cannot be granted unless there has been an assessment and consideration of the impacts of the proposed action or proposal on the heritage values of the Sydney Opera House. If approved, the proposal may be subject to conditions of approval to ensure that the heritage values are conserved and protected. These conditions are monitored and enforced (see Part 5.D). Civil and criminal proceedings for a breach of any approval may be taken before a local court or the New South Wales Land and Environment Court.

The *Heritage Act 1977* provides protection for places of natural and cultural heritage significance. It provides for the listing of heritage items or places on the State Heritage Register and the making of orders for their protection. The Sydney Opera House is listed as a heritage place (see Part 5.B). Any development application for the property must be considered for approval by the New South Wales Heritage Council. In addition, the *Minimum standards of maintenance and repair*, created under the legislation, require that the Sydney Opera House site is kept to a mandatory standard of care and maintenance. The property is also subject to guidelines that regulate heritage items owned by New South Wales Government agencies under the legislation. The *State agency heritage guide* sets standards for the day-to-day care of places owned by New South Wales Government agencies and establishes the integration of heritage matters into overall asset management.

### Offences

Australian Government and New South Wales Government legislation have provisions to impose financial penalties or imprisonment for actions that may have an adverse impact on the heritage values of the Sydney Opera House. The *Environment Protection and Biodiversity Conservation Act 1999* contains substantial penalties for civil and criminal offences that apply when the provisions of the Act that protect the heritage values of a World Heritage property or a National Heritage place are contravened. Penalties that may be imposed include civil penalties of up to A\$550 000 for individuals or A\$5.5 million for a body corporate; and criminal penalties of up to A\$46 200 and/or seven years imprisonment for an individual and A\$231 000 for a corporation. In addition the Minister for the Environment and Heritage, or persons or organisations who satisfy certain statutory requirements, can apply for an injunction to restrain a person who may be about to take such an action. The *Heritage Act 1977* outlines penalties for convicted third parties including fines of over A\$1 million and imprisonment for up to six months. The *Sydney Opera House Trust Act 1961* provides penalties including imprisonment ranging from two to seven years for convicted third parties.

## 5.D EXISTING PLANS RELATED TO MUNICIPALITY AND REGION IN WHICH THE PROPOSED PROPERTY IS LOCATED

A number of environmental planning instruments provide further protection and management of the heritage values of a listed property. The management of these instruments is the responsibility of the New South Wales Department of Planning in consultation with other relevant state agencies including the New South Wales Heritage Office. Contact information is detailed in Parts 8.A and 8.C.

### Statutory plans

#### *State Environmental Planning Policy (Major Projects) 2005 (NSW)*

The policy identifies the Sydney Opera House as a 'state significant site'. All activities on the site are given a high level of consideration and assessment under the *Environmental Planning and Assessment Act 1979*. Activities cannot proceed without the consent of the Minister for Planning.





5.2

*Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (NSW) (Harbour REP)*

The Harbour REP contains principles and provisions for planning for the Sydney Harbour Catchment including the Sydney Opera House site (called the Foreshores and Waterways Area). Under the provisions for this area, the Minister for Planning is required to consider a range of matters such as ecology and environmental protection, protection and enhancement of views, public access and preserving the scenic quality of the foreshores and waterways. The Harbour REP also includes the waterway abutting the Sydney Opera House.

Proposed buffer zone: management of the setting of the Sydney Opera House

In the event that the Sydney Opera House is inscribed on the World Heritage List, a buffer zone will come into force by an amendment to the Harbour REP. The buffer zone will be subject to additional planning rules and provisions aimed at further protecting the World Heritage values of the property. The Minister for Planning will be required to ensure that any development within the buffer zone satisfies certain criteria for consideration before granting consent under the Harbour REP.

*Figure 5.2 The Sydney Opera House, aerial view illustrating the relationship with the harbour, 2005*

To be approved, a development will need to preserve the World Heritage values of the Sydney Opera House; to preserve views and vistas between the property and other public places within the buffer zone; and to avoid any diminution of the Sydney Opera House when viewed from other public places within that zone. Any proposed development within the buffer zone would need to address these matters in its application. A copy of the Harbour REP and a copy of the exhibited draft amendment (buffer zone) are included as supporting documentation to this nomination.

### 5.E PROPERTY MANAGEMENT PLAN OR OTHER MANAGEMENT SYSTEM

#### *Management plan for the Sydney Opera House 2005*

The *Management plan for the Sydney Opera House 2005* was prepared by the New South Wales Government in consultation with the Australian Government as part of the bilateral agreement under the *Environment Protection and Biodiversity Conservation Act 1999*. Full consultation with interested parties and the general public was carried out during the development of the plan. The plan sets out the environmental impact assessment and approval requirements and the management arrangements that operate to protect the National Heritage and World Heritage values of the property. The plan includes the Conservation Plan (SOH) and the Utzon Design Principles—two documents that are described in more detail below (see also Part 4). Together these three documents provide the policy framework for the conservation and management of the Sydney Opera House.

The plan draws on a range of other documents that collectively underpin the total asset management and protection strategy of the Sydney Opera House. These include strategic building plans; strategic asset maintenance plans; a building standards manual; building asset strategy plans; emergency plans; security plans and policies; and a crisis management plan. These documents represent a cohesive strategy to conserve the heritage values of the property and maintain its reputation as a leading performing arts centre. They are reviewed and updated regularly. Arrangements to support the total asset management and protection strategy of the Sydney Opera House are detailed in Part 6.A.

The plan provides a complete framework to protect and conserve the heritage significance of the Sydney Opera House. It sets out the role of the Conservation Plan (SOH) and the Utzon Design Principles in the context of the various levels/jurisdictions of legislative control. The plan provides a link between these practical documents and the legislation. It provides a sound basis for decision-making in relation to any future development and evolution, modification and change, as well as for the day-to-day management of the property including minor management proposals. All management decisions must be carried out in accordance with the plan. A copy of the plan is included as supporting documentation to this nomination.



5.3

***Sydney Opera House: a plan for the conservation of the Sydney Opera House and its site 2003 (Conservation Plan (SOH))***

The Conservation Plan (SOH) is a highly effective management tool for the property. It provides sound and comprehensive guidance for the management of the Sydney Opera House. The plan identifies the heritage significance of the site, assesses the levels of heritage significance to be assigned to the various elements of the site and its fabric, contains detailed policies to manage the heritage values, gives guidance on managing any necessary change or upgrade in

a way which retains and respects these values, and identifies procedures for the monitoring and review of these processes. Issues are addressed that are relevant to the short- and long-term management and maintenance of the property including its function and its fabric. Each set of policies begins with the broad principles, specific policies then being identified for areas where detailed consideration is necessary.

The Conservation Plan (SOH) is consistent with international best practice and has been successfully implemented. It identifies the consideration of heritage values as central to the design, management and maintenance of the property. The Sydney Opera House Trust has engaged the services of a specialist heritage consultant to provide advice and comment, as well as assistance with all matters where there are heritage implications (see also Part 5.G). The Conservation Plan (SOH) is included as supporting documentation as Appendix A of the *Management plan for the Sydney Opera House 2005*.

***The Sydney Opera House Utzon design principles 2002 (Utzon Design Principles)***

The Utzon Design Principles are a record of Utzon's vision for the building and its setting and his views about its future. As a reference document that explains the design principles of the building it provides a framework within which the building and site may evolve and develop to meet the changing demands of this major performing arts centre, while conserving the heritage values of the site and retaining its authenticity. The Utzon Design Principles are included as supporting documentation as Appendix B of the *Management plan for the Sydney Opera House 2005*.

Figure 5.3 The Conservation Plan (SOH), 2003





## 5.F SOURCES AND LEVELS OF FINANCE

The Sydney Opera House is financed from a number of different sources. The administration and maintenance of the Sydney Opera House and its operations are funded by New South Wales Government grants, earned income from the provision of facilities and services by the Sydney Opera House, corporate sponsorship and philanthropy. An annual endowment for the operations of the Sydney Opera House Trust is provided by the New South Wales Ministry for the Arts. In the financial year 2005–06 this endowment totalled A\$14.3 million. The ministry also funds ongoing building and maintenance requirements. In 2005–06 these funds totalled A\$19.6 million. Capital funding may also be provided by the New South Wales Ministry for the Arts, on a project-by-project basis. In 2005–06 these funds totalled A\$7.1 million. In addition, the Australian Government may provide financial assistance for the identification, promotion, protection or conservation of a National Heritage place through initiative or incentive programs.



5.4

## 5.G SOURCES OF EXPERTISE AND TRAINING IN CONSERVATION AND MANAGEMENT TECHNIQUES

The Sydney Opera House Trust is in the privileged position of managing the property with policies developed by Australia's most respected conservation consultant, James Semple Kerr, (the Conservation Plan (SOH)), and with the benefit of the principles set down by the building's creator, Jørn Utzon, (the Utzon Design Principles).

The Sydney Opera House Trust established a conservation council in 1996 to provide specialist advice about issues of heritage significance. The Sydney Opera House Conservation Council includes representatives from the Sydney Opera House Trust, the New South Wales Government Architect's office, eminent government and private sector specialists with recognised expertise in architecture, heritage and conservation, engineering and performing arts, and the Sydney Opera House's executive management. Their key responsibilities are to conduct annual inspections and review significant works, the Conservation Plan (SOH) and expenditures.

Maintenance, day-to-day operations and strategic planning all draw on a range of expertise to assess the heritage implications of proposed activities. Considerable 'in-house' expertise and experience has been accumulated, particularly in the professional and technical areas. This knowledge has been passed on to new staff. Where appropriate, new and existing staff undertake training in the heritage values of the property and their protection. Heritage expertise and appropriate training are provided from various other sources which are outlined as followed.

*Figure 5.4 The Sydney Opera House Trust Conservation Council, 2005*





5.5

- An on-site heritage consultant provides advice on the development of maintenance techniques for concrete, bronze and other significant materials.
- Heritage architects provide advice on a wide range of issues from asset maintenance strategies to heritage impact assessments for capital works.
- Building fabric and services consultants and contractors have expertise in heritage buildings.
- The New South Wales Heritage Office provides advice and acts as a conduit to specialist expert services in conservation and management techniques as well as training.
- The Australian Government Department of the Environment and Heritage provides advice on the identification, promotion, protection and conservation of National Heritage places and World Heritage properties.

## 5.H VISITOR FACILITIES AND STATISTICS

It is estimated that over four million people visit the Sydney Opera House site annually. Over one million of these visitors attend more than 1700 live performances per annum, making it one of the world's busiest performing arts venues. The Sydney Opera House site also functions as a grand public gathering place and is host to a variety of function-specific facilities as well as general services. The large public events of New Year's Eve attract around 10 000 people to the site to celebrate and watch the fireworks which are broadcast internationally. The exterior of the building is accessible to the public at all times. During the day, guided tours of the interior regularly attract large numbers of international and national tourists as well as Australian school children. Tours are available daily which explain the building's history and architecture.

*Figure 5.5* Guided tours are conducted by the Sydney Opera House Trust.



5.6

## Venues

There are eight primary venues at the Sydney Opera House. These are the Concert Hall (maximum seating capacity 2679); the Opera Theatre (maximum seating capacity 1507); the Drama Theatre (maximum seating capacity 544); the Playhouse (maximum seating capacity 398); the Studio (seating capacity from 220–318); the Exhibition Hall (maximum standing capacity up to 300); the Utzon Room (a multi-purpose venue, maximum capacity 270 people); and the forecourt (an open air venue south of the shells which can accommodate up to 6000 people).

## Restaurants

There are a variety of restaurants, cafés and bars on the site catering to a diversity of experiences from fine dining to casual outdoor eating. These food and beverage outlets serve over two million customers each year.

## Shopping

Retail shops at the Sydney Opera House sell gifts, souvenirs and Sydney Opera House officially licensed products. These retail outlets serve an estimated 200 000 customers each year.

## Accessibility

The exterior areas of the Sydney Opera House site are accessible at all times. The Sydney Opera House building is open daily except for Christmas Day and Good Friday. The internal performance spaces are accessible for performances and tours. Public transport (bus, ferry, taxi and train) is available within a short walking distance. A free shuttle service operates between Circular Quay and the Sydney Opera House for elderly and less mobile visitors. An underground car park accommodates 1200 cars with covered pedestrian access to the lower concourse.

*Figure 5.6* The Sydney Opera House web site includes a virtual tour.

The Sydney Opera House has an access plan designed to improve provision of barrier-free access to the building, to the site and to services. The plan includes key goals and specific projects in the areas of physical access, promotion of community attitudes, training of staff and information about services. Recent work done under the plan includes the following:

- A series of access audits was undertaken (in 1997, 1999 and 2000) to establish the needs of customers with disabilities and older people, and to assist in identifying impediments to access.
- Access training is conducted for managers, supervisors and front of house usher staff.
- Accessible furniture was introduced as a Sydney Opera House standard in various staff work areas (1999).
- A free wheelchair-accessible bus was introduced to transport elderly and less mobile visitors between Circular Quay and the Sydney Opera House (2004).
- Accessible toilet facilities were installed adjacent to the box office foyer (2004) and the western foyers (2000).

### 5.1 POLICIES AND PROGRAMS RELATED TO THE PRESENTATION AND PROMOTION OF THE PROPERTY

The Sydney Opera House conducts a program of organised tours that include the foyers, theatres and other venues, technical backstage areas and dressing rooms for around 250 000 tourists each year. The most popular guided tour includes an overview of the Sydney Opera House, its history, the unique architecture, recent developments and an insight into the culture of the performing arts at the Sydney Opera House. In late 2004 the Museum of Sydney scheduled a major exhibition about Utzon and the evolution of the Sydney Opera House entitled *The studio of Jørn Utzon*.

The Sydney Opera House web site <<http://www.sydneyoperahouse.com>> contains information about administration and management of the Sydney Opera House, the building, performances, tours and current events. Close to 30 per cent of all tickets are now sold via the internet and a growing number of international visitors make bookings at Sydney Opera House online before leaving their home country. Web site visitors can take a virtual tour of the building and its site.

### 5.J STAFFING LEVELS (PROFESSIONAL, TECHNICAL, MAINTENANCE)

A range of professional, technical and maintenance staff are employed at the Sydney Opera House on permanent, temporary and casual contracts. The total number of staff was 654 as at 28 February 2005, comprising 305 permanent and 349 casual/temporary staff. This figure does not include the staff, performers or crew of resident or visiting companies. The occupational breakdown of staff is outlined below.

Occupational category	Number of staff
Executive	7
Administration	189
Trades (electricians, fitters, building engineers)	42
Technical (staging, lighting and sound/audiovisual)	168
Customer service	229
Occupational health and safety	19
<b>Total</b>	<b>654</b>

Table 5.2 Sydney Opera House staff as at 28 February 2005



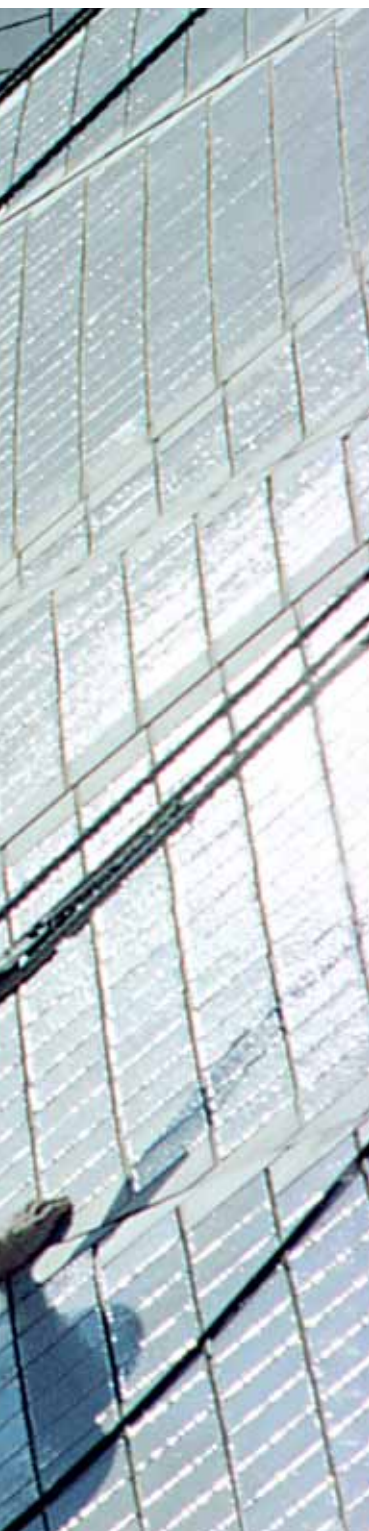
## PART 6. MONITORING











## 6.A KEY INDICATORS FOR MEASURING STATE OF CONSERVATION

The Sydney Opera House Trust uses sophisticated mechanisms and procedures to manage the maintenance and presentation of the building and its site under a program of continuous conservation. Formal monitoring systems with wide ranging indicators that measure the state of conservation are in place. These are enshrined in legislation and overseen by the New South Wales Government and the Australian Government. Baseline data for measuring the state of conservation for the property are detailed in the *Sydney Opera House: a plan for the conservation of the Sydney Opera House and its site 2003* (the Conservation Plan (SOH)), the *Sydney Opera House upgrade program*, the condition monitoring reports and various other conservation and monitoring documents (see Part 6.A ii).

### 6.A (i) External monitoring mechanisms

The *Management plan for the Sydney Opera House 2005* establishes formal monitoring mechanisms and obligations for various parties regarding the management of the heritage values of the Sydney Opera House. The plan is described in Part 5.E. Key requirements include:

- the Sydney Opera House Conservation Council providing advice to the Sydney Opera House Trust on a wide range of issues relating to the conservation and condition of the Sydney Opera House and the management of its heritage values; and
- the Sydney Opera House Trust reporting on conservation matters to New South Wales Government ministers responsible for the administration of planning and heritage legislation.

The Conservation Plan (SOH) is a central document used in monitoring the property's state of conservation. It identifies the heritage significance of the building and its site and outlines the policies and actions required to conserve that significance. The Conservation Plan (SOH) specifies ways for managing change to ensure that there is no degradation to the building or its site. It also identifies thresholds at which change would have an adverse effect on the heritage values.

### 6.A (ii) Internal monitoring mechanisms

A range of documents have been developed by the Sydney Opera House Trust to monitor the Sydney Opera House's state of conservation, protect its heritage values and manage its assets. These include a building standards manual; strategic building plans; strategic asset maintenance plans; building asset strategy plans; emergency plans; security plans and policies; and a crisis management plan. These management tools are reviewed and updated regularly. They ensure that maintenance requirements and projected capital improvements are identified over a 25-year cycle. Maintenance and replacement cycles are set out within this 25-year cycle. These explain clearly what needs to be done and when it needs to be done in order to conserve the heritage values of the property and maintain its reputation as a leading performing arts centre and iconic building.



6.2

Figure 6.2 Monitoring the sealants to the tiling

The method of monitoring and assessing the conservation and condition of the site is encapsulated in Building Condition Indices that have evolved from quarterly condition monitoring reports. The Building Condition Indices database details thousands of individual building fabric inspections that are used to determine trends in the building's condition and to plan future preventative conservation works. They are also used by the Sydney Opera House staff responsible for the care of the building and by maintenance and cleaning contractors to assess the condition of the site. The Building Condition Indices database has over 490 000 entries that detail the condition of every place, room, functional space, location zone and level of the building.

The Sydney Opera House has a specially trained, around-the-clock security team to address security needs and specifically ensure no damage occurs to the building by third parties.

## 6.B ADMINISTRATIVE ARRANGEMENTS FOR MONITORING PROPERTY

The Sydney Opera House Trust is the custodian of the building and its site and is responsible for its administration and upkeep under the terms of the *Sydney Opera House Trust Act 1961* (NSW). The internal administrative arrangements for monitoring the property's state of conservation are undertaken by the Trust's Facilities Portfolio, its staff and contractors. The Facilities Portfolio has responsibility for developing strategies and maintenance plans (outlined in Part 6.A) and preparing maintenance schedules and contracts consistent with these. A specialist technical department within the Facilities Portfolio is responsible for the ongoing care of the site.

The Sydney Opera House's asset maintenance and planning framework requires the Building Conservation Contractor to conduct monthly or quarterly inspections. This periodic monitoring ensures quick identification and rectification of maintenance and conservation matters.

The Sydney Opera House Conservation Council provides advice on the care, control and maintenance of the building. The council was established in 1996 and is guided by the Conservation Plan (SOH). It conducts formal annual inspections of the property and reviews significant works and expenditures, in accordance with the Sydney Opera House's strategic building and asset maintenance plans. In the event that the Sydney Opera House is inscribed on the World Heritage List, the charter and membership of the council would be expanded to incorporate further functions (see *Management plan for the Sydney Opera House 2005: 22–23*).

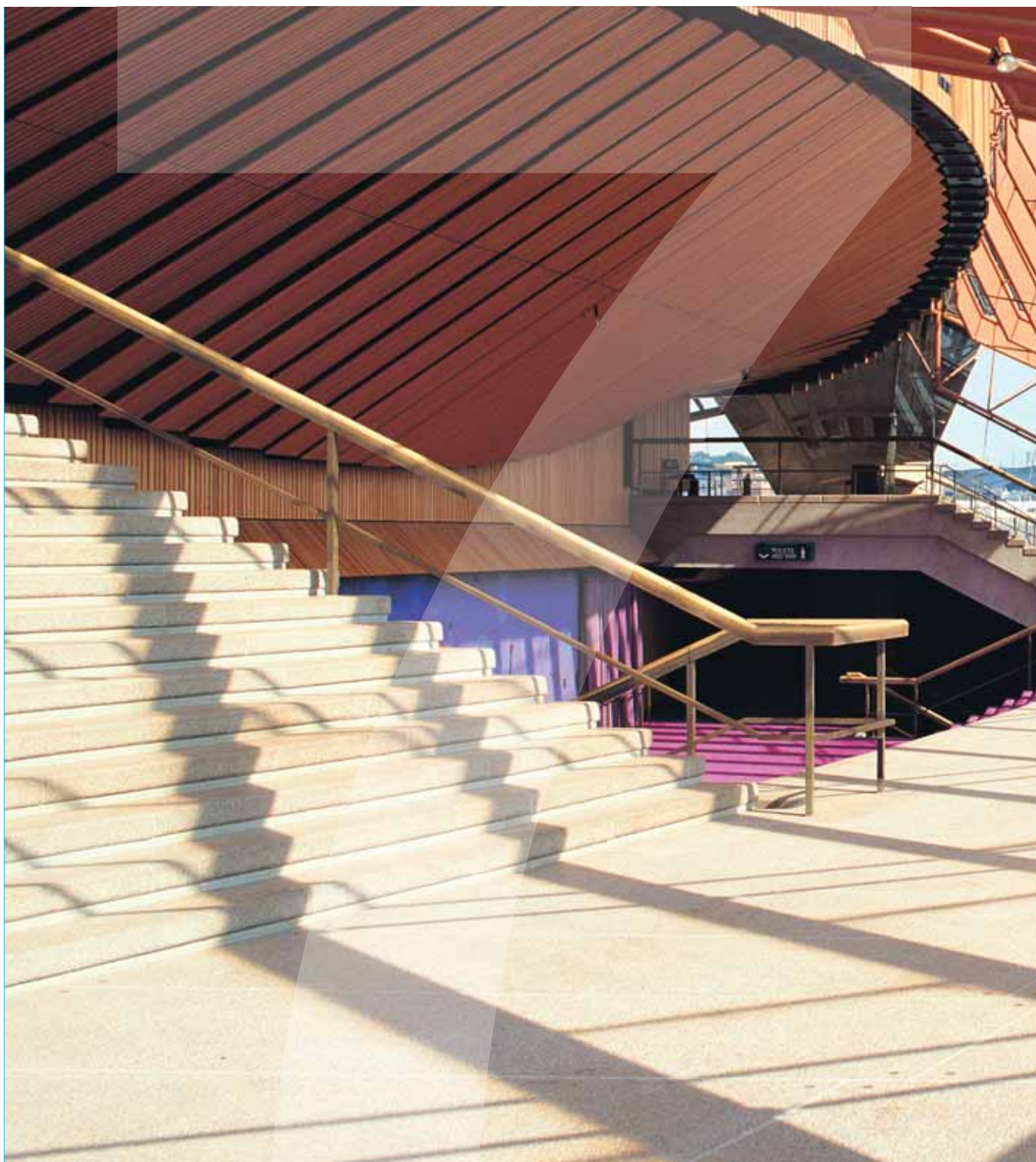
The Sydney Opera House Trust and the executive management of the Sydney Opera House consider the impact of day-to-day and minor management actions on the condition of the property. This ensures that these actions, which would not require assessment or approval in a less significant building, are also monitored. See Part 8.B for contact information.



## 6.C RESULTS OF PREVIOUS REPORTING EXERCISES

The first major assessment of the condition of the Sydney Opera House was undertaken by the New South Wales Department of Public Works (now the New South Wales Department of Commerce) in 1988. The assessment found that the property was in good condition but identified areas where maintenance and preservation could be improved. The resulting report, the *Sydney Opera House upgrade program*, became the basis for a 10-year program. The upgrade program overlapped with the development of the Conservation Plan (SOH). The Conservation Plan (SOH) was first drafted in 1993, updated in 1999 and revised in 2003. The 1993 plan found that intrusive additions or alterations had occurred over time and made a number of recommendations to ensure the preservation of the building and its site. These recommendations have been acted upon or incorporated into the relevant strategic building and asset maintenance plans.

## PART 7. DOCUMENTATION











## 7.A PHOTOGRAPHS, SLIDES, IMAGE INVENTORY AND AUTHORISATION TABLE AND OTHER AUDIOVISUAL MATERIALS

### 7.A (i) List of multi-media items accompanying nomination in CD format

Topographical maps of the site and buffer zone in PDF and JPEG format.

Sydney Opera House Trust 2005, a virtual tour of the Sydney Opera House, also found on the official web page at

<[http://www.sydneyoperahouse.com/sections/tours/virtual\\_tour/vrtour2.asp](http://www.sydneyoperahouse.com/sections/tours/virtual_tour/vrtour2.asp)>.

### 7.A (ii) Internet resources

The Sydney Opera House web site is at <<http://www.sydneyoperahouse.com>>.

This web site includes a virtual tour of the Sydney Opera House site at

<[http://www.sydneyoperahouse.com/sections/tours/virtual\\_tour/vrtour2.asp](http://www.sydneyoperahouse.com/sections/tours/virtual_tour/vrtour2.asp)>.

The Wolanski Foundation's annotated list of sources and services is at web page

<<http://www.twf.org.au/search/soh2.html>>.

The New South Wales Heritage Office web site is at <<http://www.heritage.nsw.gov.au>>.

The Australian Government Department of the Environment and Heritage web site is at

<<http://www.deh.gov.au/heritage/index.html>>.

The UNESCO web site is at <<http://www.whc.unesco/org>>.

### 7.A (iii) Other ancillary materials accompanying nomination

Collected essays used in researching nomination, photocopied and bound.

**7.A. (iv) Unrestricted copyright material for use by UNESCO:**

Sydney Opera House slide kit (in slide format and on CD-ROM).

## Image inventory

ID no.	Format (slide/ print/ video)	Caption	Date of Photo (mo/yr)	Photographer/Director of the video
1	Slide	<i>Sydney Opera House taken from the Sydney Harbour Bridge</i>	1996	Bruce Michael Edgar
2	Slide	<i>Sydney Opera House from West Circular Quay</i>	2005	Mohamed Hassan Mokak
3	Slide	<i>Sydney Opera House, view from the air towards the south east</i>	2005	Andrew Merry
4	Slide	<i>Australian Idol concert on the forecourt</i>	November 2005	Jeremy Piper
5	Slide	<i>Rugby on the house</i>	November 2003	Andrew Quilty
6	Slide	<i>Sydney Opera House under construction, view from the air towards the north west</i>	c.1965	Unknown

## 7.B TEXTS RELATING TO PROTECTIVE DESIGNATION, COPIES OF PROPERTY MANAGEMENT PLANS OR DOCUMENTED MANAGEMENT SYSTEMS AND EXTRACTS OF OTHER PLANS RELEVANT TO THE PROPERTY

Kerr, JS 2003, *Sydney Opera House: a conservation plan for the Sydney Opera House and its site* (known as the Conservation Plan (SOH)) Sydney Opera House Trust, Sydney. The Conservation Plan (SOH) was endorsed by the New South Wales Heritage Council on 5 November 2003.

Utzon, J 2002, *Sydney Opera House Utzon design principles* (known as the Utzon Design Principles) Sydney Opera House Trust, Sydney.

*Management plan for the Sydney Opera House 2005*, (the Management plan), prepared by the New South Wales Government in consultation with the Australian Government as part of a bilateral agreement pursuant to the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth). The Management plan incorporates the Conservation Plan (SOH) and the Utzon Design Principles.

### 7.B (i) Legislation

*Australian Heritage Council Act 2003* (Cwlth)

*Environmental Planning and Assessment Act 1979* (NSW)

*Environment Protection and Biodiversity Conservation Act 1999* (Cwlth)

*Heritage Act 1977* (NSW)

*Sydney Opera House Trust Act 1961* (NSW)

### 7.B (ii) Planning instruments, policies and guidelines

*Minimum standards of maintenance and repair*, NSW Heritage Office 1999, Heritage Information Series, NSW Heritage Office, Sydney

*State agency heritage guide*, NSW Heritage Office and Heritage Council of NSW 2005, NSW Heritage Office, Sydney

*State Environmental Planning Policy (Major Projects) 2005*

*Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* ('Harbour REP')

Draft amendment to *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* which provides for the Sydney Opera House buffer zone if the Sydney Opera House should be inscribed on the World Heritage List.

## 7.C FORM AND DATE OF MOST RECENT RECORDS OR INVENTORY OF PROPERTY

The Sydney Opera House's collection of information and records about its history (the Dennis Wolanski Library) was closed in 1996 and most of the collection was dispersed. The main recipients were the State Library of New South Wales, the University of New South Wales and the Victorian Arts Centre Performing Arts Museum. A small collection was retained on site by the Sydney Opera House Trust and is known as the Dennis Wolanski Archives. It includes several historic models by Jørn Utzon and a collection of books, articles and artefacts.

'The Utzon Collection' held by the Mitchell Library at the New South Wales State Library is a major collection of Jørn Utzon's office files, plans, working models and sketches generated before 1966.

New South Wales State Records holds the records of New South Wales Public Works which was the government agency responsible for overseeing the erection of the Sydney Opera House. The archive includes the group of 12 drawings by Jørn Utzon that won the 1956 architectural competition for a 'National Opera House', records from the Hornibrook Group and Hall Todd & Littlemore, photographs, minutes of meetings, speeches, press releases, parliamentary papers and news clippings.



The National Library of Australia holds thousands of items relating to the Sydney Opera House including government reports, oral history transcripts, photographs, cartoons and manuscript collections such as the 'Papers of Henry Ingham Ashworth'.

The Powerhouse Museum Sydney holds an important sectional model of the Sydney Opera House commissioned by Utzon, a prototype of the Sydney Opera House tile-lids.

The Utzon Center at Aalborg University, Denmark, is generating a new archive about Utzon with an emphasis on the Sydney Opera House. Many of these records are being donated from private collections, including some records from Utzon and from his friends and acquaintances.

#### 7.D ADDRESS WHERE INVENTORY, RECORDS AND ARCHIVES ARE HELD

Sydney Opera House  
Corporate Information  
Sydney Opera House  
Bennelong Point  
GPO Box 4274  
Sydney NSW 2001  
Australia  
Telephone: 61-2-9250 7424  
Web: <<http://www.sydneyoperahouse.com>>

Mitchell Library  
State Library of New South Wales  
Macquarie Street  
Sydney NSW 2000  
Australia  
Telephone: 61-2-9273 1414  
Web: <<http://www.sl.nsw.gov.au>>

Powerhouse Museum  
PO Box K346  
Haymarket NSW 1238  
Australia  
Telephone: 61-2-9217 0111  
Web: <<http://www.phm.gov.au/home.asp>>

State Records New South Wales  
PO Box 516  
Kingswood NSW 2747  
Australia  
Telephone: 61-2-9673 1788  
Web: <<http://www.records.nsw.gov.au/default.htm>>

National Library of Australia  
Canberra ACT 2600  
Australia  
Telephone: 61-2-6262 1111  
Web: <<http://www.nla.gov.au/contact/index.html>>

Utzon Center  
Aalborg University  
PO Box 159  
DK 1900 Aalborg  
Denmark  
Telephone: 45-9635 8080  
Web: <<http://www.utzon.aau.dk/utzon/800x600/utzon1.htm>>

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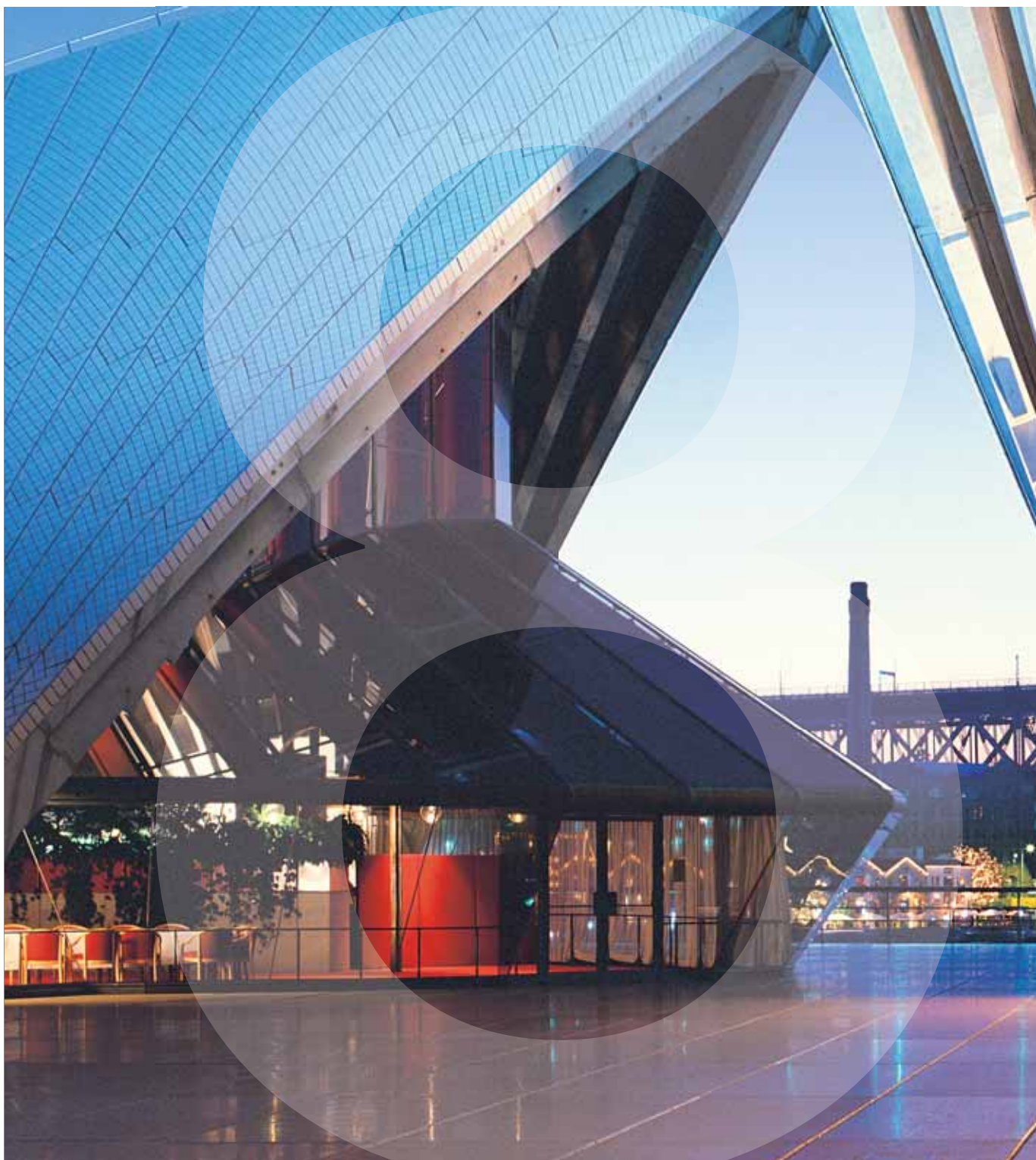
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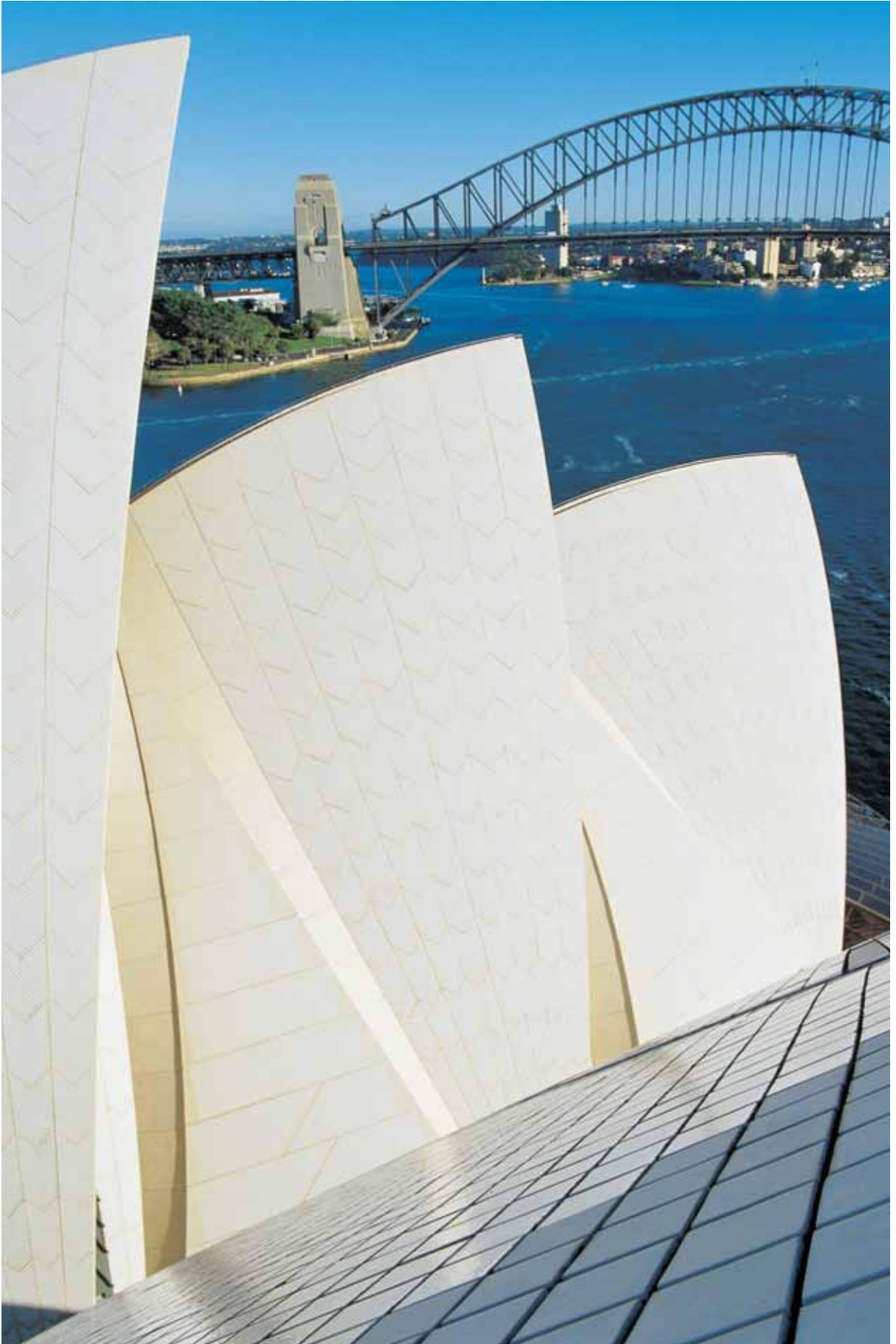
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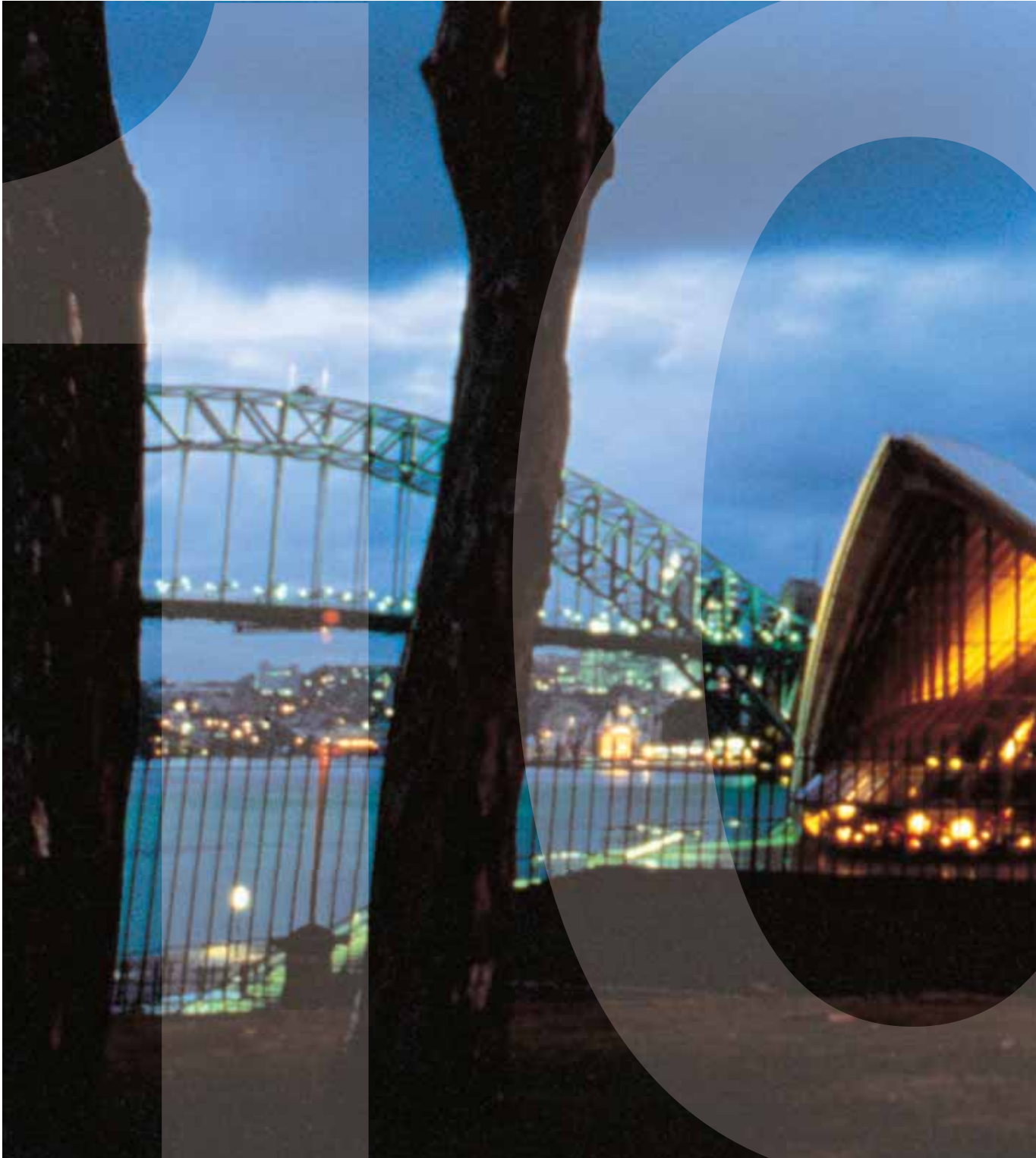
*Figure 8.2* The shells of the Sydney Opera House with the harbour bridge behind.



## PART 9. SIGNATURE ON BEHALF OF THE STATE PARTY

Senator the Hon Ian Campbell  
Minister for the Environment and Heritage  
Commonwealth of Australia  
January 2006

PART 10. APPENDICES









## 10.A BIOGRAPHIES OF JØRN UTZON AND OVE ARUP

### Jørn Utzon (1918– )

Jørn Oberg Utzon (Figure 10.1) was born in Copenhagen in 1918. He was raised and educated in Aalborg, an industrial city in Jutland on Denmark's north-east coast. His naval architect father, Aage Utzon, was chief engineer of the Aalborg shipyard and acquired an international reputation as a designer of yachts. As a school student Jørn visited the shipyard to study new designs and help his father draw up plans and make models of yachts. The Utzon family often sailed the Limfjorden Sound at Aalborg. Aage was also interested in all areas of design. In 1930 Aage visited the Stockholm Exhibition, designed by Swedish architect Gunnar Asplund, which was organised to introduce functionalism to the public. The new, simple white architecture and the demands for light and space made a considerable impression on Aage. He introduced these concepts and the new lifestyle to the Utzon household.

In 1937 Jørn Utzon enrolled in the Faculty of Architecture of the Royal Academy of Arts in Copenhagen; he graduated with the gold medal for architecture in 1942. His professors included Kaj Fisker, renowned for his large-scale housing, and Steen Eiler Rasmussen who specialised in town planning and was a prolific writer on architecture.

Utzon was influenced by the work of Gunnar Asplund and Alvar Aalto during his early career in Stockholm, Sweden. He worked briefly for Hakon Ahlberg, a recognised leader of the architecture profession in Sweden and author of Gunnar Asplund's work. Between 1942–1945 Utzon was an assistant architect for Professor Paul Hedquist who continued Asplund's practice after his death. Utzon collaborated with Tobias Faber in several architectural competitions and received an honourable mention for the Ny Ålborghal project, which included a concert hall, theatre and meeting halls. In 1942 Utzon married Lis Fenger, a Danish commercial artist, and they had two sons, Jan (born 1944) and Kim (born 1957), and a daughter Lin (born 1946).

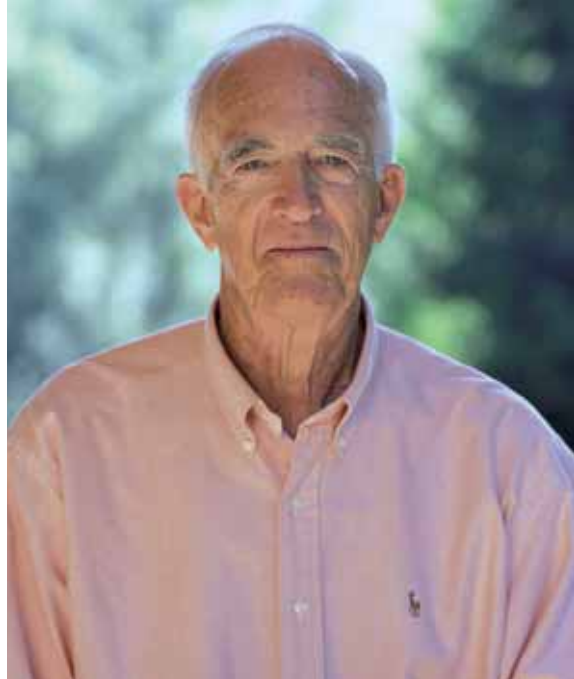
In 1945 Utzon received the Minor Gold Medal of the Royal Academy of Fine Arts, Copenhagen, an annual competition for architects under 35 years of age. The award was for an Academy of Music project. In 1946 he worked briefly with architect Alvar Aalto in Helsinki, Finland, before returning to Copenhagen. He entered various competitions for projects in Denmark and Sweden, winning honourable mentions and places. These included first and second prizes for the Architectural Association's one-family houses and town-planning competitions. In 1947 Utzon began a long collaboration with Norwegian architect Arne Korsmo on competition projects, mainly in Oslo and south-west Sweden. These included town and development planning, office buildings and housing projects.

Utzon undertook international study tours to Europe and Morocco in 1947–1948 and to Mexico and the United States in 1949. These were funded by his prize money from the Bissen Prize (1947) and the Zacharia Jacobsen Award (1949). He examined Mayan and Aztec architecture in Mexico and met architects Frank Lloyd Wright, Eero Saarinen and Mies van der Rohe in the United States. In 1950 Utzon set up his own architectural practice in Denmark and two years later established a partnership with Erik and Henry Andersson based in Helsingborg, Sweden. Between 1953 and 1960 Utzon was awarded first prize in several Scandinavian competitions, mainly for housing projects. They included the Eckensberg Medal for Architecture (1957) for the Kingo housing development in Denmark.

In 1956 Utzon worked on his entry for the Sydney Opera House international design competition. The design was produced within his partnership with Erik Andersson but the entry was submitted in Utzon's name, in recognition that he was the dominant designer. In early 1957 Utzon was announced the competition winner and he immediately began work on a model of the building. Utzon worked on the Sydney Opera House from Denmark until 1963, making annual visits to Sydney. He worked in close collaboration with the London-based Danish structural engineer, Ove Arup, and Arup's staff on the geometry of the shells.

In early 1963 Utzon closed his Denmark office and moved his family to Sydney. Utzon continued to enter European-based design competitions and was awarded first prize for the model that he worked on with his Sydney staff for the Zurich theatre project. From 1965 tensions arose between Utzon and the New South Wales Government over cost and time overruns on the Sydney Opera House project. These tensions led to Utzon's withdrawal from the project in February 1966 and his departure from Sydney in April 1966.

From 1968–1971 Utzon worked on a number of projects including the Bagsvaerd Church in Copenhagen and the Jeddah sports stadium in Saudi Arabia. In 1970 he was awarded the Nobel Prize for furniture design for his 8108 chair. Utzon and his wife moved to a house he designed, known as Can Lis, on the Mediterranean island of Majorca in 1971. Utzon was a Visiting Professor at the School of Architecture, University of Hawaii from 1971–1973. He was awarded first prize in the competition for the Kuwait National Assembly Complex in 1972 and worked on this project until 1979.



## 10.2

In 1982 he established Utzon Associates with his architect sons. Utzon collaborated with his sons on several projects including the Paustian furniture showroom (Copenhagen 1987), the Danish Museum for Modern Art (Fredensborg 1988) and several other museums of science, history, culture and art in Denmark.

In 1998 Utzon accepted a New South Wales Government proposal to develop design principles for the Sydney Opera House. With his son Jan he worked with Australian architect Richard Johnson on the principles. The *Sydney Opera House Utzon design principles 2002* was released in 2002. Utzon subsequently acted as consultant for the refurbishment of the Sydney Opera House interiors.

In 2003 the Utzon Center was established at Aalborg University to expand the appreciation of Utzon's work within the context of Nordic and international architecture and design. Utzon has been the subject of an extensive and rapidly expanding body of scholarship including writings by Sigfried Giedion, Philip Drew and Richard Weston (see below).

Today, Utzon continues to work with Utzon Associates.

Figure 10.2 Jørn Utzon

## Awards

In addition to the awards detailed above, Utzon has won many Danish and international awards celebrating his architectural achievements. These include:

- Royal Danish Academy of Fine Arts Gold Medal (Denmark 1945)
- First Prize, *Private lives* (for Scanian house types) with Ib Møgelvang (Sweden 1953)
- Eckersberg Medal (Denmark 1957)
- Architects Association of West Germany International Honorary Prize (West Germany 1966)
- CF Hansen Medal (Denmark 1967)
- Royal Australian Institute of Architects Gold Medal (Australia 1973)
- Prince Eugen Medal (Sweden 1973)
- Royal Institute of British Architects Gold Medal (United Kingdom 1978)
- Låkerol Prize (Sweden 1979)
- Architectural Prize of the Association of Danish Architects (Denmark 1981)
- Alvar Aalto Medal (Finland 1982)
- Niels Prize (Denmark 1986)
- Nykredits Architecture Prize (Denmark 1987)
- Fritz Schumacher Prize (Germany 1988)
- Wolf Foundation Prize in Arts (Architecture) (Israel 1992)
- Gold Medal, Académie d'Architecture (France 1994)
- Sonning Prize (Denmark 1998)
- Pritzker Architecture Prize (United States 2003)—the world's most prestigious architecture award.

## Works

Utzon's main works are detailed below.

- Water tower at Svaneke (Denmark 1946)
- Utzon house at Hellebaek (Denmark 1952)
- Villa Dalsgaard at Holte (Denmark 1952–1953)
- Langelinie Pavilion, Copenhagen (Denmark 1953)
- Middelboe House at Furesøen Lake (Denmark 1953)
- 'Privatliv' Housing near Lund (Sweden 1953–1955)
- Housing estate at Elineberg (Sweden 1954)
- Villa Frank at Vedbaek (Denmark 1955)
- Villa Lillesøe at Furesøen Lake (Denmark 1955)
- Villa Dalsgaard at Holte (Denmark 1956)
- Sydney Opera House (Australia 1956–1973; 1998– )
- Kingo Houses at Elsinore (Denmark 1957–1959)
- Planetstaden housing estate at Lund (Sweden 1958–1959)
- Melli Bank in Teheran (Iran 1959–1960) with Hans Munk Hansen
- Birkehoj housing estate (Denmark 1960)
- The Fredensborg Houses at Fredensborg, Copenhagen (Denmark 1962–1965)
- Frederiksberg town planning scheme at Copenhagen (Denmark 1963–1965)
- Silkeborg Museum of Art (Denmark 1963; 1970)
- Municipal Theatre, Zurich (Switzerland 1964)
- A New Angle, furniture (1967)
- Utok, furniture (1968)
- Utsep, furniture (1968)
- Espansiva, timber housing system (Denmark 1969)
- Jeddah sports stadium (Saudi Arabia 1969)
- Tritail Yacht (1970–1971)
- Can Lis (Utzon home) at Porto Petro, Majorca (Spain 1971–1974)
- Kuwait National Assembly Complex (Kuwait 1972–1982) with Jan Utzon
- Bagsvaerd Church at Copenhagen (Denmark 1973–1976) with Jan and Lin Utzon
- Swimming baths at Lake Peblingesøen, Copenhagen (Denmark 1979) with Jan Utzon
- Paustian Furniture House at Copenhagen (Denmark 1985–1987)



### Works (continued)

Office building for Herning Shipping Company  
(Denmark 1986)

Danish Museum for Modern Art at Fredensborg  
(Denmark 1988)

Skagen Odde Nature Centre (Denmark 1999–2000)  
with Kim and Jan Utzon

Can Feliz (Utzon home) on Majorca (Spain 1994)

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10.3

### Ove Arup (1895–1988)

Ove Nyquist Arup (Figure 10.2) was born in 1895 at Newcastle-upon-Tyne, England. His mother was Norwegian and his Danish father served for some time as the Danish Government's veterinary officer to the United Kingdom. Ove Arup attended schools in Germany and Denmark before studying philosophy and mathematics at the University of Copenhagen where he graduated in 1916. From 1916–1922 he studied civil engineering at the Royal Technical College, Copenhagen.

Arup started work as a designer for the Danish civil engineering designers and contractors Christiani & Nielsen in 1922 in their office in Hamburg, Germany. He moved to London in 1923 and became Christiani & Nielsen's chief designer in 1925. While his main activities were civil engineering (mainly marine structures) he became increasingly interested in architecture and the Modern Movement. He became friends with several leading architectural figures, joined the Architectural Association and became active in the Modern Architecture Research Society, known as the MARS Group. In 1933 Tecton (an architectural firm led by Berthold Lubetkin) invited Arup to work on Highpoint 1, an apartment block in London. Arup proposed the use of reinforced concrete (not generally used for multi-storey construction at that time) and a simplified construction method using movable, reusable formwork. When Christiani & Nielsen decided not to proceed with the Highpoint project, Arup moved to Danish firm JL Kier & Co as director and chief designer on the condition that they take over the project.

Highpoint 1 came to symbolise some of the tenets of the Modern Movement. Arup worked with Lubetkin on a number of other landmark projects including the much admired Penguin Pool at the London Zoo.

In 1938 Ove Arup founded two civil engineering companies with his cousin Arne Arup: Arup & Arup Ltd and Arup Designs Ltd. He resigned from Arup & Arup in 1946 to establish an independent engineering consultancy with offices in London and Dublin. For a short period, he retained the right to the registered name Arup Designs Ltd. In 1948 he took in three partners to found the practice of Ove Arup & Partners. By the mid-1950s Ove Arup & Partners was established and growing with a client base that included many of the major architectural practices in the British Isles. The firm had a particular interest in modern architecture. Its core activity was to pioneer advanced and economical solutions to buildings, particularly their structures.

A key project was the Rubber Factory at Brynmawr, Wales (with the Architects Co-Partnership) that attracted world attention, especially for its ingenious roof of nine shallow, long-span reinforced concrete shells. Arup's credo of multidisciplinary collaboration found expression in the firm's acquisition and development of all the skills necessary for the design of buildings and civil engineering works.

In 1957, Arup's firm was appointed as the consulting engineers for the Sydney Opera House project. This led to a nine-year partnership between Utzon and Ove Arup & Partners that was to result in pioneering solutions to the many structural and architectural challenges of the project. The most remarkable aspect of this collaboration was the building of the iconic roof structure. Between 1958 and 1962 Arup, his partners and staff collaborated intensively with Utzon in Denmark and London and developed a number of geometric shapes which resulted in a simplified spherical geometry. This introduced the possibility for repetition in the manufacture of the precast elements for the roof. Ove Arup & Partners also made extensive use of computers in the technical work associated with the design of the project. It was one of the first applications of digital technology to building. After Utzon's departure in 1966 the firm worked with his successors Hall, Todd & Littlemore until completion of the Sydney Opera House in 1973.

Figure 10.3 Ove Arup

The firm Arup founded continued to flourish in the 1970s and 1980s. Offices were opened in Australia—first in Sydney to work on the Sydney Opera House and subsequently in other cities—also in Singapore, Malaysia, the United States, France and latterly in many other countries. Ove Arup & Partners' development was founded on sound technical and social principles. The quest for technical excellence was underpinned by sophisticated information systems and a leading edge research and development group. It was further enhanced by the establishment of specialist services such as information technology; acoustics; economics; urban planning; and facade, fire and seismic engineering. Ove Arup wanted always to marry the highest ideals of design and construction. His background in both the humanities and engineering contributed to his ability to articulate this ideal which he described as 'Total Architecture'. In his own words: 'Good design must first of all satisfy a social function, it must have artistic wholeness and the result must harmonise with its surroundings.' Arup's social principles for his firm have become known as his 'Key Speech' and have continued to operate as the guidelines for the firm.

Ove Arup was made a Commander of the British Empire in 1953 and a Knight Bachelor in 1971. He was elected as a member of the British Royal Academy in 1986 and also received several honorary doctorates. Many of his partners and colleagues have also been honoured and received praise, including Peter Rice who played a leading role in the Sydney Opera House project. Peter Rice was awarded the Royal Institute of British Architects' Gold Medal for Architecture in 1992.

Ove Arup died in London in 1988, aged 92.

### Awards

Awards presented to Ove Arup include:

- Chevalier First Class (1965) and Commander First Class (1975) of the Order of Danneborg (Denmark)
- Royal Institute of British Architects Gold Medal (United Kingdom 1966)
- Institution of Structural Engineers Gold Medal (United Kingdom 1973).

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## 10.B LIST OF ILLUSTRATIONS

Front cover Sketch of the Sydney Opera House by Jørn Utzon, c. 1958. The sketch appeared as the frontispiece to Utzon's *Sydney National Opera House* (the *Red Book*), Atelier Elektra, Copenhagen, 1958. Courtesy Jørn Utzon.

Front cover Photograph by Greg Newington. Courtesy Sydney Opera House Trust.

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### Part 1. Identification of the property

Figure 1.1 View from Circular Quay. Courtesy Sydney Opera House Trust.

Figure 1.2 Impress Design

Figure 1.3 Impress Design

Figure 1.4 Site map. Sydney Opera House Trust and Impress Design.

### Part 2. Description

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Figure 2.9 'A nation celebrates, Sydney Harbour, 26 January 1988'. Panorama photograph by Phil Gray. © Phil Gray.

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Figure 2.13 Sectional model (1: 128) showing Utzon's scheme for the Major Hall and glass walls. Constructed by Finecraft Modelmakers, Sydney, 1966. Photograph by M. Kojdanovski, 2004. Courtesy Powerhouse Museum, Sydney (B2309).

Figure 2.14 Photograph by Greg Newington. Courtesy Sydney Opera House Trust.

Figure 2.15 Photograph by Greg Newington. Courtesy Sydney Opera House Trust.

Figure 2.16 Photograph by Lis Utzon, 2003. Courtesy Sydney Opera House Trust.

Figure 2.17 Photograph by Eric Sierins, 2004. Courtesy Sydney Opera House Trust.

Figure 2.18 CAD architectural design, Johnson Pilton Walker, 2004. Courtesy Sydney Opera House Trust.

Figure 2.19 Jørn Utzon's competition drawing for the National Opera House competition, 1956—eastern elevation. Held by State Records NSW—SRNSW: CGS 12852, [SZ 112/6]. Courtesy Jørn Utzon.

Figure 2.20 Jørn Utzon's competition drawing for the National Opera House competition, 1956—northern elevation. Held by State Records NSW—SRNSW: CGS 12852, [SZ 112/9]. Courtesy Jørn Utzon.

Figure 2.21 Jørn Utzon's competition drawing for the National Opera House competition, 1956—perspective. Held by State Records NSW—SRNSW: CGS 12852, [SZ 112/1]. Courtesy Jørn Utzon.

Figure 2.22 *Sydney Morning Herald* front page 30 January 1957, held by the State Library of NSW. © Fairfax.

Figure 2.23 Jørn Utzon's competition drawing for the National Opera House competition, 1956—plan. Held by State Records NSW—SRNSW: CGS 12852, [SZ 112/2]. Courtesy Jørn Utzon.

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Figure 3.3 Jørn Utzon's studio, Denmark, 1960. Held in the Records of Jørn Utzon, Mitchell Library, State Library of NSW. (PXA 590, v.12)

Figure 3.4 Sketch by Jørn Utzon from *Sydney Opera House* (known as the *Yellow book*), 39 plans for the Sydney Opera House by Jørn Utzon with others, Sydney, 1962. Copy held in the Mitchell Library, State Library of NSW.

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Figure 3.8 'An opera house in every home (Christmas card)', Eric Thake, lino cut, 1972. University of Melbourne Art Collection. Gift of the artist 1975.  
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Figure 3.9 Sketch by Jørn Utzon, c. 1958, from Utzon's *Sydney National Opera House* (the *Red book*), Atelier Elektra, Copenhagen, 1958. Copy held in the Mitchell Library, State Library of NSW. Courtesy Jørn Utzon.

Figure 3.10 Sketch by Jørn Utzon, published in *Zodiac 10*, 1962. Held by the Mitchell Library, State Library of New South Wales. Courtesy Jørn Utzon.

Figure 3.11 Sketch by Jørn Utzon, published in *Zodiac 10*, 1962. Held by the Mitchell Library, State Library of New South Wales. Courtesy Jørn Utzon.

Figure 3.12 Sketch by Jørn Utzon, c. 1958, from Utzon's *Sydney National Opera House* (the *Red book*), Atelier Elektra, Copenhagen, 1958. Copy held in the Mitchell Library, State Library of NSW. Courtesy Jørn Utzon.

Figure 3.13 Sketch by Jørn Utzon, c. 1958, from Utzon's *Sydney National Opera House* (the *Red book*), Atelier Elektra, Copenhagen, 1958. Copy held in the Mitchell Library, State Library of NSW. Courtesy Jørn Utzon.

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Figure 3.18 Drawing of the ribs and tile lids from Jørn Utzon's *Sydney Opera House* (the *Yellow book*), Sydney, 1962. Copy held in the Mitchell Library, State Library of NSW.

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Figure 3.22 Photograph by Max Dupain of Jørn Utzon's spherical model. © Mitchell Library, State Library of New South Wales/Max Dupain.

Figure 3.23 Sketch drawn by Rafael Moneo (according to Mikami 2001: 68) from Utzon's *Sydney Opera House* (the *Yellow book*), Sydney, 1962. Copy held in the Mitchell Library, State Library of NSW.

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Figure 3.28 Courtesy Sydney Opera House Trust

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Figure 3.47 Photograph by Jeremy Piper, 2005.  
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Figure 4.4 26 January 2003. Courtesy of the Australia Day Council of New South Wales.

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### Timeline

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Figure 10.5 Jacob Janssen, 'Sydney Cove (with Campbell's Wharf and Fort Macquarie)', oil on canvas, 1842. Collection of the Tasmanian Art Gallery and Museum, AG3242. Gift of Mr GS Whitehouse in memory of his grandparents, George and Jane Scrimger, 1981.

Figure 10.6 'View from the northern end of Macquarie Street showing approach and existing buildings' from *An international competition for a National Opera House at Bennelong Point Sydney, New South Wales, Australia—Conditions and Programme*, NSW Government Printer, 1956.

Figure 10.7 Edward Searle, 'Sydney Harbour Bridge during construction 1930 with two aeroplanes, Charles Ulm's *Southern Sun* and a Gypsy Moth', photo montage postcard entitled Sydney Harbour Bridge No.19, held in the Small Picture File at Mitchell Library, State Library of New South Wales.

Figure 10.8 "Joern Utzon discussing his plans for the Sydney Opera House at Bennelong Point" (ML ref. APA frame 03802). Courtesy of Australian Photographic Agency collection, State Library of NSW. Photograph by Ken Redshaw.

Figure 10.9 Courtesy Sydney Opera House Trust

Figure 10.10 Jørn Utzon with the spherical model. © Mitchell Library, State Library of NSW, Call No: ON122/347.

Figure 10.11 Photograph by Max Dupain. © Max Dupain & Associates.

Figure 10.12 Courtesy Sydney Opera House Trust

Figure 10.13 Photograph by Jan Uzton, 2004. Courtesy Sydney Opera House Trust.

Figure 10.14 Construction boards for the western loggia, with Utzon named as architect, 2004. Photograph by Eric Sierins. Courtesy Sydney Opera House Trust.

Figure 10.15 Photograph by David Messent. © David Messent.

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### Illustrations

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### Public consultation

Extensive public consultation was undertaken in the preparation of this nomination. Those consulted included a number of specialists and organisations involved with heritage and modern architecture; building users and those involved in the care of the Sydney Opera House; government departments that have responsibility for the care of the city within the buffer zone; and representatives of the public with a direct interest in the site. Consultation included information and discussion sessions and opportunities for people to make public submissions during various processes in the development of the nomination. The following people and organisations are acknowledged for their contributions to this process:

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## 10.D TIMELINE OF THE SYDNEY OPERA HOUSE AND ITS SITE



Figure 10.4

### 1000 BC

The site of the Sydney Opera House is known to Aboriginal people as 'Jubgalee' (Geographical Names Board of NSW 2005). A midden (collection of shells and other materials indicating a former Aboriginal camp site) is later recorded on the site.

### 1788–1789

A British penal colony is established by Governor Phillip who, frustrated with his lack of success in making contact with the indigenous people, seizes two Aboriginal men—Coleby and Bennelong.

### 1790–1813

Governor Phillip accedes to Bennelong's request and builds him a small hut at the extremity of the point. Since this time the headland has been known as Bennelong Point. Bennelong dies in 1813, alienated from both Aboriginal and European cultures.

Figure 10.4 Portrait of Bennelong



Figure 10.5

### 1818

Fort Macquarie is built on Bennelong Point providing a picturesque focal point on the harbour throughout the 19th century (Kerr 1993: 9).

Figure 10.5 Fort Macquarie at the end of Bennelong Point in 1842



Figure 10.6

**1902**

Fort Macquarie is replaced by a tram shed designed in a fortified Gothic style (to continue the picturesque associations of the site).



Figure 10.7

**1932**

The Sydney Harbour Bridge is opened.

**1948**

Eugene Goossens, conductor of the Sydney Symphony Orchestra, proposes the building of a performing arts centre on Bennelong Point with an auditorium to seat up to 4000 people.

**1952**

New South Wales Premier Cahill announces his newly elected Government's intention to build an opera house.

**1954**

Premier Cahill appoints the Opera House Committee to advise on building an opera house. The committee recommends the redundant Bennelong Point tram shed and park as the preferred site and that an international competition be held to select the design.



Figure 10.8

**1956**

The New South Wales Government announces the international competition for the design of a national opera house to be built on Bennelong Point. Mandatory requirements are a major hall to seat 3000 to 3500 persons for grand opera, ballet and concerts and a minor hall to seat approximately 1200 persons for chamber works and drama.

**1957**

Danish architect Jørn Utzon is declared the unanimous winner of the competition with his visionary design that amazes both the architectural fraternity and the public. Utzon visits the site for the first time then begins work on plans in Denmark in collaboration with Ove Arup & Partners. The New South Wales Government announces the Opera House Lottery to fund construction. Over 16 years the lottery raises more than 90 per cent of the A\$102 million ultimately expended on building the Sydney Opera House.

**1958**

The foundation stone is laid by Premier Cahill (the stone is now positioned on the first landing of the great ceremonial stairway). Utzon and Ove Arup & Partners begin testing concepts for the construction of the roof shells.



Figure 10.9

**1959**

Construction of the Sydney Opera House begins at Premier Cahill's insistence before Utzon's designs for the vaulted shells are finalised. This requires the full extent of the functions of the complex to be worked out as the project materialises. Construction begins with the removal of over 30 000 cubic metres of rock and rubble from Bennelong Point.

**1959–1963**

The foundations and podium are constructed by building contractor Civil & Civic.



Figure 10.10

**1961**

The Sydney Opera House Trust is established by Act of the New South Wales Parliament. Utzon and Ove Arup & Partners achieve the 'spherical solution' for the roof shells after three years of concept development.



Figure 10.11

**1962–1967**

Stage 2: design and construction of the shells with building contractor the Hornibrook Group takes place. Cost and time overruns in the construction of the Sydney Opera House cause tension and public discussion.

**1965**

A newly elected government takes office in New South Wales with an agenda to limit the construction cost and time overruns.

**1966**

Jørn Utzon leaves the project and departs from Sydney. The podium has been built, the roof shells are almost completed and the first roof tiles are in place. Majority public opinion overwhelmingly supports Utzon's re-engagement and public meetings are held to protest his departure. The New South Wales Government appoints Sydney architects Peter Hall, Lionel Todd and David Littlemore to take over the design and supervision of the Sydney Opera House, with Hall having responsibility for design. Ove Arup & Partners, the Hornibrook Group and other tradespeople continue on the project. Following Utzon's departure, a new brief from the Australian Broadcasting Corporation (the premier commercial user of the venue) necessitates major changes to the design of the interiors of the two halls.

Figure 10.6 View down Macquarie Street to the tram shed at Bennelong Point

Figure 10.7 The Sydney Harbour Bridge nearing completion

Figure 10.8 Jørn Utzon (third from the left) at the Sydney Opera House site in 1957

Figure 10.9 The podium under construction

Figure 10.10 Jørn Utzon with the spherical model for the shells

Figure 10.11 The Sydney Opera House takes shape





Figure 10.12

**1967–1973**

Stage 3: construction of the glass walls and interiors takes place.

**1968**

The New South Wales Government allocates 'final' funding for the completion of the project. This leads to the establishment of a hierarchy of treatment throughout the building that ensures quality in the three most important areas (exteriors, auditoria, public spaces) and economy in the administration, artists' and service areas.

**1973**

Queen Elizabeth II opens the Sydney Opera House on 20 October 1973. Around 300 journalists from around the world visit the building in its inaugural period.

**1979**

The organ is installed in the Concert Hall (at the time, it is the largest mechanical-action pipe organ in the world).



Figure 10.13

**1986–1988**

The land approach and forecourt are reconstructed and the lower concourse developed under the supervision of the then New South Wales Government Architect, Andrew Andersons, with contributions by Peter Hall.

**1993**

James Semple Kerr is commissioned to write a conservation plan for the Sydney Opera House. A long-planned car park to service the Sydney Opera House is constructed underground at the adjacent Royal Botanic Gardens.

**1998–1999**

The recording and rehearsal room is converted into two areas: an assembly area for the orchestra and the Studio, a revitalised performance space for the presentation of innovative music and performing arts.

**1998**

The Sydney Opera House celebrates its 25th anniversary. The Sydney Opera House Trust appoints Sydney architect Richard Johnson to advise on future development of the site and to establish planning principles. Through Johnson, the Trust begins negotiations to reconcile with Utzon and to re-engage him with the building in an advisory capacity. Johnson visits Utzon at his home in Majorca for lengthy discussions.

**1999**

Utzon formally accepts Premier Carr's invitation to re-engage with the project by setting down design principles that outline his vision for the building and explain the principles behind his design. Over three years he works with his architect son and business partner, Jan Utzon, and Richard Johnson to draw up his design principles for the Sydney Opera House.

Figure 10.13 Jørn and son Jan Utzon discussing the Sydney Opera House in 2004



Figure 10.14

**2002**

The Sydney Opera House Trust releases the Utzon Design Principles (Utzon 2002) simultaneously with the six-part *Venue improvement plan* and the announcement by Premier Carr of New South Wales Government funding to:

- refurbish the reception hall (guided by Jørn Utzon)
- construct the western loggia
- explore options for improving the Concert Hall acoustics
- improve services to the forecourt to support performances
- modify the orchestra pit and interior of the Opera Theatre.

**2004**

Refurbishment of the Utzon Room (formerly known as the reception hall) is completed. Work starts on the western loggia. Utzon begins work on concept designs for the Opera Theatre.

Figure 10.14 Construction boards for the western loggia in 2004, with Jørn Utzon named as architect



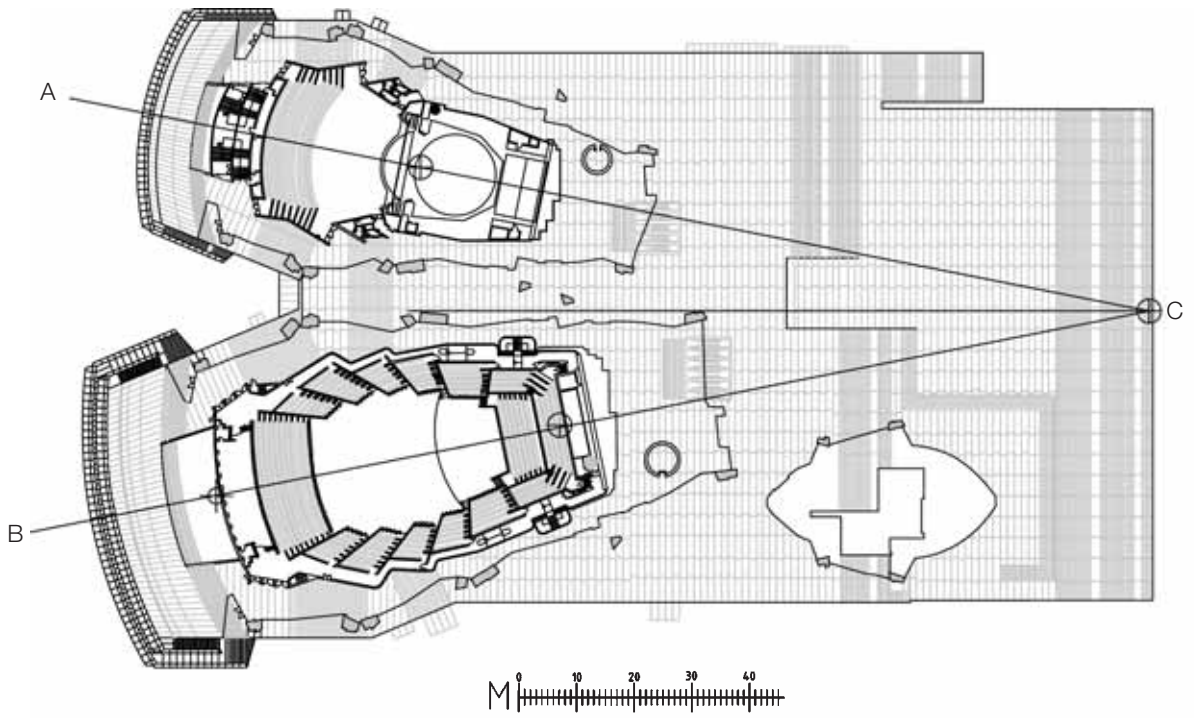
Figure 10.15 The Sydney Opera House in its harbour setting

Figure 10.12 The opening of the Sydney Opera House in 1973

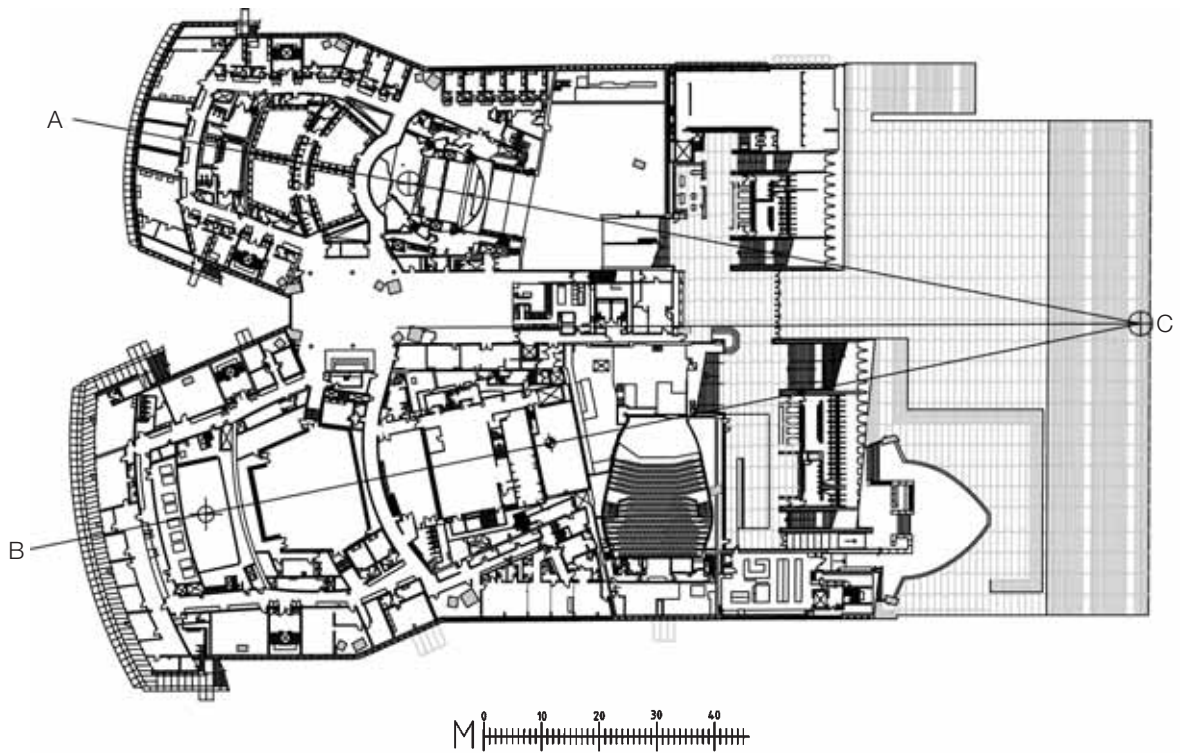
Figure 10.15



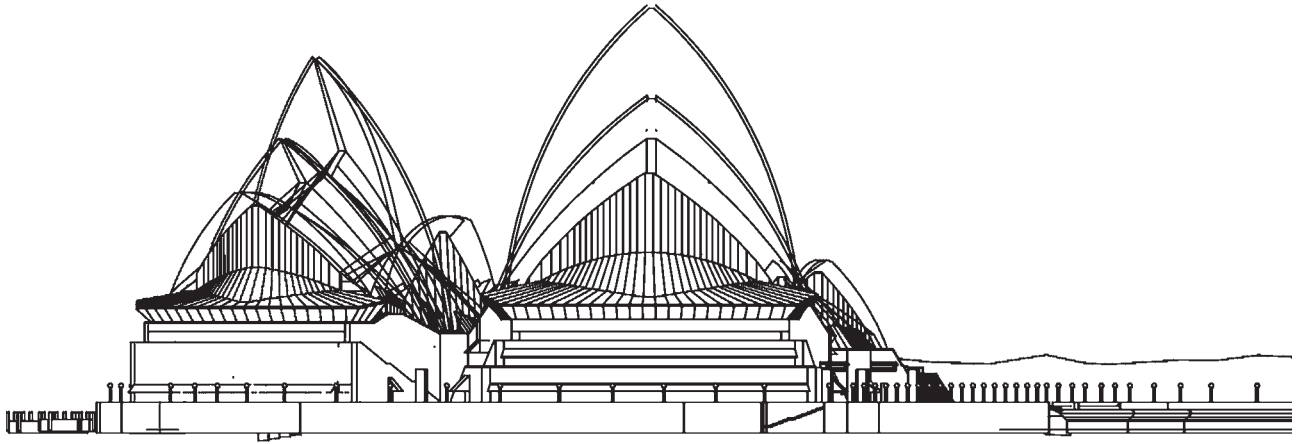
### 10.E PLANS, SECTIONS AND ELEVATIONS OF THE SYDNEY OPERA HOUSE



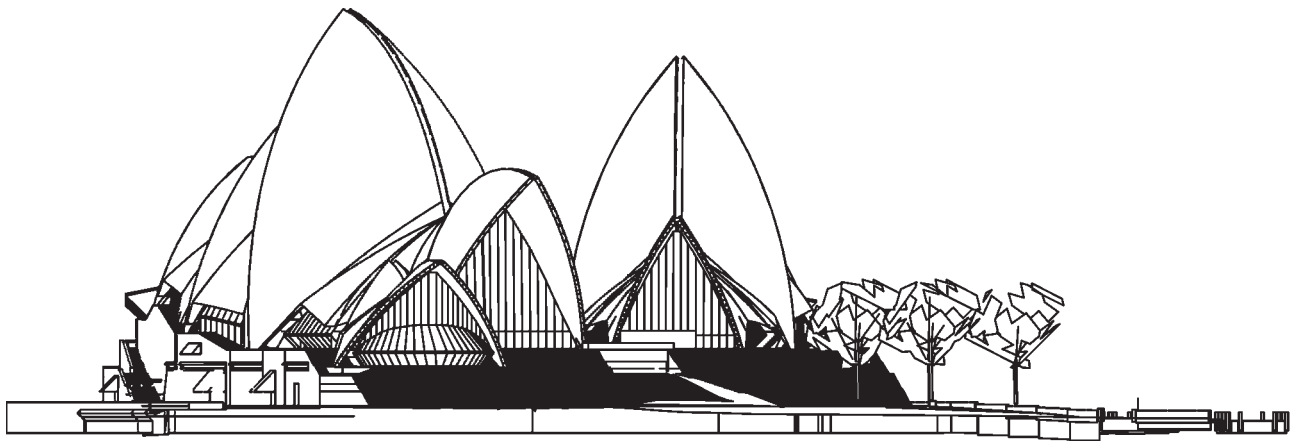
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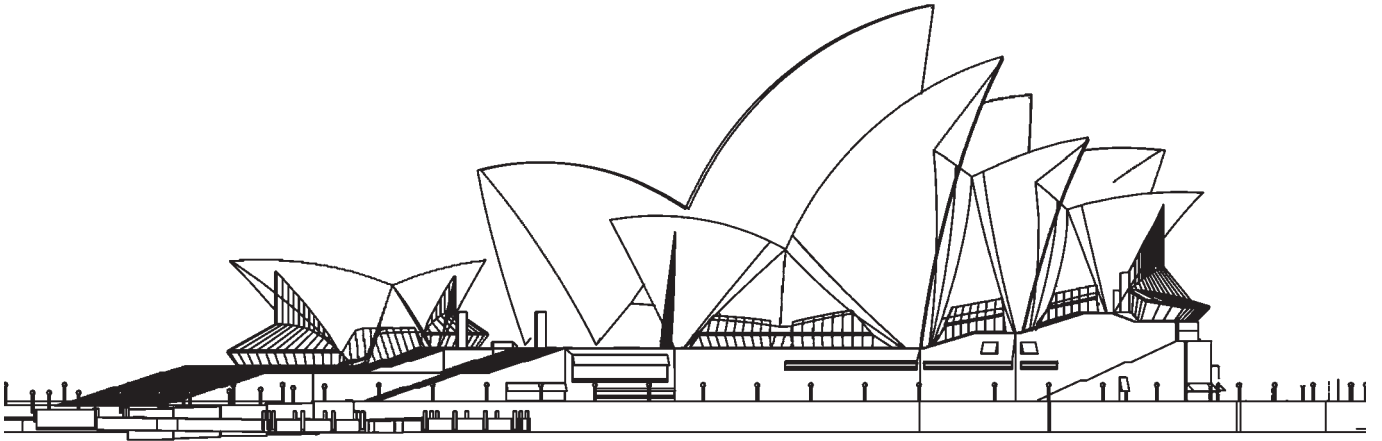
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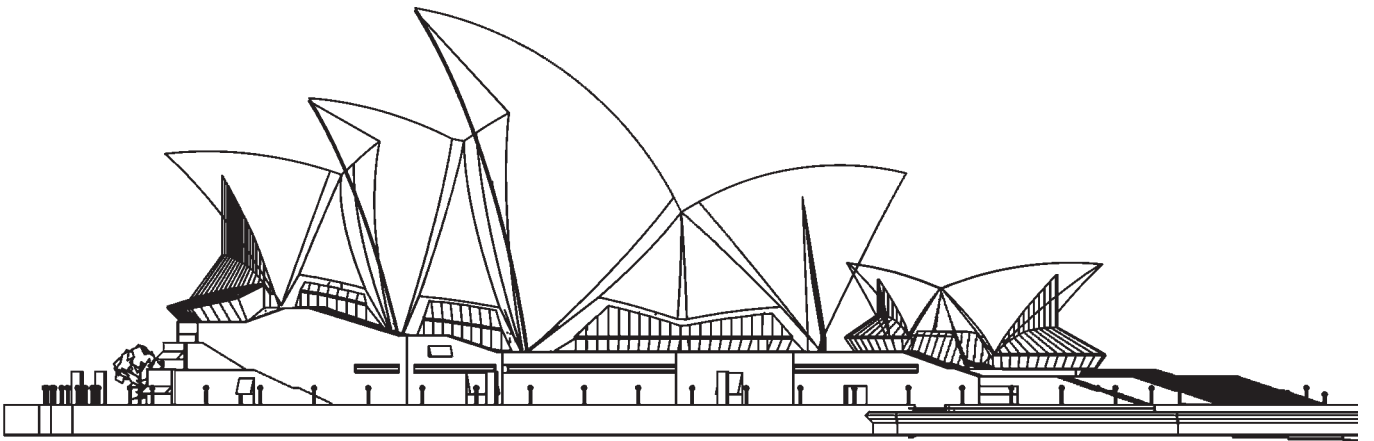
NORTHERN ELEVATION



SOUTHERN ELEVATION

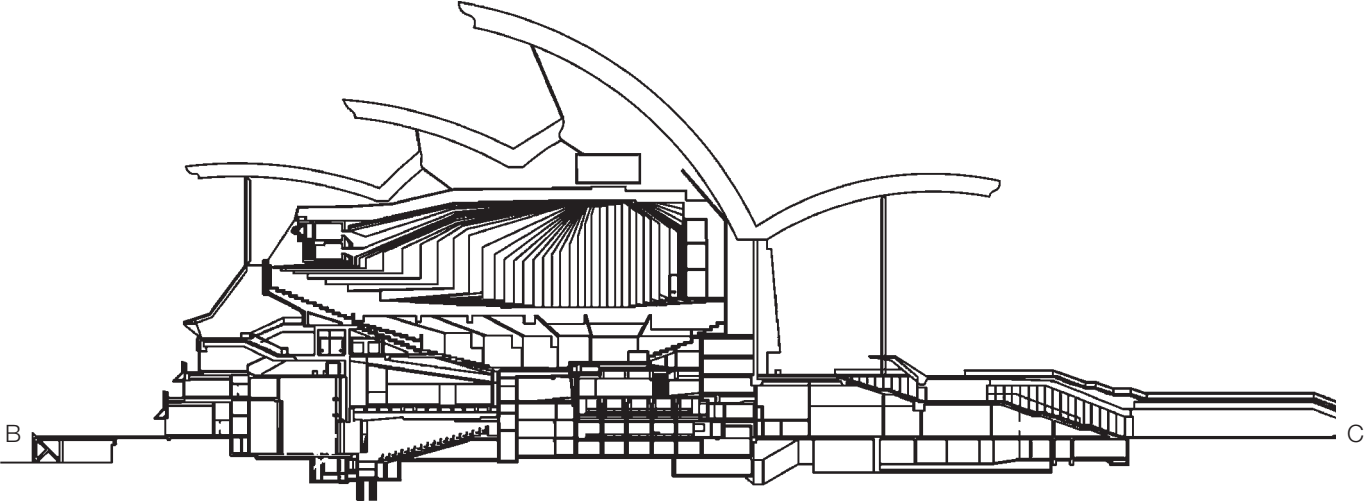


EASTERN ELEVATION

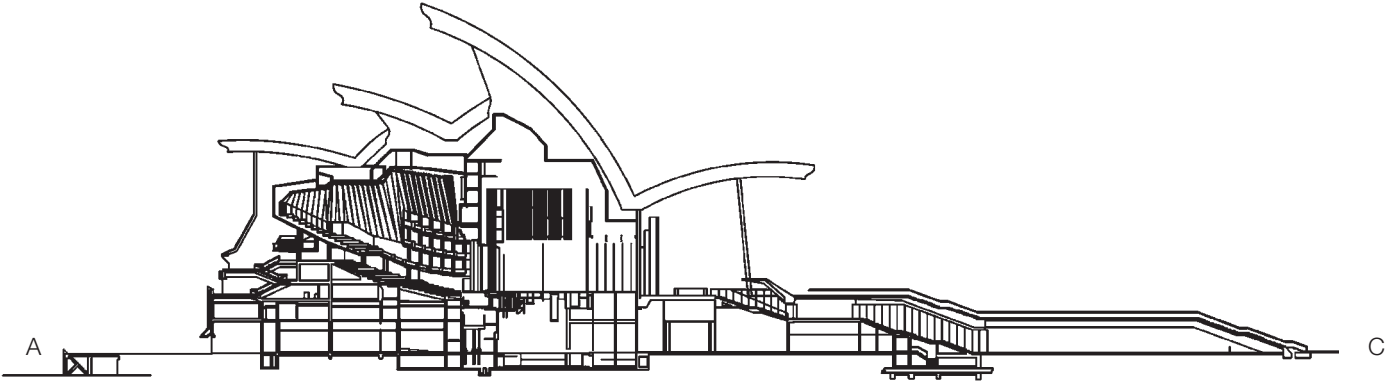


WESTERN ELEVATION



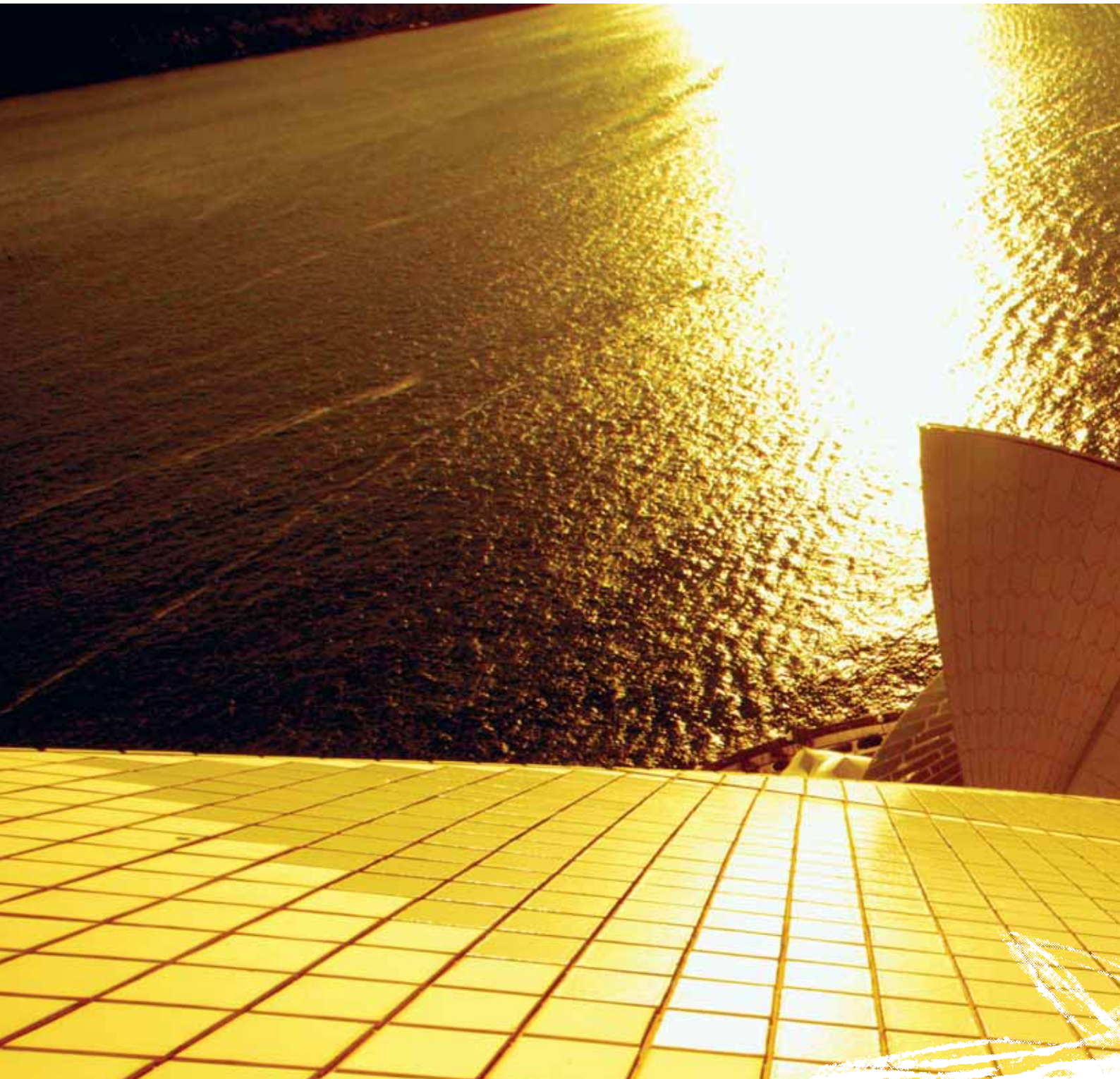


CONCERT HALL AXIAL SECTION (BC)



OPERA THEATRE AXIAL SECTION (AC)



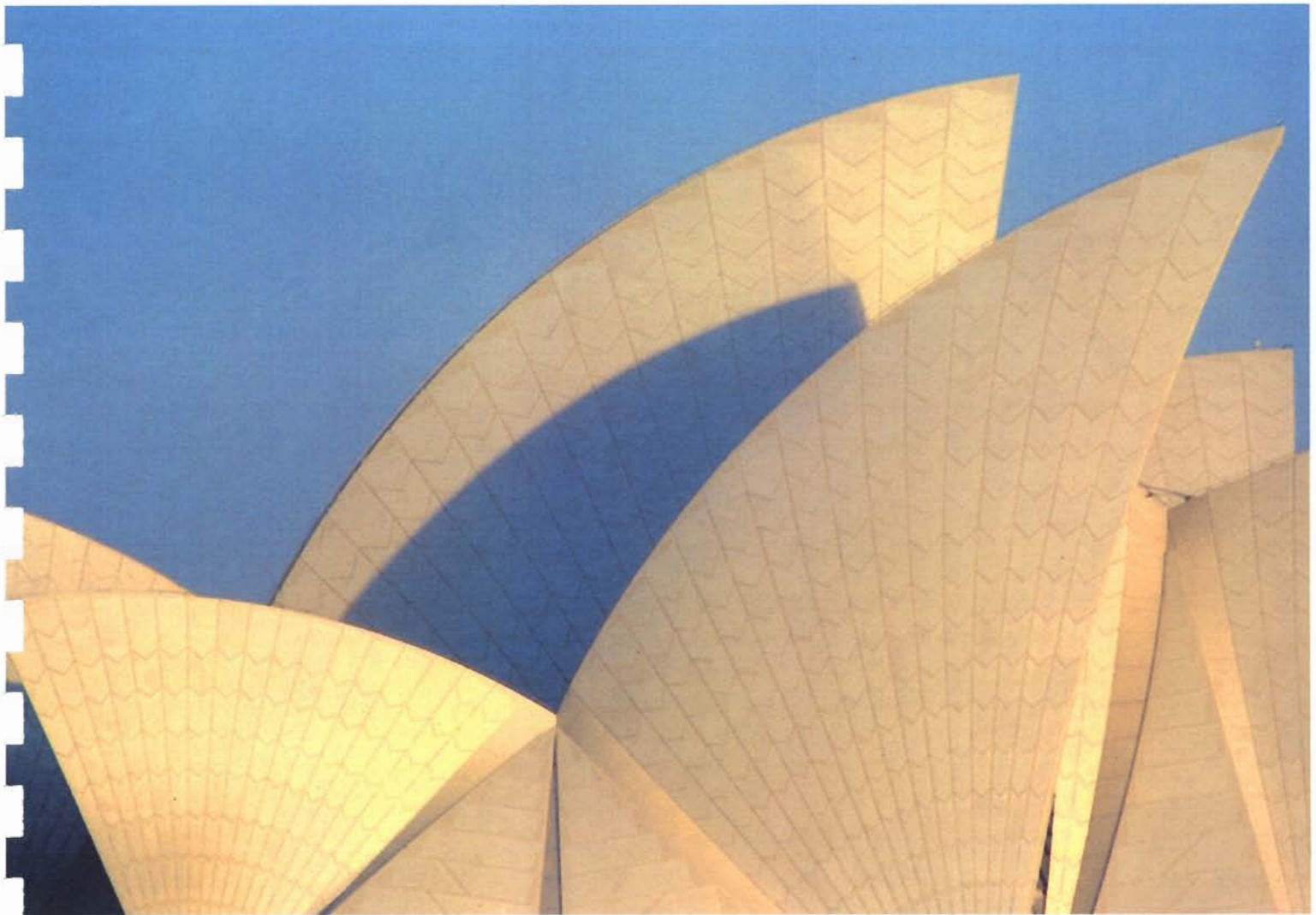




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# MANAGEMENT PLAN FOR THE SYDNEY OPERA HOUSE

AUGUST 2005



New South Wales Government

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## APPENDIX A:

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### ***"Sydney Opera House: A Revised Plan for the Conservation of the Sydney Opera House and its Site"*** (3rd edition 2003)

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This document provides an understanding of the place and its history. It also assesses the significance of the place, and provides conservation policies based on the identified heritage values of the Sydney Opera House.

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## APPENDIX B:

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### ***Utzon Design Principles (2002)***

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This document provides statements and design principles from the architect of the Sydney Opera House, Jørn Utzon, for best practice to guide the future management and development of the Sydney Opera House.

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## APPENDIX C:

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### **Statement of the National Heritage values of the Sydney Opera House**

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This document provides a detailed statement of the National Heritage values of the Sydney Opera House at its listing on the National Heritage List in July 2005.

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## 1. INTRODUCTION

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This document provides information about the National Heritage values and possible World Heritage values of the Sydney Opera House, as well as the statutory and management framework that will ensure that the National Heritage and likely World Heritage values of the Sydney Opera House are protected and conserved.

This Management Plan has been prepared in preparation for the proposed nomination of the Sydney Opera House to the World Heritage List and is based on the possible World Heritage values for which the site is proposed to be nominated; it is assumed that, if inscribed, the site will be inscribed for these values. A reference to the World Heritage values of the Sydney Opera House in this Management Plan is therefore a reference to the possible World Heritage values of the site or, if applicable, the World Heritage values for which the site has been inscribed.

This document also provides the detail necessary to meet requirements for accreditation by the Australian Government Minister for the Environment and Heritage under section 46 the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

This Management Plan has been prepared under the EPBC Act for the purposes of a bilateral agreement between the Australian Government and the State of New South Wales to:

- protect and conserve the National and World Heritage values of the Sydney Opera House;
- minimise duplication in the environmental assessment and approval of actions that may impact on the National and World Heritage values of the Sydney Opera House;
- ensure there will be adequate environmental assessment of actions that may impact upon the National and World Heritage values of the Sydney Opera House; and
- ensure that actions that will have unacceptable or unsustainable impacts on the National and World Heritage values of the Sydney Opera House will not be approved.

In addition to the requirements set out in section 46 of the EPBC Act, this plan has been prepared in accordance with:

- Sections 51 and 51A of the EPBC Act ('Agreements relating to declared World Heritage properties' and 'Agreements relating to National Heritage places'); and
- Regulation 2B.01 ('Criteria for accreditation of management plans for World Heritage properties and National Heritage places') of the *Environment Protection and Biodiversity Conservation Regulations 2000* (EPBC Regulations); and
- the 'Australian World Heritage management principles' and 'National Heritage management principles' set out in Schedules 5 and 5B of the EPBC Regulations.

The terms of this Management Plan are given legal effect in New South Wales through the *Environmental Planning and Assessment Amendment (Sydney Opera House Management Plan) Regulation 2005*. The Minister(s) responsible for administering the New South Wales *Sydney Opera House Trust Act 1961*, the *Environmental Planning and Assessment Act 1979* and the *Heritage Act 1977* are bound to comply with the terms of this Management Plan.

The Management Plan as a whole consists of this document, the existing Conservation Management Plan – "*Sydney Opera House: A Revised Plan for the Conservation of the Sydney Opera House and its Site*" (3rd edition 2003) (CMP) and the *Utzon Design Principles* (2002), found in Appendix A and B to this Management Plan are an integral part of this Management Plan.

The CMP and the *Utzon Design Principles* were commissioned by The Sydney Opera House Trust as:

*"an essential part of its custodianship of one of the world's great heritage buildings, which has the structural characteristics to serve its purpose for years to come and has to be sensitively managed to preserve its core values".*

(From the introduction to the CMP by Joseph Skrzynski, Chairman, Sydney Opera House Trust 2003).

The CMP and the *Utzon Design Principles* contain detailed guiding conservation policies based on the identified heritage values of the Sydney Opera House, and have been endorsed by the New South Wales Heritage Council as guiding management documents for its considerations of all Sydney Opera House matters. In combination, the CMP and the *Utzon Design Principles*, and this document seek to ensure that the State, National and World Heritage values of the Sydney Opera House are fully protected and conserved.

This Management Plan will ensure that the Sydney Opera House is regulated and managed to protect its National and World Heritage values, and to ensure that Australia meets its obligations under the World Heritage Convention. The environmental impact assessment and approval regime set out in this Management Plan will protect the National and World Heritage values of the Sydney Opera House to a level equivalent to that afforded under the EPBC Act.

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## 2. THE PLACE

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The Sydney Opera House is located in Lot 5 in Deposited Plan 775888 at Bennelong Point, City of Sydney, Parish of St. James, County of Cumberland, Title Diagram: DP 775888 and Lot 4 in Deposited 787933 at Circular Quay East, City of Sydney, Parish of St. James, County of Cumberland, Title Diagram: DP 787933.



## 4 Management Plan for the Sydney Opera House

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Further information about the place, including information about its location, physical features, condition, historical context and current uses is found in the CMP.

### 3. WORLD HERITAGE VALUES

---

The Sydney Opera House is likely to meet the following World Heritage criteria:

- (i) a masterpiece of human creative genius; and
- (ii) an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design.

A detailed discussion of these criteria can be found in the Sydney Opera House World Heritage nomination document.

### 4. NATIONAL HERITAGE VALUES

---

The Sydney Opera House meets the following National Heritage criteria:

- (a) the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history;
- (b) the place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history;
- (e) the place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
- (f) the place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period;
- (g) the place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons; and
- (h) the place has outstanding heritage value to the nation because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history.

The National Heritage values that cause the Sydney Opera House to meet these criteria are set out in full in Appendix C and also in the listing of the Sydney Opera House on the National Heritage List, available at <http://www.deh.gov.au/cgi-bin/ahdb/search.pl>

## 5. STATUTORY FRAMEWORK

---

The National and World Heritage values of the Sydney Opera House will be protected by the New South Wales planning and heritage statutory frameworks, as outlined in this Management Plan.

Approval of actions in relation to the Sydney Opera House may only be made in accordance with this Management Plan. Actions that will have unacceptable or unsustainable impacts (in particular, actions that will have a significant impact on the National or World Heritage values of the Sydney Opera House) are inconsistent with this Management Plan and cannot be approved.

### a. Planning Framework

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The *Environmental Planning and Assessment Act 1979* establishes the environmental and land use planning system for New South Wales, and encourages the proper management, development and conservation of natural resources and the built environment. The Act provides that any proposed development complies with relevant planning controls and, according to their nature and scale, ensures that they are environmentally and socially sustainable. The encouragement of ecologically sustainable development, including application of the precautionary principle, is included in the Objects of the Act.

The Act allows for the creation of environmental planning instruments such as State Environmental Planning Policies (SEPPs) and Regional Environmental Plans (REPs). These planning instruments set out the planning provisions and rules that apply to areas that the Minister for Planning considers are of state or regional significance. Two such planning instruments apply to the Sydney Opera House site, and are outlined below.

Schedule 3 of the *State Environment Planning Policy (Major Projects) 2005* (the SEPP) lists the Sydney Opera House as a 'State Significant Site'. All development on the site (other than that specified as exempt under Schedule 3) is deemed to be 'major project' and the consent of the Minister for Planning is required before the development can proceed.

Schedule 3 also includes a list of *specified minor works* (which meet performance criteria and are deemed to be of minimal environmental impact) that will not need development consent. The list of specified minor works is aligned with the *site-specific exemptions* gazetted in 2003 when the Sydney Opera House was listed on the NSW State Heritage Register under the *Heritage Act 1977*. The alignment of the site-specific exemptions and the list of specified minor works ensures consistency of implementation between the requirements of the *Environmental Planning and Assessment Act 1979* and the *Heritage Act 1977*. More information about the site-specific exemptions can be found in the Heritage Framework section below.



The *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*<sup>1</sup> (the REP) includes the Sydney Opera House in an area called the Foreshores and Waterways Area. The REP lists a number of matters to be considered by the Minister when making a development assessment decision under the Act. These matters include biodiversity, ecology and environment protection, public access to foreshores and waterways, maintenance of a working waterfront, interrelationship of waterways and foreshores uses, foreshores and waterways scenic quality, and the maintenance, protection and enhancement of views. This includes the full heritage model provisions for heritage items, including the Sydney Opera House.

In the event that the Sydney Opera House is inscribed on the World Heritage List, a buffer zone will come into force by an amendment to the REP. The buffer zone around the Sydney Opera House will be subject to additional planning rules and provisions aimed at further protecting the World Heritage values of the place. The Minister for Planning will be required to ensure that the impacts of any development within the buffer zone:

- does not detract from the Sydney Opera House as a cultural masterpiece of human creative genius;
- does not detract from the visual prominence of the Sydney Opera House;
- minimises the impact on views and vistas to and from the Sydney Opera House; and
- maintains, protects and enhances views to the Sydney Opera House,

before granting consent under the *Environmental Planning and Assessment Act 1979*.<sup>2</sup>

#### **b. Heritage Framework**

On 3 December 2003, the former New South Wales Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) listed the Sydney Opera House on the State Heritage Register under the *Heritage Act 1977*, following consideration of the recommendations of the Heritage Council of New South Wales. Under subsection 57(1) of the *Heritage Act 1977*, listing on the State Heritage Register means that actions affecting the Sydney Opera House require the approval of the Heritage Council of New South Wales prior to being undertaken, unless an exemption has been granted by the Minister administering the *Heritage Act 1977* on the recommendation of the Heritage Council under subsection 57(2). This is in addition to any other approvals required in relation to the action.

<sup>1</sup> (Editorial Note: It is anticipated that the Sydney Regional Environment Plan will be in force before the bilateral agreement is signed).

<sup>2</sup> The terms of the REP amendment are subject to change.

The Heritage Council of New South Wales consists of 15 members, 12 of whom are appointed by the Minister administering the *Heritage Act 1977*. The Heritage Council's membership reflects a cross-section of community, government and conservation expertise such as the National Trust of Australia. The Heritage Council of New South Wales carries out functions under the *Heritage Act 1977* and receives advice and administrative support from the New South Wales Heritage Office.

In addition to acting as the approval body for items listed on the State Heritage Register, the functions of the Heritage Council include:

- to make recommendations to the Minister regarding the listing of places of State Heritage significance on the State Heritage Register; and
- to make recommendations to the Minister related to the taking of measures for or with respect to the conservation, exhibition or display of, the provision of access to, and the publication of information concerning items of environmental heritage.

The Heritage Council formally endorsed the CMP and *Utzon Design Principles* at the time the Sydney Opera House was listed on the State Heritage Register as the guiding policies for the ongoing conservation of the Sydney Opera House, and to assist in the assessment of applications for works and for the purposes of granting exemptions from approvals for certain activities consistent with these policies under subsections 57(1) and (2) of the *Heritage Act 1977*. At the time of listing on the State Heritage Register, a number of site-specific exemptions were gazetted under section 57(2) of the *Heritage Act 1977* by the New South Wales Minister administering the Act, based on the advice of the New South Wales Heritage Council. These exemptions enable day-to-day activities with no heritage impact that comply with specific policies in the CMP and *Utzon Design Principles* to be undertaken without Heritage Council approval, and include for example:

- specified uses of external spaces for temporary events;
- the temporary use of the roof/shells as a medium to project broadcasts or fireworks or colour; and
- all ongoing maintenance, repainting and repairs identified in and consistent with the CMP and which do not impact on significant fabric identified in the CMP.

The Heritage Council considers the CMP to include comprehensive policies which will guide the long-term conservation of the National and World Heritage values of the Sydney Opera House, and that these site-specific exemptions, granted in accordance with the policies set out in the CMP, will not impact on the National and World Heritage values of the Sydney Opera House.



The *Heritage Act 1977* also sets mandatory minimum standards for the ongoing maintenance and repair of places listed on the State Heritage Register (see sections 118–122 of the *Heritage Act and clauses 10–18 of the Heritage Regulation 1999* and *Heritage Regulation 2005*).<sup>3</sup> Ministerial Principles and statutory guidelines issued by the New South Wales Heritage Council which set best practice heritage management approaches, including standards for the day-to-day care of the place also apply to the Sydney Opera House. Management arrangements for the Sydney Opera House are discussed in more detail below (see 'Management Framework').

The statutory framework regulating the Sydney Opera House ensures that any act which may have a potential impact on the State, National or World Heritage values of the place is thoroughly assessed and scrutinised before any approval is granted. Details of the assessment and approval processes that apply under this framework are outline below. The framework ensures that the State, National and World Heritage Values of the Sydney Opera House are conserved and protected.

### c. Assessment and Approvals Processes

Any proposed development on the Sydney Opera House site will require two statutory approvals under the *Environmental Planning and Assessment Act 1979* and the *Heritage Act 1977* before works may commence. The assessment and approval process for each approval is described below.

#### (i) Assessment and Approval under the *Environmental Planning and Assessment Act 1979*

As the Sydney Opera House is listed as a State Significant Site under Schedule 3 of the *State Environmental Planning Policy (Major Projects) 2005*, any proposed development on the Sydney Opera House site will require the approval of the Minister administering the *Environmental Planning and Assessment Act 1979* (EP&A Act). Such proposals will be subject to the assessment and approval processes outlined in Part 3A of the EP&A Act, and this Management Plan.

Under Part 3A of the EP&A Act, once a development proposal for the Sydney Opera House site has been submitted, the Act provides for the Minister to publish environmental assessment guidelines in the New South Wales Government Gazette, in consultation with the Chief Executive Officers of the relevant public authorities (subsection 75F(1)).

The Director-General of the Department of Infrastructure, Planning and Natural Resources will then prepare environmental assessment requirements based on the Minister's guidelines and in consultation with the relevant New South Wales public authorities, including, in this case, the New South Wales Heritage Office (subsections 75F(2) and (4)).

The Director-General will notify the proponent of the requirements and require an environmental assessment to be prepared by or on behalf of the proponent in the form approved (subsections 75F(3) and (5)). The assessment requirements may require the proponent to include a statement of commitments the proponent is prepared to make for environmental management and mitigation measures on the site (subsection 75F(6)).

In accordance with this Management Plan, any assessment guidelines or requirements prepared must also seek to ensure that the assessment contains an assessment of all the relevant impacts that the development has, will have or is likely to have on the National and World Heritage values of the Sydney Opera House.

An independent hearing and assessment panel may be constituted by the Minister, under section 75G of the EP&A Act, to assess any aspect of the development referred to it by the Minister. The panel will comprise of independent technical experts or a panel of officers representing the Department (not having regulatory functions in connection with the development) and other relevant public authorities. For the purposes of an assessment, the panel may receive or hear submissions from interested persons and submit a report to the Director-General.

The Minister may also establish a Commission of Inquiry on all or any relevant matters under section 119 of the EP&A Act. The Commission of Inquiry will report its findings and recommendations to the Minister (or to the Director-General, as the case may be), and make public those findings and recommendations in accordance with subsection 119(6).

Under section 75H of the Act, the proponent is to submit the required environmental assessment to the Director-General. If the Director-General considers that the environmental assessment does not adequately address the environmental assessment requirements, the Director-General may require the proponent to submit a revised environmental assessment.

Once accepted, the Director-General must make the environmental assessment publicly available for at least 30 days (subsection 75H(3)), and make adequate information available to the public, including affected groups with particular communication needs. During that period, any person may make a written submission to the Director-General concerning the matter (subsection 75H(4)).

In accordance with this Management Plan, the invitation to comment described above will be published on a website approved by the Department of Infrastructure, Planning and Natural Resources and the New South Wales Heritage Office; and in a newspaper circulating generally in each State and self-governing Territory. The invitation may also be published on the websites of the Department of Infrastructure, Planning and Natural Resources and the New South Wales Heritage Office. The invitation will advise: the nature of the proposed

<sup>3</sup> This Regulation is expected to commence on 1 September 2005.



development; its location; the name of the proponent; the matters of National and World Heritage significance to be covered by the assessment; how the relevant documents may be obtained; and the deadline for public comments.

Based on the public comments received, the Director-General may then require the proponent to provide:

- a response to the submissions;
- a preferred project report that outlines any proposed changes to the project to minimise its environmental impact; and
- any revised statement of commitments.

Once all of the above processes are complete, the Director-General will prepare a report for the Minister for the purposes of considering the development application. Under section 75I of the EP&A Act, and in accordance with this Management Plan, the Director-General's report must include:

- a copy of the proponents' environmental assessment, and any preferred project report;
- any advice provided by public authorities on the development;
- a copy of the report of any independent hearing and assessment panel;
- a copy of the State Environmental Planning Policy that governs the carrying out of the project;
- any environmental assessment carried out by the Director-General; and
- a consideration of the impacts of the development on the National and World Heritage values of the Sydney Opera House.

The Minister will then consider whether or not to approve the development. Under subsection 75J (2), the Minister must consider:

- the Director-General's report;
- if the proponent is a public authority, the advice of the Minister administering the *Sydney Opera House Trust Act 1961*; and
- any findings or recommendations of a Commission of Inquiry held under section 119 of the EP&A Act.

Under subsection 75J (4) of the EP&A Act, the Minister may approve the development with such modifications or on such conditions as the Minister may determine, in accordance with this Management Plan (see also 'Approvals in relation to the Sydney Opera House' below).

#### (ii) Assessment and Approval under the *Heritage Act 1977*

Development on the Sydney Opera House site assessed under Part 3A of the *Environmental Planning and Assessment Act 1979* will also require approval under Part 4 of the *Heritage Act 1977*. This approval is granted by the Heritage Council and is sought after the Minister's approval under Part 3A of the *Environmental Planning and Assessment Act 1979*.<sup>4</sup>

In accordance with section 57 of the *Heritage Act 1977* (the *Heritage Act*), the formal approval of the Heritage Council will be required for any activities which purport to alter, damage, demolish or develop the Sydney Opera House site.

Applications for approval under Part 4 of the *Heritage Act* must be adequately documented. The proponent, in accordance with the *Heritage Regulations 1999* and the Heritage Council Guidelines, must provide documentation including all drawings and documents necessary to describe the proposal, a Statement of Heritage Impact, and any other supporting documentation. The Statement of Heritage Impact must analyse the proposal in terms of the impact of the proposal on the heritage significance of the site, and against the policies outlined in the CMP. The Statement must show whether the impact of the proposal will compromise the heritage significance of the Sydney Opera House. In accordance with this Management Plan, the Statement must also include a consideration of the way in which the National and World Heritage values (if any) are likely to be affected.

Where an application for approval is made and the Heritage Council is of the opinion that, if approved, the approval would materially affect the heritage significance of the Sydney Opera House, the public is notified of the application. The notification of the proposal and an invitation to comment will be advertised in a nation-wide daily newspaper and on-site, and the proposal and the relevant documentation will be publicly displayed at the office of the approval body (the Heritage Council). The usual public comment period of 21 days will be extended to 30 days for the purposes of this Management Plan. Notification will address groups with particular communication needs upon request.

In reaching its decision about whether to approve proposed works, the Heritage Council will consider the material provided by the proponent and an assessment report with recommendations prepared by the New South Wales Heritage Office. The Heritage Council will seek to ensure that:

- an activity will not be approved if it will have a significant adverse impact on the National and World Heritage values of the Sydney Opera House;

<sup>4</sup> This is a transitional arrangement which will end once appropriate guidelines and protocols for the environmental assessment of the Sydney Opera House are established. Once the guidelines and protocols are in place, this approval will be sought independently of the approval under Part 3 of the *Environmental Planning and Assessment Act 1979*.



- if approved, the activity is subject to any necessary conditions to protect the National and World Heritage values; and
- that any such conditions are appropriately monitored and enforced.<sup>5</sup>

Approval may only be granted if it is substantially consistent with the environmental assessment carried out under Part 3A of the *Environmental Planning and Assessment Act 1979* (Schedule 6, clause 90 (1)&(2) of the *Environmental Planning and Assessment Act 1979*. The Heritage Council can attach conditions to any approval granted.

### (iii) Approvals in relation to the Sydney Opera House

In addition to the requirements set out above, the Minister responsible for administering the New South Wales *Environmental Planning and Assessment Act 1979* and the New South Wales Heritage Council in administering the *Heritage Act 1977* will seek to ensure that:

- any potential impacts on the National and World Heritage values of the Sydney Opera House are appropriately considered at all stages of the assessment and approvals process;
- in assessing an application for approval, and in making a determination in relation to that application, the decision maker will take account of the precautionary principle;
- an activity will not be approved if it will have unacceptable or unsustainable impacts (significant adverse impacts) on the National and World Heritage values of the Sydney Opera House;
- Approved activities will be subject to any conditions necessary to ensure that the National and World Heritage values of the Sydney Opera House are conserved, protected, presented, and transmitted to future generations; and

Any conditions attached to an approval will be appropriately monitored and enforced. (See 'Compliance, Offences and Penalties' below).

### d. Compliance, offences and penalties

#### Breach of Act or planning approval

The *Environmental Planning and Assessment Act 1979* and the *Heritage Act 1977* establish mechanisms to ensure that the terms of approvals granted under those Acts and in accordance with this Management Plan will be enforced.

The New South Wales Department of Infrastructure, Planning and Natural Resources has a Compliance Branch that monitors ongoing compliance with planning approvals. In the event that a proponent does not comply with the conditions of a development consent or approval issued under the *Environmental Planning and Assessment Act 1979*, a criminal

offence is committed (section 125). Proceedings can be brought in the Land and Environment Court or a Local Court. If convicted, penalties range from \$10,000 to \$100,000 (sections 126, 127).

For approvals granted under Part 3A of the EP&A Act, the Minister may impose conditions requiring monitoring or environmental audits to be carried out by approval holders (sections 122B-F).

Civil proceedings can be brought in the Land and Environment Court (section 123), if a remedial order is required or if an order is required to restrain a threatened breach. The Court can order the reinstatement of the land or building to its former condition or restrain the land or building from being used for purposes which are not permitted (section 124).

Similar provisions exist under the *Heritage Act 1977*. Proceedings can be brought in the Land and Environment Court to restrain a breach of any of the provisions of the *Heritage Act 1977* (section 153). If the damage has already occurred, an order can be sought requiring the offender(s) to restore the damaged land or building to its condition immediately before the breach was committed (section 154). A criminal offence is also committed, punishable in the Land and Environment Court, with fines of up to \$1.1 million and up to six months imprisonment (section 157).

#### Offences committed by third parties

In the event that the act of a third party impacts on the National and World Heritage values of the Sydney Opera House, the provisions of the *Crimes Act 1900* may apply. A series of crimes dealing with the criminal destruction of property are punishable, by fines or imprisonment.

In 2004, the New South Wales Government enacted specific legislation to protect the Sydney Opera House. The *Sydney Opera House Trust (Amendment) Act 2004* established a series of offences including:

- trespass;
- trespass with the intent to cause damage, or disrupt operations; and
- intentional or reckless damage.

Where the value of the damage is less than \$5000, the matter will be dealt with summarily under the *Criminal Procedure Act 1986*. Where the value of the damage caused is more than \$5000, the penalty for convicted third parties is imprisonment, with terms ranging from 2 to 5 years depending on the offence. The provisions of the *Sydney Opera House Trust (Amendment) Act 2004* do not prevent New South Wales Police from charging third parties with another offence which incurs a greater penalty under other legislation such as the *Crimes Act 1900*.

This suite of offences is vital to ensuring that the National and World Heritage values of the Sydney Opera House will be adequately protected.

<sup>5</sup> See 'Compliance, Offences and Penalties' below.



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## 6. MANAGEMENT FRAMEWORK

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The Sydney Opera House is owned by the New South Wales Minister for the Arts, on behalf of the Government of New South Wales. The Minister currently administering the *Sydney Opera House Trust Act 1961* is the New South Wales Minister for the Arts. The *Sydney Opera House Trust Act 1961* provides for the administration of the Sydney Opera House on behalf of the New South Wales Government by the Sydney Opera House Trust, whose functions under section 4 of the *Sydney Opera House Trust Act 1961*, include:

- the administration, care, control, management and maintenance of the Sydney Opera House;
- the management and administration of the Sydney Opera House as a theatre, concert hall and place of assembly to be used as a place for the presentation of any of the branches of the musical, operatic, dramatic, terpsichorean, visual or auditory arts or as a meeting place in respect of matters of international, national or local significance;
- the promotion of artistic taste and achievement in any of the branches of the arts referred to above; and
- scientific research into, and the encouragement of, new and improved forms of entertainment and methods of presentation of entertainment.

The functions of the Sydney Opera House Trust are supported by the Sydney Opera House Executive Management, who are responsible for the day-to-day management of the place.

The Sydney Opera House Trust is advised by the Sydney Opera House Conservation Council on conservation issues (see 'Consultation, Expert Advice and Implementation' for further information on the role of the Conservation Council).

The Sydney Opera House Trust and the Sydney Opera House Executive Management will seek to ensure that day-to-day and minor management actions that would not normally require assessment and approval, or that are designed to address the management of values other than the National and World Heritage values, are nonetheless consistent with the management of the National and World Heritage values of the Sydney Opera House.

The existing Conservation Management Plan and *Utzon Design Principles* (Appendices A and B to this plan) were commissioned by the Sydney Opera House Trust to guide the management and administration of the Sydney Opera House. The CMP was developed in preparation for the listing of the Sydney Opera House on the State Heritage Register, and was adopted by the Sydney Opera House Trust in 2003. The *Utzon Design Principles* are a record of Jørn Utzon's vision for the building and its setting, and his comments on the future. The *Utzon Design Principles* is intended as a reference for the conservation of the Sydney Opera House site and in the

management of proposals for change. The CMP and *Utzon Design Principles* were formally endorsed by the New South Wales Heritage Council in December 2003 as the guiding policy documents for the ongoing conservation of the Sydney Opera House.

The CMP identifies the heritage values of the Sydney Opera House and provides an analysis of their significance. This Management Plan relies primarily on the CMP, and the *Utzon Design Principles*, to provide the policies that will also be employed to identify, protect, conserve, present, and transmit to future generations the relevant National and World Heritage values of the Sydney Opera House. Policies that will be used to achieve these aims in relation to all the identified heritage values of the Sydney Opera House, including State, National and World Heritage values, are described in detail on pages 41 to 100 of the CMP.

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## 7. RISK MANAGEMENT

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Consistent with contemporary practices, risk management is embedded within the administration and property management of the Sydney Opera House. A number of documents have been developed to put in place protocols and procedures to identify and deal with risks of varying natures. First and foremost, the CMP provides a comprehensive approach to the mitigation of potential risks to the heritage values of the Sydney Opera House. The CMP identifies and analyses current and foreseeable risks to the heritage values of the Sydney Opera House and details policies that seek to mitigate or avoid these risks, including policies concerning the management and conservation processes to be used, and procedures for monitoring and review of those processes. The policies set out in the CMP will also be used to mitigate or avoid potential risks to the National and World Heritage values of the Sydney Opera House, in order to protect and conserve those values.

Other documents developed by the Sydney Opera House Trust to collectively underpin the total asset management and protection strategy of the Sydney Opera House include: strategic building plans; strategic asset maintenance plans; a building standards manual; building asset strategy plans; emergency plans; security plans and policies; and a crisis management plan.

These documents are regularly reviewed and updated and represent a cohesive and adaptive management strategy to conserve the heritage values of the Sydney Opera House and maintain its reputation as a building icon and leading performing arts centre.<sup>6</sup>

<sup>6</sup> The documents which make up the management framework are subject to change in the future and this Management Plan will be amended as necessary to reflect any changes at each formal review of the Management Plan by the Parties.



The New South Wales statutory framework outlined above provides further protection against risks to the National and World Heritage values of the Sydney Opera House by preventing proposed actions that will have unacceptable or unsustainable impacts on the National and World Heritage values of the Sydney Opera House from proceeding, and by allowing conditions to be attached to any approvals granted to ensure that any impacts on the National and World Heritage values are prevented or mitigated.

However, to ensure that all foreseeable risks to the National and World Heritage values are identified, the Sydney Opera House Executive will develop a Heritage Risk Management Policy and a Heritage Risk Management Plan within six months of the accreditation of this Management Plan, to specifically focus on identifying risks (and risk management strategies) to the National and World Heritage values of the Sydney Opera House.

The Heritage Risk Management Policy and the Heritage Risk Management Plan will be prepared in accordance with Australian Standard AS 4360:2004, *Risk Management*. The Policy and Plan will be forwarded to the New South Wales Minister for the Arts for approval within six months of the accreditation of this Management Plan. The Policy and the Plan will then be provided to the Australian Government Minister for the Environment and Heritage for information.<sup>7</sup>

The *Heritage Risk Management Policy* will include:

- the objectives and rationale for managing risks to the National and World Heritage values of the Sydney Opera House;
- the links between the policy and the Sydney Opera House's broader strategic plans;
- the processes to be used to manage risks to the National and World Heritage values of the Sydney Opera House;
- accountabilities for managing these risks;
- details of the support and expertise available to those accountable for managing risks;
- a statement on how risk management performance will be measured and reported;
- details of communication and consultation arrangements to ensure that affected and concerned stakeholders are involved in the risk management process; and
- a commitment to and establishment of mechanisms for ongoing monitoring and review.

<sup>7</sup> The Policy and Plan will be prepared in response to identified National Heritage values and expected World Heritage values. Should the presumed World Heritage values be different once the Sydney Opera House is inscribed on the World Heritage List, the Policy and Plan will be updated, if necessary, within six months of World Heritage Listing.

The *Heritage Risk Management Plan* will:

- *identify the risks* (including what, where and when risks may occur as well as how and why they may occur) and tools and techniques used to identify these risks;
- *analyse and evaluate the risks* by evaluating the strengths and weaknesses of existing controls that act to minimise risks and the likelihood of those risks occurring and their associated consequences; and
- *identify and assess the options for the management of those risks*.

The Heritage Risk Management Policy and the Heritage Risk Management Plan will be integrated with the Sydney Opera House Executive's broader risk management framework to ensure that all risks to the Sydney Opera House are identified and managed in a manner that is consistent with managing risks to its National and World Heritage values.

## 8. CONSULTATION, EXPERT ADVICE

### AND IMPLEMENTATION

The Sydney Opera House Conservation Council<sup>8</sup> is an advisory committee to the Sydney Opera House Trust. The purpose of the Conservation Council is to:

- (i) provide the Trust with the necessary specialist advice and recommendations regarding the principles and issues of significance relating to the medium and long term preservation, conservation and development of the Sydney Opera House building and site;
- (ii) critically inform the strategic direction and decision making of the Sydney Opera House and its implications for the building and site; and
- (iii) provide the Sydney Opera House Trust with advice regarding the management of key stakeholder relationships on conservation and heritage matters.

Membership of the Conservation Council includes representatives from:

- the Sydney Opera House Trust;
- the Sydney Opera House Executive;
- the Government Architect (NSW Department of Commerce); and
- government and private sector specialists with recognised expertise in architecture, heritage and conservation matters, design, engineering and related disciplines and performing arts.<sup>9</sup>

<sup>8</sup> *Sydney Opera House Conservation Council Brief (2005)*.

<sup>9</sup> *Sydney Opera House Conservation Council Membership Rules (2005)*

Once the Sydney Opera House is listed on the National and World Heritage Lists, membership of the Council will be enlarged to include one representative from each of the following Government agencies:

- the NSW Heritage Office;
- the Department of Infrastructure, Planning and Natural Resources (NSW) and;
- the NSW Ministry for the Arts.

All representatives will participate subject to the Sydney Opera House Conservation Council Code of Conduct.

The Conservation Council's Charter will also be expanded to include the following functions:

- monitor and advise the Sydney Opera House Trust on the implementation of heritage conservation policies (including the CMP and the *Utzon Design Principles*);
- monitor and advise the Sydney Opera House Trust on: how the heritage values of the place are identified, conserved, protected, presented and, transmitted to future generations; mechanisms to deal with the impacts of actions that individually or cumulatively degrade or threaten to degrade the heritage values of the place; the development of the Risk Management Plan; the identification of unforeseen discoveries or disturbance of heritage and mechanisms for their management; how heritage values are to be interpreted and promoted; and any views of persons who have an interest in the property or who may be affected by the management of the property, including Indigenous people;
- through the Sydney Opera House Trust, advise the Minister(s) responsible for administering the New South Wales *Environmental Planning and Assessment Act 1979* and the *Heritage Act 1977*, and the Minister for the Arts, on matters relevant to the administration of this Management Plan including monitoring and reporting on the state of the National and World Heritage values of the Sydney Opera House and providing advice on unforeseen discoveries or disturbances of heritage; and mechanisms for their management; and
- through the Sydney Opera House Trust, provide a report each year to the Minister(s) responsible for administering the New South Wales *Environmental Planning and Assessment Act 1979* and the *Heritage Act 1977*, and the Minister for the Arts, on the implementation of this Management Plan, including a report on the state of the National and World Heritage values.

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## 9. MANAGEMENT PLAN REVIEW

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This Management Plan will be monitored on an ongoing basis and reviewed by the Australian Government and the State of New South Wales at intervals of not more than five years.

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## 10. PUBLIC CONSULTATION

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This Management Plan was exhibited for public comment for a period of four weeks (12 July–9 August 2005). The invitation to comment was advertised in a newspaper circulating in each State and Territory; and on the New South Wales Heritage Office website ([www.heritage.nsw.gov.au](http://www.heritage.nsw.gov.au)).

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## 11. ACKNOWLEDGEMENTS

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This Management Plan has been drafted by the New South Wales Sydney Opera House World Heritage Nomination Taskforce which includes representatives from:

- the Sydney Opera House Executive;
- the New South Wales Heritage Office;
- the New South Wales Department of Infrastructure, Planning and Natural Resources; and
- The New South Wales Cabinet Office.



<sup>12</sup> Appendix A and B are appended separately to this document.

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## Statement of Values for Sydney Opera House National Heritage Listing

### Sydney Opera House:

2 Circular Quay and Macquarie Street, Bennelong Point, Sydney, comprising all of Lot 5 DP775888 and all of Lot 4 DP7879333, and including the sea walls abutting these lots.

#### Criterion

(a)  
the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history.

#### Values

The Sydney Opera House is significant in the course of Australia's cultural history, both for its place in the national history of building design and construction, as well as the history of the performing arts in Australia. The Sydney Opera House represents a masterpiece of modern architectural design, engineering and construction technology in Australia. It is a national icon that has become an internationally-recognised symbol of modern Australia and of Sydney, Australia's largest city. From the earliest concept drawings, the building's striking design, its quality as a monumental sculpture in the round, and its inspired design solution in response to its prominent setting on Bennelong Point in Sydney Harbour, have attracted national and international professional and public acclaim. The challenges involved in executing the design inspired innovative developments in technologies, construction engineering and building methods in Australia, creating the building's distinctive form, fabric and structural systems. Since the official opening on 20 October 1973 by Queen Elizabeth II, the Sydney Opera House has played a seminal role in Australia's performing arts history, enhancing the cultural vitality of the nation and continuously attracting nationally and internationally recognised performers from around the world. The achievement of its design and construction between 1957 and 1973 is all the more remarkable because it marks a significant transitional period in Australian political and economic development, and changing social attitudes towards Australian cultural life in the decades following World War II.

(b)  
the place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history.

The Sydney Opera House is a cultural icon that has no counterpart in Australia. With its distinctive sail-like concrete shell roofs standing boldly upon a massive granite-faced platform, located prominently on the Sydney Harbour foreshore, the Sydney Opera House is the most widely recognised building in Australia, and one of the most definitive national architectural icons of the twentieth century. It is also a rare example of a national cultural centre that has gained widespread recognition and respect as a performing arts venue.

- (e) the place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group.
- The design, form, scale and location of the Opera House make it one of the most significant landmarks in Australia. The aesthetic qualities of the Sydney Opera House relate both to its topographical setting on Bennelong Point, and its distinctive architectural features. Its landmark qualities are enhanced by the building's juxtaposition with Sydney Harbour, its relationship with the Sydney Harbour Bridge, the garden landscape of Bennelong Ridge, the sandstone cliff face of Tarpeian Rock, and the vistas and views to and from The Rocks, Circular Quay, East Circular Quay, Macquarie Street, the Botanic Gardens and the harbour. The sculptural, billowing sail-like roof shells provide a visual link to and artistic representation of the yacht-scattered harbour waters. The ceramic white tiles of the roof further add to this relationship and provide a dramatic contrast with the blue waters of the harbour. The building with its strongly curved design emphasis is juxtaposed with the nearby Sydney Harbour Bridge which itself has a strongly emphasized curvature, and this visual relationship is a further element of the place's aesthetic appeal. The place's dramatic aesthetic appeal is enhanced by subtle floodlighting on the white roof shells at night. The building's ability to emotionally move people and invoke a strong aesthetic response is enhanced by the experience of approaching, entering and moving around the building and surrounds. The public promenades including the Forecourt, Broadwalk, and podium platform and steps contribute to the majestic qualities of the place. The large forecourt and sweeping podium steps prepare the visitor for the majestic quality of the soaring internal spaces including the folded concrete beams throughout the building, and the reinforced radial cranked beams in the northern foyers. These are complemented by the vast coloured glass panels in the main foyers of the Concert Hall and Opera Theatre wings, through which the harbour and city views reinforce the building's magnificent setting. The distinctive interiors including the foyers surrounding the major auditoria, the Reception Hall (now the Utzon Room), the Box Office foyer, and the Bennelong Restaurant designed by Utzon and Peter Hall, enhance the relationship between the interior and exterior of the building. The two large murals commissioned specifically for the Sydney Opera House, including John Olsen's 'Five Bells' and Michael Nelson Jagamara's 'Possum Dreaming', enhance the aesthetic values of the interior.
- (f) the place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period.
- The Sydney Opera House represents a masterpiece of architectural creativity and technical accomplishment unparalleled in Australia's history. In every respect, it is a structure at the leading edge of endeavour. Its many awards, including the Royal Australian Institute of Architects Gold Award given to architect Jørn Utzon in 1973, reflect its pivotal place in the national story of creative achievement providing, as Utzon envisioned, 'an individual face for Australia in the world of art' (Frampton and Cava 1995, 296). The design of the building reflects Utzon's intention to create a sculptural form that would be both a focal point in Sydney Harbour and a reflection of its character. 'The white sail-like forms of the shell vaults relate as naturally to the Harbour as the sails to its yachts' (Assessors Report cited in Norberg-Schulz 1980, 56).
- The 'hybrid' interior spaces of the Sydney Opera House reflect the creative genius of both Utzon and Todd, Hall and Littlemore, who completed the building and interior finishes after Utzon's departure. The major public spaces with outside views, for example were designed by Utzon (and completed by Peter Hall) to be finished in natural materials, textures and colours similar to those on the exterior of the building in order to bring the outside inside (Kerr 2003, 69). In his *Design Principles* booklet submitted to the Sydney Opera House Trust in 2002, Utzon revealed the two ideas of particular importance in his design: first, his use of organic forms from nature, evident in the leaf form pattern devised for the ceramic roof tiles, and second was the creation of sensory experiences to bring pleasure to the building's users, particularly the experience of approaching, mounting the grand staircase to the podium, passing through the low ribbed box office, up to the foyers flanking the auditoria with their harbour views, and the climax of the performance itself. 'Both ideas were...reinforced by Utzon's application of counterpointing techniques using light and dark tones, soft and hard textures and richly treated warm and cool interior colours.



(f) continued

On a grander scale, the light toned shells of the building were to stand out against the (then) darker fabric of the city' (Kerr 2003, 44).

The interior spaces designed by Peter Hall, including the major auditoria known as the Concert Hall and Opera Theatre, and the minor performance spaces, performers' and staff areas, and rehearsal rooms, known collectively as 'Wobbly Land' because of the distinctive 'U' shaped timber paneling, demonstrate the distinctive design solutions that made the Opera House a functioning performing arts centre in the 1970s, and reflect the prevailing aesthetic values, building standards, and financial constraints of the day.

The process of building the Sydney Opera House resulted in the development of a number of innovative technical and creative solutions that were groundbreaking in the history of building design and construction in Australia. This is especially the case with the design and construction of the roof, based on the geometry of the sphere. The roof shells had to span large areas to accommodate the main hall and smaller hall. The solution to the structural challenges of the roof shells devised by Utzon and Ove Arup and Partners over a four year period involved the production of arched segments of varying curvature from the same range of precast modular units. The concrete shells were finally produced by cutting a three-sided segment out of a sphere and by deriving regularly modulated curved surfaces from this solid (Frampton and Cava 1995, 273). The roof shells with their vaulted concrete ribs were constructed using precast concrete segments fixed together with epoxy resin and held together by pre-stressing tendons, representing a considerable structural innovation for the period. The roof shells were faced in off-white Swedish Höganas tiles inspired by the Chinese ceramic tradition. Using a European technique of prefabrication, over one million tiles were cast into precast concrete lids on the ground then bonded onto the ribbed superstructure of the shells (Frampton and Cava 1995, 280). From the point of view of science, the Opera House embodies within its structure the integration of sophisticated geometry, technology and art. It epitomizes the extraordinary creative potential of the assembly of prefabricated, repeated components (Norberg-Schulz 1996, 101).

The building was the first of its kind in Australia to use computer-based three-dimensional site positioning devices, geothermal pumps, tower cranes, chemical anchors, non-competitive tendering, life-cycle engineering, parametric design (such as the use of governing equations to model a design), and critical path methods. It gave rise to the establishment of a testing laboratory at the University of New South Wales that became one of the first organizations in the world to commercialise university research and support technology transfer. It also promoted Australian expertise internationally, and opened the way for international engineering construction firms such as Ove Arup to establish their operations in Australia. Utzon's approach to project management was instrumental in changing Australian building and building procurement practices, including de facto pre-qualification of bidders, use of scope drawings, performance-based design assistance from trade specialists, mock-up testing, and on-the-job skill development (Tombesi 2005).



(g) the place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons.

The Sydney Opera House is an enduring symbol of modern Sydney and Australia, both nationally and internationally. Indeed, the profile of the distinctive ceramic clad roof shells has become an instantly-recognisable national emblem. For example, it provided the inspiration for the logo used to promote the 2000 Olympic Games held in Sydney. The building's role as a cultural icon is also derived from the numerous performances conducted there (100,000 since 1973), and the place's role as a focal point for community events. The Sydney Opera House is a mecca for both Australian and international visitors to Sydney, attracting over 100 million visitors since the opening in 1973. The high cost of construction was met by a major public lottery that served to enhance its status as a place for the people.

(h) the place has outstanding heritage value to the nation because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history.

The Sydney Opera House is directly associated with Jørn Utzon, whose design won an international competition in 1957 and was hailed by the architectural critic Sigfried Giedion as opening a new chapter in contemporary architecture. Utzon's design represented a significant development in the basic concepts of the Modern Movement in architecture associated with free plan and clear construction. It evolved during a period of experimentation in modern architecture occurring internationally in the 1950s. Utzon was influenced by the architecture of the ancient Mayans and Aztecs, as well as the work of earlier twentieth century architects including the Finnish architect, Alvar Aalto with whom Utzon worked in 1945, Frank Lloyd Wright, and Mies van der Rohe. Utzon's creative genius, exemplified in the Sydney Opera House, is widely acknowledged amongst national and international scholars of modern architectural history. Although Utzon left the project in 1966, prior to the building's completion, the Sydney Opera House is nevertheless identified with him and he has attracted national and international acclaim. His professional recognition in Australia is reflected by awards such as the Royal Australian Institute of Architects' Gold Award mentioned above, and internationally in awards such as the prestigious Pritzker Prize for Architecture awarded to Utzon in 2003.

The peninsula on which the Sydney Opera House now stands has a special association with Bennelong, an Aboriginal man 'captured' by Governor Arthur Phillip in 1789. Bennelong became a prominent and influential figure in the early Sydney colony, sharing information about his culture with Governor Phillip and regularly visiting the Governor's residence. He was the first Aboriginal adult in the new colony to play a significant role in mediating interactions between Aboriginal people and the early settlers, and was reportedly highly regarded by both Aboriginal people and Europeans. Governor Phillip built the first structure – a house – on the peninsula for Bennelong's use, and from the 1790s the peninsula became known as 'Bennelong Point', and was known to Aboriginal people as Tyubow-gule (McBryde 1989, 17).



ENVIRONMENT  
PROTECTION AND  
BIODIVERSITY  
CONSERVATION  
ACT 1999

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Reprint 2

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## **Part 15—Protected areas**

### **Division 1—Managing World Heritage properties**

#### **Subdivision A—Simplified outline of this Division**

##### **313 Simplified outline of this Division**

The following is a simplified outline of this Division:

The Commonwealth may submit a property for inclusion in the World Heritage List only after seeking the agreement of relevant States, self-governing Territories and land-holders.

The Minister must make plans for managing properties on the World Heritage List that are entirely in Commonwealth areas. The Commonwealth and Commonwealth agencies must not contravene such plans.

The Commonwealth must try to prepare and implement management plans for other properties on the World Heritage List, in co-operation with the relevant States and self-governing Territories.

The Commonwealth and Commonwealth agencies have duties relating to World Heritage properties in States and Territories.

The Commonwealth can provide assistance for the protection or conservation of declared World Heritage properties.

**Note:** Section 12 prohibits an action that has a significant impact on the world heritage values of a declared World Heritage property, unless the person taking the action has the approval of the Minister administering that section or certain other requirements are met.

**Section 314**

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**Subdivision B—Seeking agreement on World Heritage listing**

**314 Special provisions relating to World Heritage nominations**

- (1) The Commonwealth may submit to the World Heritage Committee for inclusion in the World Heritage List a property containing an area owned or occupied by another person only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the other person on:
  - (a) the proposed submission of the property (so far as it relates to the area); and
  - (b) management arrangements for the property (so far as they relate to the area).
- (2) The Commonwealth may submit to the World Heritage Committee for inclusion in the World Heritage List a property in a State or self-governing Territory only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the State or Territory on:
  - (a) the proposed submission of the property; and
  - (b) management arrangements for the property.
- (3) A failure to comply with this section does not affect the submission of a property to the World Heritage Committee for inclusion in the World Heritage List or the status of a property as a declared World Heritage property.

**Subdivision C—Notice of submission of property for listing**

**315 Minister must give notice of submission of property for listing etc.**

- (1) The Minister must give notice in the *Gazette* and in the way (if any) prescribed by the regulations of any of the following events as soon as practicable after the event occurs:
  - (a) the Commonwealth submits a property to the World Heritage Committee for inclusion in the World Heritage List;

**Chapter 5** Conservation of biodiversity and heritage  
**Part 15** Protected areas  
**Division 1** Managing World Heritage properties

**Section 316**

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*Requirements for plan*

- (3) A plan must not be inconsistent with:
- (a) Australia's obligations under the World Heritage Convention; or
  - (b) the Australian World Heritage management principles.

**Note:** Section 323 explains what Australian World Heritage management principles are.

*Ensuring plans reflect current management principles*

- (4) If the Australian World Heritage management principles change so that a plan (the *earlier plan*) is inconsistent with them, the Minister must make another plan:
- (a) amending the earlier plan so it is not inconsistent with them; or
  - (b) revoking and replacing the earlier plan.

*Plan may be in same document as another plan*

- (5) To avoid doubt, a plan under this section for a property may be in the same document as:
- (a) a plan under this section for another property; or
  - (b) a plan that this Act or another law of the Commonwealth requires or permits to be prepared.

*Commonwealth reserves*

- (6) Despite subsections (1) and (2), the Minister may not make a plan for so much of a property as is in a Commonwealth reserve.

**Note:** A management plan must be prepared under Division 4 for a Commonwealth reserve, taking account of Australia's obligations under the World Heritage Convention.

*Heard Island and McDonald Islands*

- (7) Despite subsections (1) and (2), the Minister may not make a plan for so much of a property as is in the Territory of Heard Island and McDonald Islands and covered by a plan:



- (a) that is in operation under the *Environment Protection and Management Ordinance 1987* of that Territory; and
- (b) that the Minister is satisfied is not inconsistent with:
  - (i) Australia's obligations under the World Heritage Convention; or
  - (ii) the Australian World Heritage management principles.

### **317 Notice of plans**

The Minister must give notice of the making of a plan under section 316, in accordance with the regulations.

### **318 Commonwealth compliance with plans**

- (1) The Commonwealth or a Commonwealth agency must not:
  - (a) contravene a plan made under section 316; or
  - (b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene such a plan.
- (2) If there is no plan in force under section 316 for a particular property described in subsection (1) of that section, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the property are not inconsistent with the Australian World Heritage management principles.

### **319 Review of plans every 5 years**

- (1) The Minister must cause a review of a plan made under section 316 to be carried out at least once in each period of 5 years after the plan is made.
- (2) The review must consider whether the plan is consistent with the Australian World Heritage management principles in force at the time.

Note: Section 323 explains what Australian World Heritage management principles are.

**Section 320**

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**Subdivision E—Managing World Heritage properties in States and self-governing Territories**

**320 Application**

This Subdivision applies in relation to a property that:

- (a) is:
  - (i) in a State; or
  - (ii) in a self-governing Territory; or
  - (iii) on, over or under the seabed vested in a State by the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by the *Coastal Waters (Northern Territory Title) Act 1980*; and
- (b) is not entirely within one or more Commonwealth areas.

**321 Co-operating to prepare and implement plans**

- (1) This section applies in relation to a property that is included in the World Heritage List.
- (2) The Commonwealth must use its best endeavours to ensure a plan for managing the property in a way that is not inconsistent with Australia's obligations under the World Heritage Convention or the Australian World Heritage management principles is prepared and implemented in co-operation with the State or Territory.

Note: The Commonwealth and the State or Territory could make a bilateral agreement adopting the plan and providing for its implementation.

**322 Commonwealth responsibilities**

- (1) This section applies in relation to a property that is a declared World Heritage property.
- (2) The Commonwealth and each Commonwealth agency must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the property in a way that is not inconsistent with:
  - (a) the World Heritage Convention; and

- (b) the Australian World Heritage management principles; and
- (c) if the property is on the World Heritage List and a plan for managing the property has been prepared as described in section 321—that plan.

### **Subdivision F—Australian World Heritage management principles**

#### **323 Australian World Heritage management principles**

- (1) The regulations must prescribe principles for the management of natural heritage and cultural heritage. The principles prescribed are the *Australian World Heritage management principles*.
- (2) Before the Governor-General makes regulations prescribing principles, the Minister must be satisfied that the principles to be prescribed are consistent with Australia's obligations under the World Heritage Convention.
- (3) In this section:

*cultural heritage* has the meaning given by the World Heritage Convention.

*natural heritage* has the meaning given by the World Heritage Convention.

### **Subdivision G—Assistance for protecting World Heritage properties**

#### **324 Commonwealth assistance for protecting declared World Heritage properties**

- (1) The Commonwealth may give financial or other assistance for the protection or conservation of a declared World Heritage property to:
  - (a) a State or self-governing Territory in which the property occurs; or
  - (b) any other person.

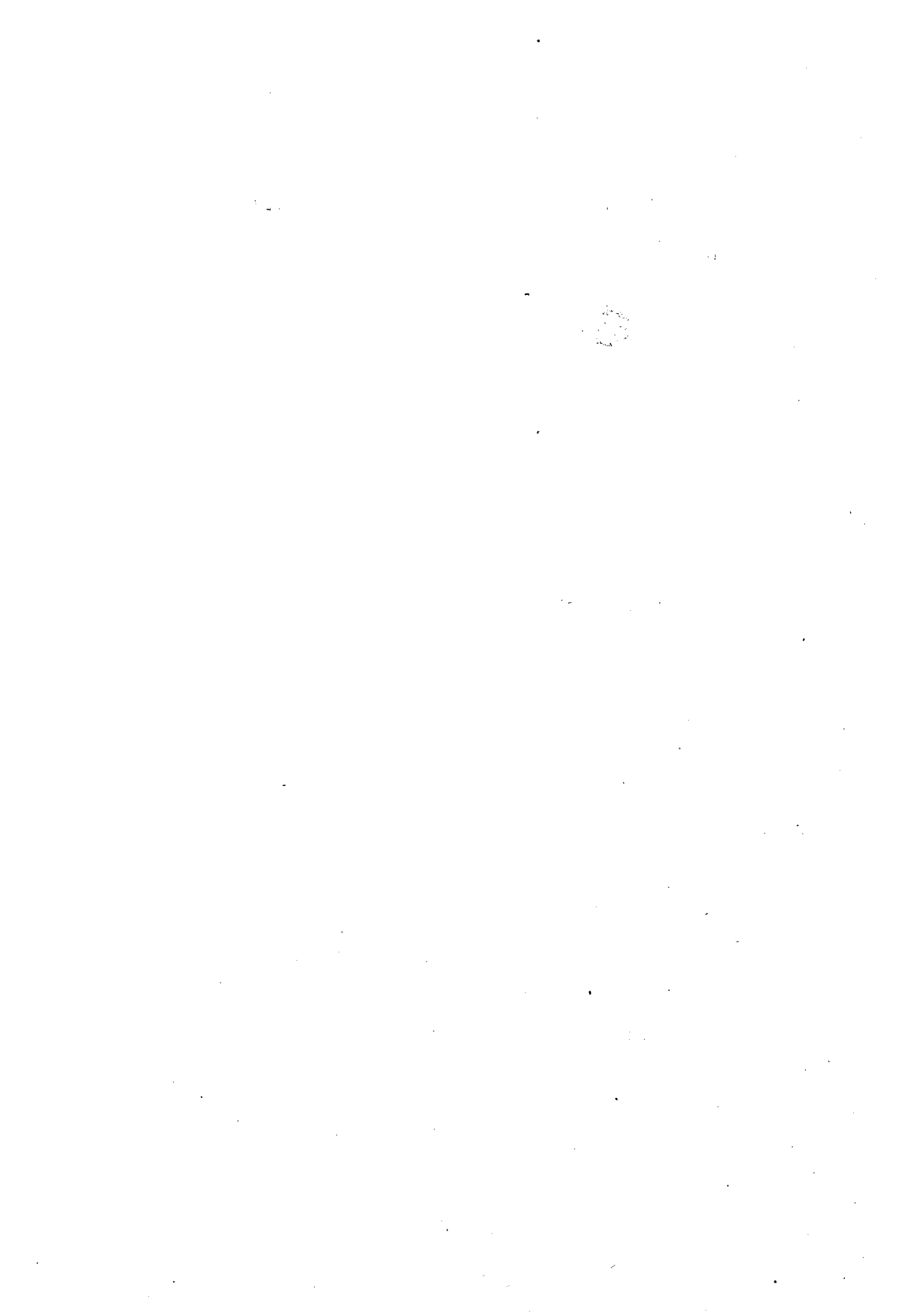


**Chapter 5** Conservation of biodiversity and heritage  
**Part 15** Protected areas  
**Division 1** Managing World Heritage properties

**Section 324**

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- (2) The giving of assistance may be made subject to such conditions as the Minister thinks fit.





# Environment Protection and Biodiversity Conservation Act 1999

**Act No. 91 of 1999 as amended**

This compilation was prepared on 10 April 2006  
taking into account amendments up to Act No. 17 of 2006

**Volume 1** includes: Table of Contents  
Sections 1 – 266A

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

**Volume 2** includes: Table of Contents  
Sections 267 – 528  
Note 1  
Table of Acts  
Act Notes  
Table of Amendments  
Notes 2 and 3  
Table A

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**An Act relating to the protection of the  
environment and the conservation of biodiversity,  
and for related purposes**  
**Chapter 1—Preliminary**

**Part 1—Preliminary**

**1 Short title** [see Note 1]

This Act may be cited as the *Environment Protection and Biodiversity Conservation Act 1999*.

**2 Commencement** [see Note 1]

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 12 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

**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

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- (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.

### **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.

### **4 Act to bind Crown**

This Act binds the Crown in each of its capacities.

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**5 Application of Act**

*Extension to external Territories*

- (1) This Act extends to each external Territory.

*Limited extraterritorial application*

- (2) This Act applies to acts, omissions, matters and things in the Australian jurisdiction, and does not apply to acts, omissions, matters and things outside the Australian jurisdiction except so far as the contrary intention appears.

*Application limited to Australians outside exclusive economic zone*

- (3) A provision of this Act that has effect in relation to a place that is outside the outer limits of the exclusive economic zone and is not on or in the continental shelf applies only in relation to:
- (a) Australian citizens; and
  - (b) persons who:
    - (i) are not Australian citizens; and
    - (ii) hold permanent visas under the *Migration Act 1958*; and
    - (iii) are domiciled in Australia or an external Territory; and
  - (c) corporations incorporated in Australia or an external Territory; and
  - (d) the Commonwealth; and
  - (e) Commonwealth agencies; and
  - (f) Australian aircraft; and
  - (g) Australian vessels; and
  - (h) members of crews of Australian aircraft and Australian vessels (including persons in charge of aircraft or vessels).

*Application to everyone in Australia and exclusive economic zone*

- (4) A provision of this Act that has effect in relation to a place that is within the outer limits of the exclusive economic zone (whether the place is in the zone or in Australia or an external Territory) or that is on or in the continental shelf applies in relation to:
- (a) all persons (including persons who are not Australian citizens); and

- (b) all aircraft (including aircraft that are not Australian aircraft);  
and
- (c) all vessels (including vessels that are not Australian vessels).

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

#### *Definitions*

(5) In this Act:

***Australian aircraft*** means:

- (a) an aircraft that is owned, possessed or controlled by:
  - (i) the Commonwealth or a Commonwealth agency; or
  - (ii) a State, a self-governing Territory or an agency of a State or self-governing Territory; or
- (b) an aircraft that is registered in Australia.

***Australian jurisdiction*** means the land, waters, seabed and airspace in, under or above:

- (a) Australia; or
- (b) an external Territory; or
- (c) the exclusive economic zone; or
- (d) the continental shelf.

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

***Australian vessel*** means:

- (a) a vessel that is owned, possessed or controlled by:
  - (i) the Commonwealth or a Commonwealth agency; or
  - (ii) a State, a self-governing Territory or an agency of a State or self-governing Territory; or
- (b) a vessel that is registered in Australia; or
- (c) a vessel that is flying the Australian flag.

## **7 Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

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**8 Native title rights not affected**

- (1) To avoid doubt, nothing in this Act affects the operation of section 211 of the *Native Title Act 1993* in relation to a provision of this Act.

Note: Section 211 of the *Native Title Act 1993* provides that holders of native title rights covering certain activities do not need authorisation required by other laws to engage in those activities.

- (2) This Act does not affect the operation of:
- (a) the *Aboriginal Land Rights (Northern Territory) Act 1976*; or
  - (b) the *Native Title Act 1993*.

**9 Relationship with other Acts**

*Aboriginal Land Rights (Northern Territory) Act 1976*

- (1A) Subsection 70(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* does not prevent a person exercising powers or performing functions or duties under Division 4 or 5 of Part 15, or Division 5 of Part 19, of this Act from entering or remaining on land:
- (a) in the Kakadu region or Uluru region; and
  - (b) in which an Aboriginal Land Trust established under that Act holds an estate in fee simple.

*Airports Act 1996 not affected*

- (1) This Act does not affect the operation of the *Airports Act 1996*.

*Antarctic Treaty (Environment Protection) Act 1980 not affected*

- (2) To avoid doubt, nothing in this Act affects the operation of subsection 7(1) of the *Antarctic Treaty (Environment Protection) Act 1980* or regulations made for the purposes of that subsection.

**10 Relationship with State law**

This Act is not intended to exclude or limit the concurrent operation of any law of a State or Territory, except so far as the contrary intention appears.



## **Chapter 2—Protecting the environment**

### **Part 2—Simplified outline of this Chapter**

#### **11 Simplified outline of this Chapter**

The following is a simplified outline of this Chapter:

This Chapter provides a basis for the Minister to decide whether an action that has, will have or is likely to have a significant impact on certain aspects of the environment should proceed.

It does so by prohibiting a person from taking an action without the Minister having given approval or decided that approval is not needed. (Part 9 deals with the giving of approval.)

Approval is not needed to take an action if any of the following declare that the action does not need approval:

- (a) a bilateral agreement between the Commonwealth and the State or Territory in which the action is taken;
- (b) a declaration by the Minister.

Also, an action does not need approval if it is taken in accordance with Regional Forest Agreements or a plan for managing the Great Barrier Reef.

## Part 3—Requirements for environmental approvals

### Division 1—Requirements relating to matters of national environmental significance

#### Subdivision A—World Heritage

#### 12 Requirement for approval of activities with a significant impact on a declared World Heritage property

- (1) A person must not take an action that:
  - (a) has or will have a significant impact on the world heritage values of a declared World Heritage property; or
  - (b) is likely to have a significant impact on the world heritage values of a declared World Heritage property.

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) A property has *world heritage values* only if it contains natural heritage or cultural heritage. The *world heritage values* of the property are the natural heritage and cultural heritage contained in the property.

(4) In this section:

*cultural heritage* has the meaning given by the World Heritage Convention.

*natural heritage* has the meaning given by the World Heritage Convention.

### **13 What is a *declared World Heritage property*?**

#### *Properties on World Heritage List*

(1) A property included in the World Heritage List is a ***declared World Heritage property*** as long as the property is included in the List.

#### *Properties not yet on World Heritage List*

(2) A property specified in a declaration made under section 14 (with any amendments made under section 15) is a ***declared World Heritage property*** for the period for which the declaration is in force.

### **14 Declaring a property to be a declared World Heritage property**

#### *Making declarations*

- (1) The Minister may declare a specified property to be a declared World Heritage property by notice in the *Gazette* if:
- (a) the property is a property submitted by the Commonwealth to the World Heritage Committee under Article 11 of the World Heritage Convention as suitable for inclusion in the World Heritage List; or
  - (b) the Minister is satisfied that:
    - (i) the property has, or is likely to have, world heritage values; and
    - (ii) some or all of the world heritage values of the property are under threat.

Note 1: The Minister may make more than one declaration relating to the same property. See subsection 33(1) of the *Acts Interpretation Act 1901*.

Note 2: The Minister may make an extra declaration to cover property that is an extension of a property previously submitted to the World Heritage Committee.

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*Consulting State or Territory before making declaration*

- (2) Before the Minister makes a declaration relating to property 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:
- (a) he or she proposes to make a declaration in the circumstances described in paragraph (1)(b); and
  - (b) he or she is satisfied that the threat mentioned in subparagraph (1)(b)(ii) 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:
- (a) comes into force when it is published in the *Gazette*; and
  - (b) remains in force (whether amended under section 15 or not) until the earliest of the following events:
    - (i) the end of the period specified in the declaration as the period for which the declaration is in force;
    - (ii) the revocation of the declaration;
    - (iii) if the declaration specifies a property submitted to the World Heritage Committee for inclusion in the World Heritage List—the Committee either includes the property in the List or decides the property should not be included in the List.

*Specified 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 period the Minister believes:



- (a) the World Heritage Committee needs to decide whether or not to include the property in the World Heritage List, in the case of a declaration specifying a property that has been submitted to the Committee for inclusion in the List; or
- (b) the Commonwealth needs to decide whether the property has world heritage values and to submit the property to the World Heritage Committee for inclusion in the World Heritage List, in the case of a declaration specifying a property not yet submitted to the Committee for inclusion in the List.

*Declarations because of threat in force for a year or less*

- (7) The Minister must not specify that a declaration of a property is to be in force for more than 12 months if:
  - (a) the declaration is made in the circumstances described in paragraph (1)(b); and
  - (b) the property is not a property submitted by the Commonwealth to the World Heritage Committee under Article 11 of the World Heritage Convention as suitable for inclusion in the World Heritage List.

## **15 Amending or revoking a declaration of a declared World Heritage property**

*Revoking declarations specifying nominated property*

- (1) The Minister must, by notice in the *Gazette*, revoke a declaration made under section 14 specifying a property that has been submitted to the World Heritage Committee for inclusion in the World Heritage List if the Commonwealth decides to withdraw the submission of the property for inclusion in the List.

*Amending declarations specifying nominated property*

- (2) The Minister must, by notice in the *Gazette*, amend a declaration made under section 14 specifying a property that has been submitted to the World Heritage Committee for inclusion in the World Heritage List so as to remove from the specification any part of the property that the Commonwealth decides to withdraw from the submission.

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*Revoking declarations specifying property not yet nominated*

- (3) The Minister must, by notice in the *Gazette*, revoke a declaration made under section 14 specifying a property that is not submitted to the World Heritage Committee for inclusion in the World Heritage List if:
- (a) the Minister is satisfied that the property does not have world heritage values; or
  - (b) the Commonwealth decides not to submit the property to the Committee for inclusion in the List; or
  - (c) the Minister is satisfied that none of the world heritage values of the property are under threat.

**15A Offences relating to declared World Heritage properties**

- (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 world heritage values of a declared World Heritage property.

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

- (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 world heritage values of a declared World Heritage property and the person is reckless as to that fact.

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

- (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.

- (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*.

## **Subdivision AA—National Heritage**

### **15B Requirement for approval of activities with a significant impact on a National Heritage place**

- (1) A constitutional corporation, the Commonwealth or a Commonwealth agency must not take an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place.

Civil Penalty:

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

- (2) A person must not, for the purposes of trade or commerce:
  - (a) between Australia and another country; or
  - (b) between 2 States; or
  - (c) between a State and Territory; or
  - (d) between 2 Territories;

take an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place.

Civil Penalty:

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

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

(3) A person must not take an action in:

(a) a Commonwealth area; or

(b) a Territory;

that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place.

Civil Penalty:

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

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

(4) A person must not take an action that has, will have or is likely to have a significant impact on the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place.

Civil Penalty:

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

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

Note: For *indigenous heritage value*, see section 528.

(5) A person must not take an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

Civil Penalty:

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

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

(6) Subsection (5) only applies to actions whose prohibition is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention. (However, that subsection may not apply to certain actions because of subsection (8).)

(7) A person must not take outside the Australian jurisdiction an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place outside the Australian jurisdiction.

Civil Penalty:



- (a) for an individual—5,000 penalty units;
  - (b) for a body corporate—50,000 penalty units.
- (8) Subsections (1) to (5) (inclusive) and (7) do not apply to an action if:
- (a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency, Commonwealth or person is in operation under Part 9 for the purposes of this section; or
  - (b) Part 4 lets the constitutional corporation, Commonwealth agency, Commonwealth or 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).

### **15C Offences relating to National Heritage places**

- (1) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, is guilty of an offence if:
- (a) the corporation or agency takes an action; and
  - (b) the action results or will result in a significant impact on the National Heritage values of a National Heritage place.
- Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
- (2) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, is guilty of an offence if:
- (a) the corporation or agency takes an action; and
  - (b) the action is likely to have a significant impact on the National Heritage values of a National Heritage place; and
  - (c) the corporation or agency is reckless as to the facts in paragraph (b).

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

- (3) A person is guilty of an offence if:
- (a) the person takes an action; and
  - (b) the action is taken for the purposes of trade or commerce:
    - (i) between Australia and another country; or
    - (ii) between 2 States; or
    - (iii) between a State and Territory; or
    - (iv) between 2 Territories; and
  - (c) the action results or will result in a significant impact on the National Heritage values of a National Heritage place.

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

- (4) A person is guilty of an offence if:
- (a) the person takes an action; and
  - (b) the action is taken for the purposes of trade or commerce:
    - (i) between Australia and another country; or
    - (ii) between 2 States; or
    - (iii) between a State and Territory; or
    - (iv) between 2 Territories; and
  - (c) the action is likely to have a significant impact on the National Heritage values of a National Heritage place; and
  - (d) the person is reckless as to the facts in paragraph (c).

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

- (5) A person is guilty of an offence if:
- (a) the person takes an action; and
  - (b) the action is taken in:
    - (i) a Commonwealth area; or
    - (ii) a Territory; and
  - (c) the action results or will result in a significant impact on the National Heritage values of a National Heritage place.

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

- (6) A person is guilty of an offence if:
- (a) the person takes an action; and

- (b) the action is taken in:
  - (i) a Commonwealth area; or
  - (ii) a Territory; and
- (c) the action is likely to have a significant impact on the National Heritage values of a National Heritage place; and
- (d) the person is reckless as to the facts in paragraph (c).

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

- (7) 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 National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place.

Note 1: For *indigenous heritage value*, see section 528.

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

- (8) 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 National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place; and
  - (c) the person is reckless as to the facts in paragraph (b).

Note 1: For *indigenous heritage value*, see section 528.

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

- (9) 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 National Heritage values of a National Heritage place; and
  - (c) the National Heritage place is in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

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

- (10) A person is guilty of an offence if:
- (a) the person takes an action; and

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- (b) the action is likely to have a significant impact on the National Heritage values of a National Heritage place; and
- (c) the National Heritage place is in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention; and
- (d) the person is reckless as to the facts in paragraphs (b) and (c).

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

- (11) A person is guilty of an offence if:
- (a) the person takes an action; and
  - (b) the action is taken outside the Australian jurisdiction; and
  - (c) the action results or will result in a significant impact on the National Heritage values of a National Heritage place; and
  - (d) the place is outside the Australian jurisdiction.

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

- (12) A person is guilty of an offence if:
- (a) the person takes an action; and
  - (b) the action is taken outside the Australian jurisdiction; and
  - (c) the action is likely to have a significant impact on the National Heritage values of a National Heritage place; and
  - (d) the person is reckless as to the facts in paragraph (c); and
  - (e) the place is outside the Australian jurisdiction.

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

- (13) An offence against any of subsections (1) to (12) (inclusive) 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.

- (14) Subsections (9) and (10) only apply to actions whose prohibition is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention. (However, those



subsections may not apply to certain actions because of subsection (16).)

- (15) Section 14.1 (standard geographical jurisdiction) of the *Criminal Code* does not apply to an offence created by this section.

Note: Section 5 affects the extra-territorial operation of this section.

- (16) Subsections (1) to (12) (inclusive) do not apply to an action if:
- (a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency or person is in operation under Part 9 for the purposes of this section; or
  - (b) Part 4 lets the constitutional corporation, Commonwealth agency or 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*.

## **Subdivision B—Wetlands of international importance**

### **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.

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- (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.

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*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 declared Ramsar wetland.

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

- (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 declared Ramsar wetland and the person is reckless as to that fact.

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



- (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.

- (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*.

### **Subdivision C—Listed threatened species and communities**

#### **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;

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- (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 listed threatened species; or
    - (ii) a listed threatened ecological community.

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

- (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 listed threatened species; or
    - (ii) a listed threatened ecological community;and the person is reckless as to that fact.

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

- (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.

- (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).

### **Subdivision D—Listed migratory species**

#### **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

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- (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 listed migratory species.

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

- (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 listed migratory species and the person is reckless as to that fact.

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

- (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.

- (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*.

## **Subdivision E—Protection of the environment from nuclear actions**

### **21 Requirement for approval of nuclear actions**

- (1) A constitutional corporation, the Commonwealth or Commonwealth agency must not take a nuclear action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

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

- (2) A person must not, for the purposes of trade or commerce:

- (a) between Australia and another country; or
- (b) between 2 States; or
- (c) between a State and a Territory; or
- (d) between 2 Territories;

take a nuclear action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

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

- (3) A person must not take in a Territory a nuclear action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

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

- (4) Subsections (1), (2) and (3) do not apply to an action if:

- (a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency, Commonwealth or

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person is in operation under Part 9 for the purposes of this section; or

- (b) Part 4 lets the constitutional corporation, Commonwealth agency, Commonwealth or 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).

**22 What is a *nuclear action*?**

- (1) In this Act:

***nuclear action*** means any of the following:

- (a) establishing or significantly modifying a nuclear installation;
- (b) transporting spent nuclear fuel or radioactive waste products arising from reprocessing;
- (c) establishing or significantly modifying a facility for storing radioactive waste products arising from reprocessing;
- (d) mining or milling uranium ore;
- (e) establishing or significantly modifying a large-scale disposal facility for radioactive waste;
- (f) de-commissioning or rehabilitating any facility or area in which an activity described in paragraph (a), (b), (c), (d) or (e) has been undertaken;
- (g) any other action prescribed by the regulations.

***nuclear installation*** means any of the following:

- (a) a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and sub-critical assemblies);
- (b) a plant for preparing or storing fuel for use in a nuclear reactor as described in paragraph (a);



- (c) a nuclear waste storage or disposal facility with an activity that is greater than the activity level prescribed by regulations made for the purposes of this section;
- (d) a facility for production of radioisotopes with an activity that is greater than the activity level prescribed by regulations made for the purposes of this section.

Note: A nuclear waste storage or disposal facility could include a facility for storing spent nuclear fuel, depending on the regulations.

**radioactive waste** means radioactive material for which no further use is foreseen.

**reprocessing** means a process or operation to extract radioactive isotopes from spent nuclear fuel for further use.

**spent nuclear fuel** means nuclear fuel that has been irradiated in a nuclear reactor core and permanently removed from the core.

- (2) In this Act:

**large-scale disposal facility** for radioactive waste means, if regulations are made for the purposes of this definition, a facility prescribed by the regulations.

## 22A Offences relating to nuclear actions

- (1) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, is guilty of an offence if:
- (a) the corporation or agency takes a nuclear action; and
  - (b) the nuclear action results or will result in a significant impact on the environment.

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

- (2) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, is guilty of an offence if:
- (a) the corporation or agency takes a nuclear action; and
  - (b) the nuclear action is likely to have a significant impact on the environment and the corporation or agency is reckless as to that fact.

**Chapter 2** Protecting the environment

**Part 3** Requirements for environmental approvals

**Division 1** Requirements relating to matters of national environmental significance

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

- (3) A person is guilty of an offence if:
- (a) the person takes a nuclear action; and
  - (b) the nuclear action is taken for the purposes of trade or commerce:
    - (i) between Australia and another country; or
    - (ii) between 2 States; or
    - (iii) between a State and a Territory; or
    - (iv) between 2 Territories; and
  - (c) the nuclear action results or will result in a significant impact on the environment.

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

- (4) A person is guilty of an offence if:
- (a) the person takes a nuclear action; and
  - (b) the nuclear action is taken for the purposes of trade or commerce:
    - (i) between Australia and another country; or
    - (ii) between 2 States; or
    - (iii) between a State and a Territory; or
    - (iv) between 2 Territories; and
  - (c) the nuclear action is likely to have a significant impact on the environment and the person is reckless as to that fact.

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

- (5) A person is guilty of an offence if:
- (a) the person takes a nuclear action; and
  - (b) the nuclear action is taken in a Territory; and
  - (c) the nuclear action results or will result in a significant impact on the environment.

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

- (6) A person is guilty of an offence if:
- (a) the person takes a nuclear action; and
  - (b) the nuclear action is taken in a Territory; and

- (c) the nuclear action is likely to have a significant impact on the environment and the person is reckless as to that fact.

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

- (7) An offence against subsection (1), (2), (3), (4), (5) or (6) 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.

- (8) Subsections (1), (2), (3), (4), (5) and (6) 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*.

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**Subdivision F—Marine environment**

**23 Requirement for approval of activities involving the marine environment**

*Actions in Commonwealth marine areas affecting the environment*

- (1) A person must not take in a Commonwealth marine area an action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

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

*Actions outside Commonwealth marine areas affecting those areas*

- (2) A person must not take outside a Commonwealth marine area but in the Australian jurisdiction an action that:
- (a) has or will have a significant impact on the environment in a Commonwealth marine area; or  
(b) is likely to have a significant impact on the environment in a Commonwealth marine area.

Civil penalty:

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

*Fishing in State or Territory waters managed by Commonwealth*

- (3) A person must not take in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory an action:
- (a) that:
- (i) is fishing (as defined in the *Fisheries Management Act 1991*); and  
(ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
- (b) that:
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- (i) has or will have a significant impact on the environment in those coastal waters; or
- (ii) is likely to have a significant impact on the environment in those coastal waters.

Civil penalty:

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

*Exceptions to prohibitions*

- (4) Subsection (1), (2) or (3) 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 the subsection; or
  - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
  - (c) 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
  - (d) the person taking the action is the Commonwealth or a Commonwealth agency; or
  - (e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

*Exception—fishing in Commonwealth waters managed by State*

- (5) Subsection (1) does not apply to an action if the action:
  - (a) is fishing (as defined in the *Fisheries Management Act 1991*); and
  - (b) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of a State or the Northern Territory as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
  - (c) is permitted under a law of the State or Territory.

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*Exception—fishing outside Commonwealth marine areas*

- (6) Subsection (2) does not apply to an action that:
- (a) is fishing (as defined in the *Fisheries Management Act 1991*); and
  - (b) is permitted under a law of a State or self-governing Territory.

**24 What is a *Commonwealth marine area*?**

Each of the following is a *Commonwealth marine area*:

- (a) any waters of the sea inside the seaward boundary of the exclusive economic zone, except:
  - (i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and
  - (ii) waters within the limits of a State or the Northern Territory;
- (b) the seabed under waters covered by paragraph (a);
- (c) airspace over waters covered by paragraph (a);
- (d) any waters over the continental shelf, except:
  - (i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and
  - (ii) waters within the limits of a State or the Northern Territory; and
  - (iii) waters covered by paragraph (a);
- (e) any seabed under waters covered by paragraph (d);
- (f) any airspace over waters covered by paragraph (d).

**24A Offences relating to marine areas**

*Actions in Commonwealth marine areas affecting the environment*

- (1) A person is guilty of an offence if:
- (a) the person takes an action; and
  - (b) the action is taken in a Commonwealth marine area; and

- (c) the action results or will result in a significant impact on the environment.

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

*Actions in Commonwealth marine areas likely to affect the environment*

- (2) A person is guilty of an offence if:
- (a) the person takes an action; and
  - (b) the action is taken in a Commonwealth marine area; and
  - (c) the action is likely to have a significant impact on the environment and the person is reckless as to that fact.

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

*Actions outside Commonwealth marine areas affecting those areas*

- (3) A person is guilty of an offence if:
- (a) the person takes an action; and
  - (b) the action is taken outside a Commonwealth marine area but in the Australian jurisdiction; and
  - (c) the action results or will result in a significant impact on the environment in a Commonwealth marine area.

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

*Actions likely to affect environment in Commonwealth marine areas*

- (4) A person is guilty of an offence if:
- (a) the person takes an action; and
  - (b) the action is taken outside a Commonwealth marine area but in the Australian jurisdiction; and
  - (c) the action is likely to have a significant impact on the environment in a Commonwealth marine area and the person is reckless as to that fact.

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

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*Fishing with impact in State or Territory waters managed by Commonwealth*

- (5) A person is guilty of an offence if:
- (a) the person takes an action that:
    - (i) is fishing (as defined in the *Fisheries Management Act 1991*); and
    - (ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
  - (b) the action is taken in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory; and
  - (c) the action results or will result in a significant impact on the environment in those coastal waters.

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

*Fishing with likely impact in State or Territory waters managed by Commonwealth*

- (6) A person is guilty of an offence if:
- (a) the person takes an action that:
    - (i) is fishing (as defined in the *Fisheries Management Act 1991*); and
    - (ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
  - (b) the action is taken in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory; and
  - (c) the action is likely to have a significant impact on the environment in those coastal waters and the person is reckless as to that fact.

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



*Penalties*

- (7) An offence against subsection (1), (2), (3), (4), (5) or (6) 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.

*Defences—general*

- (8) Subsection (1), (2), (3), (4), (5) or (6) 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 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
  - (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*.

*Defence—fishing in Commonwealth waters managed by State*

- (9) Subsections (1) and (2) do not apply to an action if the action:
- (a) is fishing (as defined in the *Fisheries Management Act 1991*); and
  - (b) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of a State or the Northern Territory as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and

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(c) is permitted under a law of the State or Territory.

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

*Defence—fishing outside Commonwealth marine areas*

(10) Subsections (3) and (4) do not apply to an action that:

(a) is fishing (as defined in the *Fisheries Management Act 1991*); and

(b) is permitted under a law of a State or self-governing Territory.

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

**Subdivision G—Additional matters of national environmental significance**

**25 Requirement for approval of prescribed actions**

(1) A person must not take an action that is prescribed by the regulations for the purposes of this subsection.

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) Before the Governor-General makes regulations prescribing an action for the purposes of subsection (1), the Minister (the *Environment Minister*) must:
- (a) inform the appropriate Minister of each State and self-governing Territory of the proposal to prescribe:
    - (i) the action; and
    - (ii) a thing as matter protected by this section in relation to the action; and
  - (b) invite the appropriate Minister of each State and self-governing Territory to give the Environment Minister comments on the proposal within a specified period of at least 28 days; and
  - (c) consider the comments (if any); and
  - (d) if comments have been given as described in paragraph (b)—take all reasonable steps to consult the appropriate Minister of each State and self-governing Territory with a view to agreeing on:
    - (i) the action to be prescribed; and
    - (ii) the thing to be prescribed as matter protected by this section in relation to the action.
- Note: Section 34 provides that the matter protected by this section is a thing prescribed by the regulations in relation to the action.
- (3A) To avoid doubt, regulations may be made for the purposes of this section even if no agreement is reached on the matters described in paragraph (3)(d).
- (4) The regulations may prescribe different things as matter protected by this section in relation to different actions prescribed for the purposes of subsection (1).
- (5) This section applies only to actions:
- (a) taken in a Territory or a place acquired by the Commonwealth for public purposes (within the meaning of section 52 of the Constitution); or
  - (b) taken in a Commonwealth marine area; or
  - (c) taken for the purpose of trade or commerce:
    - (i) between Australia and another country; or
    - (ii) between 2 States; or
    - (iii) between a State and a Territory; or

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- (iv) between 2 Territories; or
  - (d) taken by a constitutional corporation; or
  - (e) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.
- (6) Regulations prescribing an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more countries must specify the agreement.

**Subdivision H—Actions that are taken to be covered by this Division**

**25A Actions that are taken to be covered by this Division**

- (1) The regulations may provide that a specified action is taken to be an action to which a specified regulatory provision applies.
- Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.
- (2) To avoid doubt, if, as a result of a regulation made for the purposes of subsection (1), a regulatory provision applies to an action, the action is taken to be described in the provision.
- (3) Regulations made for the purposes of subsection (1) may only specify actions:
- (a) taken in a Territory; or
  - (b) taken in a Commonwealth marine area; or
  - (c) taken for the purpose of trade or commerce:
    - (i) between Australia and another country; or
    - (ii) between 2 States; or
    - (iii) between a State and a Territory; or
    - (iv) between 2 Territories; or
  - (d) taken by a constitutional corporation; or
  - (e) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.
- (4) Regulations specifying an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more countries must specify the agreement.



(5) In this section:

*regulatory provision* means:

- (a) a civil penalty provision set out in this Division; or
- (b) a provision of this Division that creates an offence.

## **Subdivision I—Evidentiary certificates**

### **25B Evidentiary certificates**

#### *Contravention*

- (1) The Minister may issue a written certificate:
  - (a) stating that a specified person has contravened, or is contravening, a specified civil penalty provision set out in this Division; and
  - (b) setting out particulars of that contravention.
- (2) The Minister may issue a certificate under subsection (1) relating to a particular contravention if the Minister has reason to believe that the person concerned has committed, or is committing, the contravention.
- (3) To avoid doubt, a certificate under subsection (1) may be issued even if any relevant proceedings under section 475 or 481 have been instituted.

#### *Proposal*

- (4) The Minister may issue a written certificate stating that, if a specified person were to carry out a proposal to engage in specified conduct, that conduct would contravene a specified civil penalty provision set out in this Division.
- (5) The Minister may issue a certificate under subsection (4) if the Minister has reason to believe that:
  - (a) the person proposes to engage in the conduct concerned; and
  - (b) the conduct would contravene the civil penalty provision concerned.
- (6) To avoid doubt, a certificate under subsection (4) may be issued even if any relevant proceedings under section 475 have been instituted.

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**25C Certificate to be given to person**

As soon as practicable after issuing a certificate under subsection 25B(1) or (4), the Minister must give a copy of the certificate to the person concerned.

**25D Evidentiary effect of certificate**

- (1) In any proceedings under section 475 or 481, a certificate under subsection 25B(1) is prima facie evidence of the matters in the certificate.
- (2) In any proceedings under section 475, a certificate under subsection 25B(4) is prima facie evidence of the matters in the certificate.
- (3) A document purporting to be a certificate under subsection 25B(1) or (4) must, unless the contrary is established, be taken to be such a certificate and to have been properly issued.
- (4) The Minister may certify that a document is a copy of a certificate under subsection 25B(1) or (4).
- (5) This section applies to the certified copy as if it were the original.

**25E Variation of certificate**

- (1) The Minister may vary a certificate under subsection 25B(1) or (4) so long as the variation is of a minor nature.
- (2) If a certificate is varied, the Minister must give the person concerned a written notice setting out the terms of the variation.

**25F Revocation of certificate**

- (1) The Minister may revoke a certificate under subsection 25B(1) or (4).
- (2) If a certificate is revoked, the Minister must give the person concerned a written notice stating that the certificate has been revoked.

## **Division 2—Protection of the environment from proposals involving the Commonwealth**

### **Subdivision A—Protection of environment from actions involving Commonwealth land**

#### **26 Requirement for approval of activities involving Commonwealth land**

##### *Actions on Commonwealth land*

- (1) A person must not take on Commonwealth land an action that has, will have or is likely to have a significant impact on the environment.

##### Civil penalty:

- (a) for an individual—1,000 penalty units;  
(b) for a body corporate—10,000 penalty units.

##### *Actions outside Commonwealth land affecting that land*

- (2) A person must not take outside Commonwealth land an action that:
- (a) has or will have a significant impact on the environment on Commonwealth land; or  
(b) is likely to have a significant impact on the environment on Commonwealth land.

##### Civil penalty:

- (a) for an individual—1,000 penalty units;  
(b) for a body corporate—10,000 penalty units.

##### *Exceptions to prohibitions*

- (3) Subsection (1) or (2) 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 the subsection; or  
(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or  
(d) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for

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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

- (e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process); or
- (f) the person taking the action is the Commonwealth or a Commonwealth agency.

Note 1: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place on Commonwealth land, because the heritage values of a place are part of the environment. See the definition of *environment* in section 528.

Note 2: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

**27 What is *Commonwealth land*?**

*Commonwealth land* is so much of a Commonwealth area as is not a Commonwealth marine area.

**27A Offences relating to *Commonwealth land***

- (1) A person is guilty of an offence if:
  - (a) the person takes an action; and
  - (b) the action is taken on Commonwealth land; and
  - (c) the action results or will result in a significant impact on the environment.

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

- (2) A person is guilty of an offence if:
  - (a) the person takes an action; and
  - (b) the action is taken on Commonwealth land; and
  - (c) the action is likely to have a significant impact on the environment and the person is reckless as to that fact.

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

- (3) A person is guilty of an offence if:
  - (a) the person takes an action; and



- (b) the action is taken outside Commonwealth land but in the Australian jurisdiction; and
- (c) the action results or will result in a significant impact on the environment on Commonwealth land.

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

- (4) A person is guilty of an offence if:
  - (a) the person takes an action; and
  - (b) the action is taken outside Commonwealth land but in the Australian jurisdiction; and
  - (c) the action is likely to have a significant impact on the environment on Commonwealth land and the person is reckless as to that fact.

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

- (5) An offence against subsection (1), (2), (3) or (4) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 120 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.

- (6) Subsection (1), (2), (3) or (4) 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 the subsection; or
  - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
  - (c) 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
  - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process); or
  - (e) the person taking the action is a Commonwealth agency.

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- 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: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place on Commonwealth land, because the heritage values of a place are part of the environment. See the definition of *environment* in section 528.
- Note 3: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

**Subdivision AA—Protection of Commonwealth Heritage places outside the Australian jurisdiction**

**27B Requirement for approval of actions with significant impact on Commonwealth Heritage places overseas**

- (1) A person must not take outside the Australian jurisdiction an action that has, will have or is likely to have a significant impact on the environment in a Commonwealth Heritage place outside the Australian jurisdiction.

Civil Penalty:

- (a) for an individual—1,000 penalty units;
- (b) for a body corporate—10,000 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).

Note: Subdivision F of Division 1 and Subdivision A of this Division protect the environment in Commonwealth Heritage places inside the Australian jurisdiction because those places are in Commonwealth marine areas or on Commonwealth land.

### **27C Offences relating to Commonwealth Heritage places overseas**

- (1) A person is guilty of an offence if:
- (a) the person takes an action; and
  - (b) the action is taken outside the Australian jurisdiction; and
  - (c) the action results or will result in a significant impact on the environment in a Commonwealth Heritage place; and
  - (d) the place is outside the Australian jurisdiction.

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

- (2) A person is guilty of an offence if:
- (a) the person takes an action; and
  - (b) the action is taken outside the Australian jurisdiction; and
  - (c) the action is likely to have a significant impact on the environment in a Commonwealth Heritage place; and
  - (d) the person is reckless as to the facts in paragraph (c); and
  - (e) the place is outside the Australian jurisdiction.

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

- (3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 120 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.

- (4) Section 14.1 (standard geographical jurisdiction) of the *Criminal Code* does not apply to an offence created by this section.

Note: Section 5 affects the extra-territorial operation of this section.

- (5) 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

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- (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*.

**Subdivision B—Protection of the environment from Commonwealth actions**

**28 Requirement for approval of activities of Commonwealth agencies significantly affecting the environment**

- (1) The Commonwealth or a Commonwealth agency must not take inside or outside the Australian jurisdiction an action that has, will have or is likely to have a significant impact on the environment inside or outside the Australian jurisdiction.

Civil penalty:

- (a) for a Commonwealth agency that is an individual—1,000 penalty units;
- (b) for a Commonwealth agency that is a body corporate—10,000 penalty units.

Note 1: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place from an action taken by the Commonwealth or a Commonwealth agency, because the heritage values of a place are part of the environment. See the definition of *environment* in section 528.

Note 2: This section does not apply to decisions to authorise activities. See Subdivision A of Division 1 of Part 23.

- (2) Subsection (1) does not apply to an action if:
  - (a) an approval of the taking of the action by the Commonwealth or Commonwealth agency is in operation under Part 9 for the purposes of this section; or



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- (b) Part 4 lets the Commonwealth or Commonwealth agency take the action without an approval under Part 9 for the purposes of this section; or
  - (c) the action is one declared by the Minister in writing to be an action to which this section does not apply; or
  - (d) 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
  - (e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).
- (3) The Minister may make a written declaration that actions are actions to which this section does not apply, but only if he or she is satisfied that it is necessary in the interests of:
- (a) Australia's defence or security; or
  - (b) preventing, mitigating or dealing with a national emergency.
- (4) The Minister may make a written declaration that all actions, or a specified class of actions, taken by a specified Commonwealth agency are actions to which this section does not apply.
- (5) The Minister may make a declaration under subsection (4) relating to a Commonwealth agency's actions only if he or she is satisfied that, in taking the actions to which the declaration relates, the agency must comply with the law of a State or Territory dealing with environmental protection.

### **Subdivision C—Actions that are taken to be covered by this Division**

#### **28AA Actions that are taken to be covered by this Division**

- (1) The regulations may provide that a specified action is taken to be an action to which a specified regulatory provision applies.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

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- (2) To avoid doubt, if, as a result of a regulation made for the purposes of subsection (1), a regulatory provision applies to an action, the action is taken to be described in the provision.
- (3) In this section:
- regulatory provision* means:
- (a) a civil penalty provision set out in this Division; or
  - (b) a provision of this Division that creates an offence.

## **Division 3—Review of extension of operation of this Part**

### **28A Identifying extra matters to be protected by this Part**

- (1) Every 5 years after the commencement of this Act, the Minister must cause a report to be prepared on whether this Part should be amended (or regulations made for the purposes of section 25) to prohibit or regulate additional actions that have, will have or are likely to have a significant impact on environmental matters that may properly be regarded as being of national or international significance.
- (2) The following must be taken into account in preparing the report:
  - (a) environmental matters that are properly regarded as being of national or international significance;
  - (b) the adequacy of existing legislation and administrative measures of the Commonwealth, the States and the Territories to prevent significant impacts on those matters;
  - (c) the principles of ecologically sustainable development;
  - (d) Australia's international obligations;
  - (e) the objects of this Act;
  - (f) the matters (if any) prescribed by the regulations for the purposes of this paragraph.
- (3) Before preparation of the report begins, the Minister must publish in accordance with the regulations (if any) an invitation for persons to comment, within a specified period, on the matters to be covered by the report.
- (4) Before preparation of the report is completed, the Minister must cause to be published in accordance with the regulations (if any):
  - (a) a draft of the report; and
  - (b) an invitation to comment on the draft within the period specified by the Minister.
- (5) The Minister must publish the report.
- (6) To avoid doubt, this section does not affect the operation of section 25.

## **Part 4—Cases in which environmental approvals are not needed**

### **Division 1—Actions covered by bilateral agreements**

#### **29 Actions declared by agreement not to need approval**

- (1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:
- (a) the action is taken in a State or self-governing Territory; and
  - (b) the action is one of a class of actions declared by a bilateral agreement between the Commonwealth and the State or Territory not to require approval under Part 9 for the purposes of the provision (because the action is approved in accordance with a management plan that is a bilaterally accredited management plan for the purposes of the bilateral agreement); and
  - (c) the provision of the bilateral agreement making the declaration is in operation in relation to the action; and
  - (d) the bilaterally accredited management plan is in force under a law of the State or Territory identified in or under the bilateral agreement; and
  - (e) the action is taken in accordance with the bilaterally accredited management plan.
- Note 1: Section 46 deals with bilateral agreements making declarations described in paragraph (1)(b).
- Note 2: Division 3 of Part 5 explains how the operation of a bilateral agreement may be ended or suspended. Also, under section 49, bilateral agreements do not operate in relation to actions in Commonwealth areas, or actions taken by the Commonwealth or a Commonwealth agency, unless they expressly provide that they do.
- (2) If the action is to be taken in 2 or more States or self-governing Territories, this section does not operate unless it operates in relation to each of those States or Territories.

### **30 Extended operation in State and Northern Territory waters**

- (1) Section 29 applies to an action taken on, over or under the seabed vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* in the same way that it applies to an action taken in the State.
- (2) Section 29 applies to an action taken on, over or under the seabed vested in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980* in the same way that it applies to an action taken in the Territory.
- (3) Section 29 applies to an action taken in a Commonwealth marine area to which a law of a State or self-governing Territory is applied by a Commonwealth law or by an agreement or arrangement under a Commonwealth law (other than this Act) in the same way as it applies to an action in the State or Territory, if the provision of the bilateral agreement has effect in relation to the area.

Note: A provision of a bilateral agreement only has effect in relation to a Commonwealth area if the agreement expressly provides that it does. See section 49.

### **31 Extended operation in non-self-governing Territories**

A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:

- (a) the action is taken in a Territory (the *action Territory*) that is not a self-governing Territory; and
- (b) an Act providing for the government of the action Territory provides that some or all of the law of a State or self-governing Territory is in force in the action Territory as a law of the Territory; and
- (c) the action is one of a class of actions declared by a bilateral agreement between the Commonwealth and the State or self-governing Territory not to require approval under Part 9 for the purposes of the provision of Part 3 (because the action is approved or taken in accordance with a bilaterally accredited management plan); and
- (d) the bilateral agreement specifies that the provision of the agreement making the declaration has effect in relation to actions in the action Territory; and



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- (e) the provision of the bilateral agreement making the declaration is in operation in relation to the action; and
- (f) the bilaterally accredited management plan is in force under a law of the State or self-governing Territory identified in or under the bilateral agreement; and
- (g) the action is taken in accordance with the bilaterally accredited management plan.

Note: Division 3 of Part 5 explains how the operation of a bilateral agreement may be ended or suspended.

## **Division 2—Actions covered by Ministerial declarations**

### **Subdivision A—Effect of declarations**

#### **32 Actions declared by Minister not to need approval**

A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:

- (a) the action is one of a class of actions declared by the Minister under section 33 not to require approval under Part 9 for the purposes of the provision (because the action is approved in accordance with an accredited management plan for the purposes of the declaration); and
- (b) the declaration is in operation when the action is taken; and
- (c) the accredited management plan is in force under a law of the Commonwealth identified in or under the declaration; and
- (d) the action is taken in accordance with the accredited management plan.

### **Subdivision B—Making declarations**

#### **33 Making declaration that actions do not need approval under Part 9**

##### *Declaration of actions not needing approval*

- (1) The Minister may declare in writing that actions in a class of actions specified in the declaration wholly or partly by reference to the fact that their taking has been approved by the Commonwealth or a specified Commonwealth agency, in accordance with a management plan that is an accredited management plan for the purposes of the declaration, do not require approval under Part 9 for the purposes of a specified provision of Part 3.

Note 1: Subdivisions C and D set out rules about prerequisites for making a declaration and limits on making a declaration.

Note 2: Section 35 provides for revocation of a declaration.

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*What is an accredited management plan?*

- (2) A management plan is an **accredited management plan** for the purposes of a declaration that certain actions do not require approval under Part 9 for the purposes of a specified provision of Part 3 if and only if the management plan:
- (a) is in force under a law of the Commonwealth identified in or under the declaration; and
  - (b) has been accredited in writing by the Minister in accordance with this section for the purposes of the declaration.

*Accrediting management plan*

- (3) For the purposes of subsection (2), the Minister may accredit by written instrument a management plan for the purposes of a declaration. However, the Minister may do so only if the Minister is satisfied that:
- (a) the management plan and the law under which it is in force (or is to be in force) meet the criteria prescribed by the regulations; and
  - (b) there has been or will be adequate assessment of the impacts that actions approved in accordance with the plan:
    - (i) have or will have; or
    - (ii) are likely to have;on each matter protected by a provision of Part 3 to which the declaration relates; and
  - (c) actions approved or taken in accordance with the management plan will not have unacceptable or unsustainable impacts on a matter protected by a provision of Part 3 to which the declaration relates.

The Minister must publish in accordance with the regulations (if any) the instrument accrediting the management plan.

Note: Subdivision C sets out more prerequisites for accrediting a plan.

*Tabling of management plan before accreditation*

- (4) The Minister must cause to be laid before each House of the Parliament a copy of a management plan that the Minister is considering accrediting for the purposes of subsection (2), together with a notice that the Minister proposes to accredit the plan for a declaration under this section.

*No accreditation before end of period for opposition*

- (5) The Minister must not accredit a management plan for the purposes of subsection (2) under a bilateral agreement:
- (a) before, or within 15 sitting days after, a copy of the management plan is laid before each House of the Parliament under this section; or
  - (b) if, within those 15 sitting days of a House, notice of a motion to oppose accreditation of the management plan is given in that House—within 15 sitting days of that House after the notice is given.

*No accreditation after accreditation opposed*

- (6) The Minister must not accredit the management plan if either House of the Parliament passes a resolution opposing accreditation of the management plan following a motion of which notice has been given within 15 sitting days after the management plan has been laid before the House under this section.

*No accreditation if motion not defeated in time*

- (7) The Minister must not accredit the management plan if at the end of 15 sitting days after notice of a motion to oppose accreditation of the management plan that was given in a House of the Parliament within 15 sitting days after the management plan was laid before the House under this section:
- (a) the notice has not been withdrawn and the motion has not been called on; or
  - (b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of.

*Extended time after dissolution or prorogation*

- (8) If:
- (a) notice of a motion to oppose the accreditation of the management plan is given in a House of the Parliament (the **opposing House**); and
  - (b) before the end of 15 sitting days of the opposing House after the notice is given:
    - (i) the House of Representatives is dissolved or expires; or
    - (ii) the Parliament is prorogued; and

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- (c) at the time of the dissolution, expiry or prorogation (as appropriate):
- (i) the notice has not been withdrawn and the motion has not been called on; or
  - (ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;
- the management plan is taken for the purposes of subsections (5), (6) and (7) to have been laid before the opposing House on the first sitting day of that House after the dissolution, expiry or prorogation (as appropriate).

**34 What is *matter protected* by a provision of Part 3?**

The *matter protected* by a provision of Part 3 specified in column 2 of an item of the following table is the thing specified in column 3 of the item.

<b>Matter protected by provisions of Part 3</b>		
<b>Item</b>	<b>Provision</b>	<b>Matter protected</b>
1	section 12	the world heritage values of a declared World Heritage property
1A	section 15A	the world heritage values of a declared World Heritage property
1B	section 15B	the National Heritage values of a National Heritage place
1C	section 15C	the National Heritage values of a National Heritage place
2	section 16	the ecological character of a declared Ramsar wetland
2A	section 17B	the ecological character of a declared Ramsar wetland
3	subsection 18(1)	a listed threatened species in the extinct in the wild category
4	subsection 18(2)	a listed threatened species in the critically endangered category
5	subsection 18(3)	a listed threatened species in the endangered category
6	subsection 18(4)	a listed threatened species in the vulnerable category

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<b>Matter protected by provisions of Part 3</b>		
<b>Item</b>	<b>Provision</b>	<b>Matter protected</b>
7	subsection 18(5)	a listed threatened ecological community in the critically endangered category
8	subsection 18(6)	a listed threatened ecological community in the endangered category
8A	subsection 18A(1) or (2)	a listed threatened species (except a species included in the extinct category of the list referred to in section 178 or a conservation dependent species) and a listed threatened ecological community (except an ecological community included in the vulnerable category of the list referred to in section 181)
9	section 20	a listed migratory species
9A	section 20A	a listed migratory species
10	section 21	the environment
10A	section 22A	the environment
11	subsection 23(1)	the environment
12	subsection 23(2)	the environment in a Commonwealth marine area
13	subsection 23(3)	the environment in the coastal waters (as defined in the <i>Fisheries Management Act 1991</i> ) in which the action is taken of the State or Territory
13A	subsection 24A(1) or (2)	the environment
13B	subsection 24A(3) or (4)	the environment in a Commonwealth marine area
13C	subsection 24A(5) or (6)	the environment in the coastal waters (as defined in the <i>Fisheries Management Act 1991</i> ) in which the action is taken of the State or Territory
14	section 25	a thing prescribed by the regulations for the purposes of this item in relation to an action to which section 25 applies

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<b>Matter protected by provisions of Part 3</b>		
<b>Item</b>	<b>Provision</b>	<b>Matter protected</b>
15	subsection 26(1)	the environment
16	subsection 26(2)	the environment on Commonwealth land
16A	subsection 27A(1) or (2)	the environment
16B	subsection 27A(3) or (4)	the environment on Commonwealth land
16C	section 27B	the environment in a Commonwealth Heritage place outside the Australian jurisdiction
16D	subsections 27C(1) and (2)	the environment in a Commonwealth Heritage place outside the Australian jurisdiction
17	section 28	the environment

**Subdivision C—Prerequisites for making declarations**

**34A Minister may only make declaration if prescribed criteria are met**

The Minister may make a declaration under section 33 only if the Minister is satisfied that the declaration:

- (a) accords with the objects of this Act; and
- (b) meets the requirements (if any) prescribed by the regulations.

**34B Declarations relating to declared World Heritage properties**

- (1) The Minister may make a declaration under section 33 relating to a declared World Heritage property only if:
  - (a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the World Heritage Convention; and
  - (b) the Minister is satisfied that the declaration will promote the management of the property in accordance with the Australian World Heritage management principles; and

- (c) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management plan under section 33 for the purposes of a declaration relating to a declared World Heritage property only if:
  - (a) the Minister is satisfied that the management plan is not inconsistent with Australia's obligations under the World Heritage Convention; and
  - (b) the Minister is satisfied that the management plan will promote the management of the property in accordance with the Australian World Heritage management principles.

### **34BA Declarations relating to National Heritage places**

- (1) The Minister may make a declaration under section 33 relating to a National Heritage place only if:
  - (a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the National Heritage management principles; and
  - (b) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management plan under section 33 for the purposes of such a declaration only if he or she is satisfied that the management plan will promote the management of the place concerned in accordance with the National Heritage management principles.

### **34C Declarations relating to declared Ramsar wetlands**

- (1) The Minister may make a declaration under section 33 relating to a declared Ramsar wetland only if:
  - (a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the Ramsar Convention; and
  - (b) the Minister is satisfied that the declaration will promote the management of the wetland in accordance with the Australian Ramsar management principles; and
  - (c) the declaration meets the requirements (if any) prescribed by the regulations.

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- (2) The Minister may accredit a management plan under section 33 for the purposes of a declaration relating to a declared Ramsar wetland only if:
  - (a) the Minister is satisfied that the management plan is not inconsistent with Australia's obligations under the Ramsar Convention; and
  - (b) the Minister is satisfied that the management plan will promote the management of the wetland in accordance with the Australian Ramsar management principles.

**34D Declarations relating to listed threatened species and ecological communities**

- (1) The Minister may make a declaration under section 33 relating to a listed threatened species or a listed threatened ecological community only if:
  - (a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under:
    - (i) the Biodiversity Convention; or
    - (ii) the Apia Convention; or
    - (iii) CITES; and
  - (b) the Minister is satisfied that the declaration will promote the survival and/or enhance the conservation status of each species or community to which the declaration relates; and
  - (c) the Minister is satisfied that the declaration is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and
  - (d) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management plan under section 33 for the purposes of a declaration relating to a listed threatened species or a listed threatened ecological community only if:
  - (a) the Minister is satisfied that the management plan is not inconsistent with Australia's obligations under:
    - (i) the Biodiversity Convention; or
    - (ii) the Apia Convention; or
    - (iii) CITES; and
  - (b) the Minister is satisfied that the management plan will promote the survival and/or enhance the conservation status

of each species or community to which the declaration relates; and

- (c) the Minister is satisfied that the management plan is not inconsistent with any recovery plan for the species or community or a threat abatement plan.

### **34E Declarations relating to migratory species**

- (1) The Minister may make a declaration under section 33 relating to a listed migratory species only if:
- (a) the Minister is satisfied that the declaration 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 declaration will promote the survival and/or enhance the conservation status of each species to which the declaration relates; and
  - (c) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management plan under section 33 for the purposes of a declaration relating to a listed migratory species only if:
- (a) the Minister is satisfied that the management plan 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 plan will promote the survival and/or enhance the conservation status of each species to which the declaration relates.



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**34F Declarations relating to Commonwealth Heritage places**

- (1) The Minister may make a declaration under section 33 relating to a Commonwealth Heritage place only if:
  - (a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the Commonwealth Heritage management principles; and
  - (b) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management plan under section 33 for the purposes of such a declaration only if he or she is satisfied that the management plan will promote the management of the place concerned in accordance with the Commonwealth Heritage management principles.

**Subdivision D—Other rules about declarations**

**35 Revoking declarations**

*Revoking declarations*

- (1) The Minister may, by written instrument, revoke a declaration made under section 33.

*Revocation does not affect some actions*

- (2) If:
  - (a) before the revocation of a declaration made under section 33, an action could be taken without approval under Part 9 because its taking had been approved by the Commonwealth or a Commonwealth agency in accordance with a management plan that was an accredited management plan for the purposes of the declaration; and
  - (b) the declaration is revoked;this Act continues to operate in relation to the action as if the declaration had not been revoked.

### **36 Other rules about declarations**

#### *Minister must not give preference*

- (1) In making a declaration or accrediting a management plan under section 33, or revoking a declaration under section 35, relating to an action taken:
  - (a) by a person for the purposes of trade between Australia and another country or between 2 States; or
  - (b) by a constitutional corporation;the Minister must not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

#### *Publishing declarations*

- (2) The Minister must publish a declaration made under section 33, an instrument accrediting a management plan under section 33, or an instrument under section 35 revoking a declaration, in accordance with the regulations.

## **Division 4—Forestry operations in certain regions**

### **Subdivision A—Regions covered by regional forest agreements**

#### **38 Part 3 not to apply to certain RFA forestry operations**

- (1) Part 3 does not apply to an RFA forestry operation that is undertaken in accordance with an RFA.
- (2) In this Division:

*RFA* or *regional forest agreement* has the same meaning as in the *Regional Forest Agreements Act 2002*.

*RFA forestry operation* has the same meaning as in the *Regional Forest Agreements Act 2002*.

Note: This section does not apply to some RFA forestry operations. See section 42.

### **Subdivision B—Regions subject to a process of negotiating a regional forest agreement**

#### **39 Object of this Subdivision**

The purpose of this Subdivision is to ensure that an approval under Part 9 is not required for forestry operations in a region for which a process (involving the conduct of a comprehensive regional assessment, assessment under the *Environment Protection (Impact of Proposals) Act 1974* and protection of the environment through agreements between the Commonwealth and the relevant State and conditions on licences for the export of wood chips) of developing and negotiating a regional forest agreement is being, or has been, carried on.

#### **40 Forestry operations in regions not yet covered by regional forest agreements**

- (1) A person may undertake forestry operations in an RFA region in a State or Territory without approval under Part 9 for the purposes of a provision of Part 3 if there is not a regional forest agreement in force for any of the region.

Note 1: This section does not apply to some forestry operations. See section 42.

Note 2: The process of making a regional forest agreement is subject to assessment under the *Environment Protection (Impact of Proposals) Act 1974*, as continued by the *Environmental Reform (Consequential Provisions) Act 1999*.

(2) In this Division:

**forestry operations** means any of the following done for commercial purposes:

- (a) the planting of trees;
- (b) the managing of trees before they are harvested;
- (c) the harvesting of forest products;

and includes any related land clearing, land preparation and regeneration (including burning) and transport operations. For the purposes of paragraph (c), **forest products** means live or dead trees, ferns or shrubs, or parts thereof.

**RFA region** has the meaning given by section 41.

- (3) Subsection (1) does not operate in relation to an RFA region that is the subject of a declaration in force under this section.
- (4) The Minister may declare in writing that subsection (1) does not apply to an RFA region.
- (5) A declaration is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) The Minister must not make a declaration that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of the action:
  - (a) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
  - (b) by a constitutional corporation.

#### **41 What is an RFA region?**

*Regions that are RFA regions*

- (1) Each of the following is an **RFA region**:

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- (a) the area delineated as the Eden RFA Region on the map of that New South Wales Region dated 13 May 1999 and published by the Bureau of Resource Sciences;
- (b) the area delineated as the Lower North East RFA Region on the map of that New South Wales Region dated 13 May 1999 and published by the Bureau of Resource Sciences;
- (c) the area delineated as the Upper North East RFA Region on the map of that New South Wales Region dated 13 May 1999 and published by the Bureau of Resource Sciences;
- (d) the area delineated as the South Region on the map of the Comprehensive Regional Assessment South CRA Region dated August 1997 and published by the State Forests GIS Branch of the organisation known as State Forests of New South Wales;
- (e) the area delineated as the Gippsland Region in the map of that Region dated 11 March 1998 and published by the Forest Information Section of the Department of Natural Resources and Environment of Victoria;
- (f) the area delineated as the North East RFA Region in the map of that Region dated 11 March 1998 and published by the Forest Information Section of the Department of Natural Resources and Environment of Victoria;
- (g) the area delineated as the West Region in the map of that Region dated 3 March 1999 and published by the Forest Information Section of the Department of Natural Resources and Environment of Victoria;
- (h) the area delineated as the South East Queensland RFA Region on the map of that Region dated 21 August 1998 and published by the Bureau of Resource Sciences.

*Regulations may amend list of regions*

- (2) The regulations may amend subsection (1).

*Prerequisites for prescribing RFA regions*

- (3) Before the Governor-General makes regulations amending subsection (1), the Minister must be satisfied that the proposed regulations, in conjunction with this Subdivision, will not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.



## **Subdivision C—Limits on application**

### **42 This Division does not apply to some forestry operations**

Subdivisions A and B of this Division, and subsection 6(4) of the *Regional Forest Agreements Act 2002*, do not apply to RFA forestry operations, or to forestry operations, that are:

- (a) in a property included in the World Heritage List; or
- (b) in a wetland included in the List of Wetlands of International Importance kept under the Ramsar Convention; or
- (c) incidental to another action whose primary purpose does not relate to forestry.

## **Division 5—Actions in the Great Barrier Reef Marine Park**

### **43 Actions taken in accordance with permission**

A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:

- (a) the action is taken in the Great Barrier Reef Marine Park established by the *Great Barrier Reef Marine Park Act 1975*; and
- (b) the person is authorised to take the action in the place where he or she takes it, by any of the following instruments made or issued under that Act (including instruments made or issued under an instrument (including regulations) made or issued under that Act):
  - (i) a zoning plan;
  - (ii) a plan of management;
  - (iii) a permission;
  - (iv) an authority;
  - (v) an approval;
  - (vi) a permit.

## **Division 6—Actions with prior authorisation**

### **43A Actions with prior authorisation**

- (1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:
  - (a) the action consists of a use of land, sea or seabed; and
  - (b) the action was specifically authorised under a law of the Commonwealth, a State or a self-governing Territory before the commencement of this Act; and
  - (c) immediately before the commencement of this Act, no further environmental authorisation was necessary to allow the action to be taken lawfully.

- (2) In this section:

***environmental authorisation*** means an authorisation under a law of the Commonwealth, a State or a self-governing Territory that has either or both of the following objects (whether express or implied):

- (a) to protect the environment;
- (b) to promote the conservation and ecologically sustainable use of natural resources.

### **43B Actions which are lawful continuations of use of land etc.**

- (1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if the action is a lawful continuation of a use of land, sea or seabed that was occurring immediately before the commencement of this Act. For this purpose, an enlargement, expansion or intensification of use is not a ***continuation*** of a use.
- (2) However, subsection (1) does not apply to an action that was specifically authorised under a law of the Commonwealth, a State or a self-governing Territory before the commencement of this Act.

Note: Section 43A applies to actions that were specifically authorised under a law before the commencement of this Act.

## **Chapter 3—Bilateral agreements**

### **Part 5—Bilateral agreements**

#### **Division 1—Object of Part**

##### **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).

## Division 2—Making bilateral agreements

### Subdivision A—Power to make bilateral agreements

#### 45 Minister may make agreement

##### *Making bilateral agreement*

- (1) On behalf of the Commonwealth, the Minister may enter into a bilateral agreement.

Note 1: A bilateral agreement can detail the level of Commonwealth accreditation of State practices, procedures, processes, systems, management plans and other approaches to environmental protection.

Note 2: Subdivision B sets out some prerequisites for entering into bilateral agreements.

##### *What is a **bilateral agreement**?*

- (2) A **bilateral agreement** is a written agreement between the Commonwealth and a State or a self-governing Territory that:
- (a) provides for one or more of the following:
    - (i) protecting the environment;
    - (ii) promoting the conservation and ecologically sustainable use of natural resources;
    - (iii) ensuring an efficient, timely and effective process for environmental assessment and approval of actions;
    - (iv) minimising duplication in the environmental assessment and approval process through Commonwealth accreditation of the processes of the State or Territory (or vice versa); and
  - (b) is expressed to be a bilateral agreement.

##### *Publishing notice of intention to enter into agreement*

- (3) As soon as practicable after starting the process of developing a draft bilateral agreement with a State or self-governing Territory, the Minister must publish, in accordance with the regulations (if any), notice of his or her intention to develop a draft bilateral agreement with the State or Territory.



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*Publishing bilateral agreements and related material*

- (4) As soon as practicable after entering into a bilateral agreement, the Minister must publish in accordance with the regulations:
- (a) the agreement; and
  - (b) a statement of the Minister's reasons for entering into the agreement; and
  - (c) a report on the comments (if any) received on the draft of the agreement published under Subdivision B.

**46 Agreement may declare actions do not need approval under Part 9**

*Declaration of actions not needing approval*

- (1) A bilateral agreement may declare that actions in a class of actions specified in the agreement wholly or partly by reference to the fact that their taking has been approved by:
- (a) the State or self-governing Territory that is party to the agreement; or
  - (b) an agency of the State or Territory;
- in accordance with a management plan that is a bilaterally accredited management plan for the purposes of the agreement do not require approval under Part 9 for the purposes of a specified provision of Part 3.

*What is a bilaterally accredited management plan?*

- (2) A management plan is a **bilaterally accredited management plan** for the purposes of a bilateral agreement declaring that certain actions do not require approval under Part 9 for the purposes of a specified provision of Part 3 if and only if the management plan:
- (a) is in force under a law:
    - (i) of the State or Territory that is party to the agreement; and
    - (ii) identified in or under the agreement; and
  - (b) has been accredited in writing by the Minister in accordance with this section for the purposes of the agreement.

*Accrediting management plan*

- (3) For the purposes of subsection (2), the Minister may accredit in writing a management plan for the purposes of a bilateral agreement with a State or self-governing Territory. However, the Minister may do so only if the Minister is satisfied that:
- (a) the management plan and the law of the State or Territory under which the management plan is in force (or is to be in force) meet the criteria prescribed by the regulations; and
  - (b) there has been or will be adequate assessment of the impacts that actions approved in accordance with the management plan:
    - (i) have or will have; or
    - (ii) are likely to have;on each matter protected by a provision of Part 3 in relation to which the agreement makes a declaration under subsection (1); and
  - (c) actions approved in accordance with the management plan will not have unacceptable or unsustainable impacts on a matter protected by a provision of Part 3 in relation to which the agreement makes a declaration under subsection (1).

The Minister must publish in accordance with the regulations (if any) the instrument accrediting the management plan.

Note: Subdivision B sets out more prerequisites for accrediting a plan.

*Tabling of management plan before accreditation*

- (4) The Minister must cause to be laid before each House of the Parliament a copy of a management plan that the Minister is considering accrediting for the purposes of subsection (2).

*No accreditation before end of period for disallowance*

- (5) The Minister must not accredit a management plan for the purposes of subsection (2) under a bilateral agreement:
- (a) before, or within 15 sitting days after, a copy of the plan is laid before each House of the Parliament; or
  - (b) if, within those 15 sitting days of a House, notice of a motion to disallow the management plan is given in that House—within 15 sitting days of that House after the notice is given.

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*Disallowance motion passed*

- (6) The Minister must not accredit the management plan if either House of the Parliament passes a resolution disallowing the management plan following a motion of which notice has been given within 15 sitting days after the plan has been laid before the House.

*Disallowance motion not defeated in time*

- (7) The Minister must not accredit the management plan if at the end of 15 sitting days after notice of a motion to disallow the management plan that was given in a House of the Parliament within 15 sitting days after the management plan was laid before the House:
- (a) the notice has not been withdrawn and the motion has not been called on; or
  - (b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of.

*Extended time after dissolution or prorogation*

- (8) If:
- (a) notice of a motion to disallow the management plan is given in a House of the Parliament (the **disallowing House**); and
  - (b) before the end of 15 sitting days of the disallowing House after the notice is given:
    - (i) the House of Representatives is dissolved or expires; or
    - (ii) the Parliament is prorogued; and
  - (c) at the time of the dissolution, expiry or prorogation (as appropriate):
    - (i) the notice has not been withdrawn and the motion has not been called on; or
    - (ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;
- the management plan is taken for the purposes of subsections (5), (6) and (7) to have been laid before the disallowing House on the first sitting day of that House after the dissolution, expiry or prorogation (as appropriate).

*No preference*

- (9) In accrediting a management plan for the purposes of a bilateral agreement making a declaration relating to an action:
- (a) by a person for the purposes of trade between Australia and another country or between 2 States; or
  - (b) by a constitutional corporation;
- the Minister must not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

*Requirements for bilateral agreement making declaration*

- (10) The declaration does not have effect for the purposes of this Act unless the bilateral agreement requires the State or self-governing Territory that is party to the agreement and agencies of the State or Territory:
- (a) to act in accordance with a management plan that is a bilaterally accredited management plan for the purposes of the agreement; and
  - (b) not to approve the taking of actions that would be inconsistent with a management plan that is a bilaterally accredited management plan for the purposes of the agreement.

**47 Agreement may declare classes of actions do not need assessment**

*Declaration of actions that do not need further assessment*

- (1) A bilateral agreement may declare that actions in a class of actions identified wholly or partly by reference to the fact that they have been assessed in a specified manner need not be assessed under Part 8.

Note: A declaration described in subsection (1) can accredit practices, procedures, systems of the State or self-governing Territory for environmental assessment.

*Prerequisite to declaration*

- (2) The Minister may enter into a bilateral agreement declaring that actions assessed in a specified manner need not be assessed under Part 8 only if he or she is satisfied that assessment of an action in

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the specified manner will include assessment of the impacts the action:

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

on each matter protected by a provision of Part 3.

*Assessment approaches that may be accredited*

- (3) The manner of assessment of actions that may be specified in a bilateral agreement between the Commonwealth and a State or Territory for the purposes of subsection (1) includes:
  - (a) assessment by any person under a law of the State or Territory; and
  - (b) assessment by any person under an agreement or other instrument made under a law of the State or Territory; and
  - (c) assessment by any person in accordance with criteria specified in an instrument agreed by the parties to the bilateral agreement.

This does not limit subsection (1).

*Report on actions that do not need further assessment*

- (4) If a bilateral agreement has (or could have) the effect that an action need not be assessed under Part 8 but the action must still be approved under Part 9, the agreement must provide for the Minister to receive a report including, or accompanied by, enough information about the relevant impacts of the action to let the Minister make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action.

**48 Other provisions of bilateral agreements**

- (1) A bilateral agreement may include:
  - (a) provisions for State accreditation of Commonwealth processes and decisions; and
  - (b) other provisions for achieving the object of this Part; and
  - (c) provisions for the provision of information by one party to the agreement to the other party; and
  - (d) provisions for the publication of information relating to the agreement; and



- (e) provisions relating to the operation of the whole agreement or particular provisions of the agreement, such as:
  - (i) provisions for the commencement of all or part of the agreement; or
  - (ii) provisions for auditing, monitoring and reporting on the operation and effectiveness of all or part of the agreement; or
  - (iii) provisions for review of all or part of the agreement; or
  - (iv) provisions for rescission of all or part of the agreement; or
  - (v) provisions for expiry of the agreement; and
- (f) provisions varying or revoking another bilateral agreement between the same parties; and
- (g) a provision dealing with a matter that another section of this Act permits a bilateral agreement to deal with.

*Consistency with Act and regulations*

- (2) A provision of a bilateral agreement has no effect for the purposes of this Act to the extent that it is inconsistent with this Act or the regulations. A provision of a bilateral agreement is not inconsistent with this Act or the regulations if it is possible to comply with both the provision on the one hand and the Act or regulations on the other hand.

*Relationship with sections 46 and 47*

- (3) Subsection (1) does not limit sections 46 and 47.

## **48A Mandatory provisions**

*Application*

- (1) A bilateral agreement with a State or self-governing Territory including a declaration that is described in section 46 or 47 and covers actions described in subsection (2) or (3) does not have effect for the purposes of this Act unless the agreement also includes the undertaking required by subsection (2) or (3) (as appropriate).

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*Agreements including declarations about approvals*

- (2) A bilateral agreement including a declaration described in section 46 must include an undertaking by the State or Territory to ensure that the environmental impacts that the following actions covered by the declaration have, will have or are likely to have on a thing that is not a matter protected by a provision of Part 3 for which the declaration has effect will be assessed to the greatest extent practicable:
- (a) actions taken in the State or Territory by a constitutional corporation;
  - (b) actions taken in the State or Territory by a person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories;
  - (c) actions that are taken in the State or Territory and are actions whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries;
  - (d) actions taken in the Territory (if applicable).

*Agreements including declarations about assessment*

- (3) A bilateral agreement including a declaration described in section 47 must include an undertaking by the State or Territory to ensure that the environmental impacts that the following actions covered by the declaration have, will have or are likely to have (other than the relevant impacts of those actions) will be assessed to the greatest extent practicable:
- (a) actions taken in the State or Territory by a constitutional corporation;
  - (b) actions taken in the State or Territory by a person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories;
  - (c) actions that are taken in the State or Territory and are actions whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries;
  - (d) actions taken in the Territory (if applicable).

*Auditing*

- (4) A bilateral agreement does not have effect for the purposes of this Act unless it includes a provision recognising that, under the *Auditor-General Act 1997*, the Auditor-General may audit the operations of the Commonwealth public sector (as defined in section 18 of that Act) relating to the bilateral agreement.

**49 Express provision needed to affect Commonwealth areas or actions**

- (1) A provision of a bilateral agreement does not have any effect in relation to an action in a Commonwealth area or an action by the Commonwealth or a Commonwealth agency, unless the agreement expressly provides otherwise.
- (2) A provision of a bilateral agreement does not have any effect in relation to an action in Booderee National Park, Kakadu National Park or Uluru-Kata Tjuta National Park.
- (3) ***Booderee National Park*** is the Commonwealth reserve (as it exists from time to time) to which the name Booderee National Park was given by Proclamation continued in force by the *Environmental Reform (Consequential Provisions) Act 1999*.

**Subdivision B—Prerequisites for making bilateral agreements**

**49A Consultation on draft agreement**

The Minister may enter into a bilateral agreement only if he or she:

- (a) has published in accordance with the regulations:
- (i) a draft of the agreement; and
  - (ii) an invitation for any person to give the Minister comments on the draft within a specified period of at least 28 days after the latest day on which the draft or invitation was published; and
- (b) has taken into account the comments (if any) received in response to the invitation; and
- (c) has considered the role and interests of indigenous peoples in promoting the conservation and ecologically sustainable use of natural resources in the context of the proposed agreement,

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taking into account Australia's relevant obligations under the Biodiversity Convention.

**50 Minister may only enter into agreement if prescribed criteria are met**

The Minister may enter into a bilateral agreement only if the Minister is satisfied that the agreement:

- (a) accords with the objects of this Act; and
- (b) meets the requirements (if any) prescribed by the regulations.

**51 Agreements relating to declared World Heritage properties**

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a declared World Heritage property only if:
  - (a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under the World Heritage Convention; and
  - (b) the Minister is satisfied that the agreement will promote the management of the property in accordance with the Australian World Heritage management principles; and
  - (c) the provision meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management plan under section 46 for the purposes of a bilateral agreement containing a provision relating to a declared World Heritage property only if:
  - (a) the Minister is satisfied that the plan is not inconsistent with Australia's obligations under the World Heritage Convention; and
  - (b) the Minister is satisfied that the plan will promote the management of the property in accordance with the Australian World Heritage management principles.

**51A Agreements relating to National Heritage places**

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a National Heritage place only if:
  - (a) the Minister is satisfied that the agreement will promote the management of the place in accordance with the National Heritage management principles; and

- (b) the provision meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management plan under section 46 for the purposes of such a bilateral agreement only if he or she is satisfied that the plan will promote the management of the place concerned in accordance with the National Heritage management principles.

## **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 plan 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 plan is not inconsistent with Australia's obligations under the Ramsar Convention; and
  - (b) the Minister is satisfied that the plan will promote the management of the wetland in accordance with the Australian Ramsar management principles.

## **53 Agreements relating to listed threatened species and ecological communities**

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a listed threatened species or a listed threatened ecological community only if:
  - (a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under:
    - (i) the Biodiversity Convention; or
    - (ii) the Apia Convention; or



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- (iii) CITES; and
  - (b) the Minister is satisfied that the agreement will promote the survival and/or enhance the conservation status of each species or community to which the provision relates; and
  - (c) the Minister is satisfied that the provision is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and
  - (d) the provision meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management plan under section 46 for the purposes of a bilateral agreement containing a provision relating to a listed threatened species or a listed threatened ecological community only if:
- (a) the Minister is satisfied that the plan is not inconsistent with Australia's obligations under:
    - (i) the Biodiversity Convention; or
    - (ii) the Apia Convention; or
    - (iii) CITES; and
  - (b) the Minister is satisfied that the plan will promote the survival and/or enhance the conservation status of each species or community to which the provision relates; and
  - (c) the Minister is satisfied that the plan is not inconsistent with any recovery plan for the species or community or a threat abatement plan.

**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 plan 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 plan 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 plan will promote the survival and/or enhance the conservation status of each species to which the provision relates.

### **55 Agreements relating to nuclear actions**

The Minister must not enter into a bilateral agreement, or accredit for the purposes of a bilateral agreement a management plan, containing a provision that:

- (a) relates to a nuclear action; and
- (b) has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of a nuclear action:
  - (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
  - (ii) by a constitutional corporation.

### **56 Agreements relating to prescribed actions**

The Minister must not enter into a bilateral agreement containing a provision that:

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- (a) relates to an action prescribed for the purposes of subsection 25(1); and
- (b) has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of the action:
  - (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
  - (ii) by a constitutional corporation.

## **Division 3—Suspending and ending the effect of bilateral agreements**

### **Subdivision A—Suspension and cancellation of effect**

#### **57 Representations about suspension or cancellation**

##### *Representations*

- (1) A person may refer to the Minister a matter that the person believes involves a contravention of a bilateral agreement.

##### *Minister must decide whether agreement has been contravened*

- (2) The Minister must:
  - (a) decide whether or not the bilateral agreement has been contravened; and
  - (b) decide what action he or she should take in relation to any contravention.

##### *Publication of decision and reasons*

- (3) The Minister must publish in accordance with the regulations each decision he or she makes, and the reasons for it.

##### *Minister need not decide on vexatious referrals*

- (4) Despite subsection (2), the Minister need not make a decision under that subsection if he or she is satisfied that:
  - (a) the referral was vexatious, frivolous, or not supported by sufficient information to make a decision; or
  - (b) the matter referred is the same in substance as a matter that has been referred before; or
  - (c) if the alleged contravention of the bilateral agreement were a contravention of the Act, the person referring the matter would not be entitled to apply under section 475 for an injunction in relation to the contravention.

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**58 Consultation before cancellation or suspension**

- (1) The Minister (the *Environment Minister*) must consult the appropriate Minister of a State or Territory that is party to a bilateral agreement if the Environment Minister believes that the State or Territory:
  - (a) has not complied with the agreement or will not comply with it; or
  - (b) has not given effect, or will not give effect, to the agreement in a way that:
    - (i) accords with the objects of this Act and the objects of this Part; and
    - (ii) promotes the discharge of Australia's obligations under any agreement with one or more other countries relevant to a matter covered by the agreement.
- (2) Subsection (1) operates whether the Environment Minister's belief relates to a matter referred to him or her under section 57 or not.

**59 Suspension or cancellation**

*Minister may give notice of suspension or cancellation*

- (1) If, after the consultation, the Environment Minister is not satisfied that the State or Territory:
  - (a) has complied with, and will comply with, the agreement; and
  - (b) has given effect, and will give effect, to the agreement in a way that:
    - (i) accords with the objects of this Act and the objects of this Part; and
    - (ii) promotes the discharge of Australia's obligations under all international agreements (if any) relevant to a matter covered by the agreement;

he or she may give the appropriate Minister of the State or Territory a written notice described in subsection (2) or (3).

Example 1: The Minister could give notice if the agreement declared that certain actions affecting the world heritage values of a declared world heritage property did not require approval under Part 9 if approved by the State, and the State approved an action that was not consistent with the protection, conservation and presentation of those values.

Example 2: The Minister could give notice if the agreement declared that certain actions affecting the ecological character of a declared Ramsar



wetland did not require approval under Part 9 if approved by the State, and the State approved an action that had a significant adverse impact on that character.

Example 3: The Minister could give notice if the agreement declared that certain actions affecting a listed threatened species did not require approval under Part 9 if approved by the State, and the State approved an action that caused the species to become more threatened.

*Notice of suspension*

- (2) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or specified provisions of this Act is suspended, either generally or in relation to actions in a specified class, for a period:
- (a) starting on a specified day at least 10 business days (in the capital city of the State or Territory) after the day on which the notice is given; and
  - (b) ending on a specified later day or on the occurrence of a specified event.

*Notice of cancellation*

- (3) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or specified provisions of this Act is cancelled, either generally or in relation to actions in a specified class, on a specified day at least 10 business days (in the capital city of the State or Territory) after the day on which the notice is given.

*Effect suspended or cancelled in accordance with notice*

- (4) The effect of an agreement or specified provision of an agreement is suspended or cancelled for the purposes of this Act, or of a specified provision of this Act, either generally or in relation to actions in a specified class, in accordance with the notice. This subsection has effect subject to sections 61 and 62.

*Reasons for giving notice*

- (5) When giving a notice, the Environment Minister must give the appropriate Minister of the State or Territory a written statement of reasons for the giving of the notice.

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*Publishing notice and reasons*

- (6) As soon as practicable after the suspension or cancellation occurs, the Environment Minister must publish in accordance with the regulations:
- (a) notice of the suspension or cancellation; and
  - (b) reasons for the suspension or cancellation.

**60 Emergency suspension of effect of bilateral agreement**

- (1) This section applies if the Minister is satisfied that:
- (a) the State or Territory that is party to a bilateral agreement is not complying with it, or will not comply with it; and
  - (b) as a result of the non-compliance, a significant impact is occurring or imminent on any matter protected by a provision of Part 3 that is relevant to an action in a class of actions to which the agreement relates.
- (2) The Minister may suspend the effect of the agreement or specified provisions of the agreement for the purposes of this Act or specified provisions of this Act, by notice:
- (a) given to the appropriate Minister of the State or Territory; and
  - (b) published in accordance with the regulations.
- (3) The suspension continues for the shorter of the following periods:
- (a) 3 months;
  - (b) the period that is specified in the notice (either by reference to time or by reference to the occurrence of an event).
- (4) Subsection (3) has effect subject to section 62.
- (5) As soon as practicable after the Minister (the *Environment Minister*) gives the appropriate Minister of the State or Territory (the *State or Territory Minister*) notice of the suspension, the Environment Minister must consult the State or Territory Minister about the non-compliance.
- (6) To avoid doubt, this section has effect despite sections 58 and 59.

## **61 Cancellation during suspension**

- (1) The Minister may give notice of the cancellation of the effect of a bilateral agreement even while its effect is suspended under section 59 or 60.
- (2) The cancellation may occur even though the period of suspension has not ended.
- (3) This section applies whether the cancellation or suspension has effect generally or in relation to actions in a specified class.

## **62 Revocation of notice of suspension or cancellation**

- (1) This section applies if the Minister:
  - (a) has given a notice under section 59 or 60 to suspend or cancel the effect of a bilateral agreement (either generally or in relation to actions in a specified class); and
  - (b) is later satisfied that the State or Territory that is party to the agreement will comply with the agreement and give effect to it in a way that:
    - (i) accords with the objects of this Act and the objects of this Part; and
    - (ii) promotes the discharge of Australia's obligations under all international agreements (if any) relevant to a matter covered by the agreement.
- (2) The Minister must revoke the notice of suspension or cancellation by another written notice:
  - (a) given to the appropriate Minister of the State or Territory; and
  - (b) published in accordance with the regulations.

However, the Environment Minister must not revoke the notice of cancellation after cancellation of the effect of the agreement occurs.

- (3) Suspension or cancellation of the effect of the agreement does not occur if the notice of suspension or cancellation is revoked before the suspension or cancellation would otherwise occur.
- (4) Suspension of the effect of the agreement ends when the notice of suspension is revoked.

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**63 Cancellation or suspension at request of other party**

*Minister must give notice of cancellation or suspension*

- (1) The Minister must give the appropriate Minister of a State or self-governing Territory that is party to a bilateral agreement a notice under subsection (2) or (3) if the appropriate Minister has requested a notice under that subsection in accordance with the agreement.

*Notice of suspension*

- (2) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or specified provisions of this Act is suspended, either generally or in relation to actions in a specified class, for a period:
  - (a) starting on a specified day after the day on which the notice is given; and
  - (b) ending on a specified later day or on the occurrence of a specified event.

*Notice of cancellation*

- (3) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or specified provisions of this Act is cancelled, either generally or in relation to actions in a specified class, on a specified day after the day on which the notice is given.

*Effect suspended or cancelled in accordance with notice*

- (4) The effect of an agreement or specified provision of an agreement is suspended or cancelled for the purposes of this Act, or of a specified provision of this Act, either generally or in relation to actions in a specified class, in accordance with the notice.

*Publishing notice and reasons*

- (5) As soon as practicable after the suspension or cancellation occurs, the Minister must publish in accordance with the regulations:
  - (a) notice of the suspension or cancellation; and
  - (b) reasons for the suspension or cancellation.

## **64 Cancellation or suspension of bilateral agreement does not affect certain actions**

### *Application*

- (1) This section explains how this Act operates in relation to an action that a person was able to take without approval under Part 9 for the purposes of a provision of Part 3 because of Division 1 of Part 4 and a provision of a bilateral agreement immediately before the cancellation or suspension of the operation of the provision of the agreement for the purposes of this Act or of any provision of this Act.

### *Actions approved in specified manner may be taken*

- (2) If the action was able to be taken without approval under Part 9 because its taking had already been approved in accordance with a management plan that is a bilaterally accredited management plan for the purposes of the agreement, this Act continues to operate in relation to the action as if the suspension or cancellation had not occurred.

## **Subdivision B—Expiry of bilateral agreements**

### **65 Expiry and review of bilateral agreements**

- (1) A bilateral agreement ceases to have effect for the purposes of this Act:
  - (a) 5 years after it is entered into; or
  - (b) at an earlier time when the agreement provides for it to cease to have effect for the purposes of this Act.

Note: The parties to a bilateral agreement may also agree to revoke it.

- (2) The Minister must:
  - (a) cause a review of the operation of a bilateral agreement to be carried out; and
  - (b) give a report of the review to the appropriate Minister of the State or Territory that is party to the agreement;before the agreement ceases to have effect as a result of this section.

Note: A bilateral agreement may also provide for review of its operation.



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- (3) The Minister must publish the report in accordance with the regulations.

**65A Expiry of bilateral agreement does not affect certain actions**

*Application of subsection (2)*

- (1) Subsection (2) explains how this Act operates in relation to an action that a person was able to take without approval under Part 9 for the purposes of a provision of Part 3 because of Division 1 of Part 4 and a provision of a bilateral agreement immediately before the agreement ceases to have effect for the purposes of this Act under section 65.

*Actions already approved may be taken*

- (2) This Act continues to operate in relation to the action as if the agreement had not ceased to have effect if the action was able to be taken without approval under Part 9 because its taking had already been approved in accordance with a management plan that was a bilaterally accredited management plan for the purposes of the agreement.

## **Chapter 4—Environmental assessments and approvals**

### **Part 6—Simplified outline of this Chapter**

#### **66 Simplified outline of this Chapter**

The following is a simplified outline of this Chapter:

This Chapter deals with assessment and approval of actions that Part 3 prohibits without approval (*controlled actions*). (It does not deal with actions that a bilateral agreement declares not to need approval.)

A person proposing to take an action, or a government body aware of the proposal, may refer the proposal to the Minister so he or she can decide:

- (a) whether his or her approval is needed to take the action; and
- (b) how to assess the impacts of the action to be able to make an informed decision whether or not to approve the action.

An assessment may be done using:

- (a) a process laid down under a bilateral agreement; or
- (b) a process specified in a declaration by the Minister; or
- (c) a process accredited by the Minister; or
- (d) preliminary documentation provided by the proponent; or
- (e) a public environment report; or

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(f) an environmental impact statement; or

(g) a public inquiry.

Once the report of the assessment is given to the Minister, he or she must decide whether or not to approve the action, and what conditions to attach to any approval.

## **Part 7—Deciding whether approval of actions is needed**

### **Division 1—Referral of proposals to take action**

#### **67 What is a *controlled action*?**

An action that a person proposes to take is a *controlled action* if the taking of the action by the person without approval under Part 9 for the purposes of a provision of Part 3 would be prohibited by the provision. The provision is a *controlling provision* for the action.

#### **68 Referral by person proposing to take action**

- (1) A person proposing to take an action that the person thinks may be or is a controlled action must refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.
- (2) A person proposing to take an action that the person thinks is not a controlled action may refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.
- (3) In a referral under this section, the person must state whether or not the person thinks the action the person proposes to take is a controlled action.
- (4) If the person states that the person thinks the action is a controlled action, the person must identify in the statement each provision that the person thinks is a controlling provision.
- (5) Subsections (1) and (2) do not apply in relation to a person proposing to take an action if the person has been informed by the Minister under section 73 that the proposal has been referred to the Minister.

#### **69 State or Territory may refer proposal to Minister**

- (1) A State, self-governing Territory or agency of a State or self-governing Territory that is aware of a proposal by a person to take an action may refer the proposal to the Minister for a decision

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whether or not the action is a controlled action, if the State, Territory or agency has administrative responsibilities relating to the action.

- (2) This section does not apply in relation to a proposal by a State, self-governing Territory or agency of a State or self-governing Territory to take an action.

Note: Section 68 applies instead.

**70 Minister may request referral of proposal**

- (1) If the Minister believes a person proposes to take an action that the Minister thinks may be or is a controlled action, the Minister may request:

- (a) the person; or  
(b) a State, self-governing Territory or agency of a State or self-governing Territory that the Minister believes has administrative responsibilities relating to the action;

to refer the proposal to the Minister within 15 business days or a longer period agreed by the Minister and the requested person, State, Territory or agency (as appropriate).

Note 1: If the proposal to take the action is not referred, the person cannot get an approval under Part 9 to take the action. If taking the action without approval contravenes Part 3, an injunction could be sought to prevent or stop the action, or the person could be ordered to pay a pecuniary penalty.

Note 2: Section 156 sets out rules about time limits.

- (2) In making a request, the Minister must act in accordance with the regulations (if any).

*Deemed referral of proposal*

- (3) If:
- (a) the Minister has made a request under subsection (1); and  
(b) the period for compliance with the request has ended; and  
(c) the requested person has not referred the proposal to the Minister in accordance with the request;

the Minister may, within 20 business days after the end of that period, determine in writing that this Act has effect as if:



- (d) if paragraph (1)(a) applies—the requested person had referred the proposal to the Minister under subsection 68(1) at the time the determination was made; or
  - (e) if paragraph (1)(b) applies—the requested person had referred the proposal to the Minister under subsection 69(1) at the time the determination was made.
- (4) A determination under subsection (3) has effect accordingly.
  - (5) A copy of a determination under subsection (3) is to be given to the requested person.
  - (6) Subsection 68(3) and section 72 do not apply to a referral covered by subsection (3) of this section.
  - (7) Despite subsection 74(4), section 74 applies to a referral covered by subsection (3) of this section.
  - (8) Subsection 74(3) applies to a referral covered by subsection (3) of this section as if the reference in paragraph 74(3)(a) to the referral were a reference to the determination concerned.

## **71 Commonwealth agency may refer proposal to Minister**

- (1) A Commonwealth agency (except the Minister) that is aware of a proposal by a person to take an action may refer the proposal to the Minister for a decision whether or not the action is a controlled action, if the agency has administrative responsibilities relating to the action.
- (2) This section does not apply in relation to a proposal by the Commonwealth or a Commonwealth agency to take an action.

Note: Section 68 applies instead.

## **72 Form and content of referrals**

- (1) A referral of a proposal to take an action must be made in a way prescribed by the regulations.
- (2) A referral of a proposal to take an action must include the information prescribed by the regulations.

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**73 Informing person proposing to take action of referral**

As soon as practicable after receiving a referral under section 69 or 71 of a proposal by a person to take an action, the Minister must:

- (a) inform the person of the referral; and
- (b) invite the person to give the Minister relevant information about whether the action is a controlled action, within 10 business days.

**74 Inviting provision of information on referred proposal**

*Inviting other Commonwealth Ministers to provide information*

- (1) As soon as practicable after receiving a referral of a proposal to take an action, the Minister (the **Environment Minister**) must:
  - (a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the proposal; and
  - (b) invite each other Minister informed to give the Environment Minister within 10 business days information that relates to the proposed action and is relevant to deciding whether or not the proposed action is a controlled action.

*Inviting comments from appropriate State or Territory Minister*

- (2) As soon as practicable after receiving, from the person proposing to take an action or from a Commonwealth agency, a referral of a proposal to take an action in a State or self-governing Territory, the Environment Minister must:
  - (a) inform the appropriate Minister of the State or Territory; and
  - (b) invite that Minister to give the Environment Minister comments within 10 business days on whether the proposed action is a controlled action;

if the Environment Minister thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance).

Note: Subsection (2) also applies in relation to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

*Inviting public comment*

- (3) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must cause to be published on the Internet:
- (a) the referral; and
  - (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the action is a controlled action.

*Section does not apply if proponent says action is controlled action*

- (4) This section does not apply in relation to a referral of a proposal to take an action by the person proposing to take the action if the person states in the referral that the person thinks the action is a controlled action.

**74A Minister may request referral of a larger action**

- (1) If the Minister receives a referral in relation to a proposal to take an action by a person, and the Minister is satisfied the action that is the subject of the referral is a component of a larger action the person proposes to take, the Minister may decide to not accept the referral.
- (2) If the Minister decides to not accept a referral under subsection (1), the Minister:
- (a) must give written notice of the decision to the person who referred the proposal to the Minister; and
  - (b) must give written notice of the decision to the person who is proposing to take the action that was the subject of the referral; and
  - (c) may, under section 70, request of the person proposing to take the action that was the subject of the referral, that they refer the proposal, to take the larger action, to the Minister.
- (3) To avoid doubt, sections 73 and 74 do not apply to a referral that has not been accepted in accordance with subsection (1).
- (4) If the Minister decides to accept a referral under subsection (1), the Minister must, at the time of making a decision under section 75:
- (a) give written notice of the decision to the person who referred the proposal to the Minister;

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- (b) publish in accordance with the regulations (if any), a copy or summary of the decision.

## **Division 2—Ministerial decision whether action needs approval**

### **75 Does the proposed action need approval?**

*Is the action a controlled action?*

- (1) The Minister must decide:
  - (a) whether the action that is the subject of a proposal referred to the Minister is a controlled action; and
  - (b) which provisions of Part 3 (if any) are controlling provisions for the action.
- (1AA) To avoid doubt, the Minister is not permitted to make a decision under subsection (1) in relation to an action that was the subject of a referral that was not accepted under subsection 74A(1).

*Minister must consider public comment*

- (1A) In making a decision under subsection (1) about the action, the Minister must consider the comments (if any) received:
  - (a) in response to the invitation (if any) under subsection 74(3) for anyone to give the Minister comments on whether the action is a controlled action; and
  - (b) within the period specified in the invitation.

*Considerations in decision*

- (2) If, when the Minister makes a decision under subsection (1), it is relevant for the Minister to consider the impacts of an action:
  - (a) the Minister must consider all adverse impacts (if any) the action:
    - (i) has or will have; or
    - (ii) is likely to have;on the matter protected by each provision of Part 3; and
  - (b) must not consider any beneficial impacts the action:
    - (i) has or will have; or
    - (ii) is likely to have;on the matter protected by each provision of Part 3.



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*Designating a proponent of the action*

- (3) If the Minister decides that the action is a controlled action, the Minister must designate a person as proponent of the action.

*Consent to designation*

- (4) The Minister may designate a person who does not propose to take the action only if:
- (a) the person agrees to being designated; and
  - (b) the person proposing to take the action agrees to the designation.

*Timing of decision and designation*

- (5) The Minister must make the decisions and designation:
- (a) within 20 business days of the referral; or
  - (b) if the person proposing to take the action referred the proposal and stated in the referral that the person thought the action was a controlled action—within 10 business days of the referral.

Note: Section 156 sets out rules about time limits.

*Time does not run while further information being sought*

- (6) If the Minister has requested more information under section 76 for the purposes of making a decision, a day is not to be counted as a business day for the purposes of subsection (5) 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*

- (7) The Minister and the person proposing to take 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 (5). If the agreement is made, those days are not to be counted for the purposes of that subsection.

## **76 Minister may request more information for making decision**

If the Minister believes on reasonable grounds that the referral of a proposal to take an action does not include enough information for the Minister to decide:

- (a) whether the action is a controlled action; or
- (b) which provisions of Part 3 (if any) are controlling provisions for the action;

the Minister may request the person proposing to take the action to provide specified information relevant to making the decision.

## **77 Notice and reasons for decision**

### *Giving notice*

- (1) Within 10 business days after deciding whether an action that is the subject of a proposal referred to the Minister is a controlled action or not, the Minister must:
  - (a) give written notice of the decision to:
    - (i) the person proposing to take the action; and
    - (ii) if the Minister has designated as proponent of the action a person who does not propose to take the action—that person; and
    - (iii) if the Minister decided that the action is a controlled action because of Division 1 of Part 3 (which deals with matters of national environmental significance)—the appropriate Minister of each State or self-governing Territory in which the action is to be taken; 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)(iii) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

### *Notice must identify any applicable controlling provisions*

- (2) If the decision is that the action is a controlled action, the notice must identify each of the controlling provisions.

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*Reasons for decision*

- (4) The Minister must give reasons for the decision to a person who:
- (a) has been given the notice; and
  - (b) within 28 days of being given the notice, has requested the Minister to provide reasons.

The Minister must do so as soon as practicable, and in any case within 28 days of receiving the request.

**77A Action to be taken in a particular manner**

- (1) If, in deciding whether the action is a controlled action or not, the Minister has made a decision (the *component decision*) that a particular provision of Part 3 is not a controlling provision for the action because the Minister believes it will be taken in a particular manner (whether or not in accordance with an accredited management plan for the purposes of a declaration under section 33 or a bilaterally accredited management plan for the purposes of a bilateral agreement), the notice, to be provided under section 77, must set out the component decision, identifying the provision and the manner.

Note: The Minister may decide that a provision of Part 3 is not a controlling provision for an action because he or she believes that the action will be taken in a manner that will ensure the action will not have (and is not likely to have) an adverse impact on the matter protected by the provision.

- (2) A person must not take an action, that is the subject of a notice that includes a particular manner under subsection (1), in a way that is inconsistent with the manner specified in the notice.

Civil penalty:

- (a) for an individual—1,000 penalty units, or such lower amount as is prescribed by the regulations;
- (b) for a body corporate—10,000 penalty units, or such lower amount as is prescribed by the regulations.

## 78 Reconsideration of decision

### *Limited power to vary or substitute decisions*

- (1) The Minister may revoke a decision (the ***first decision***) made under subsection 75(1) about an action and substitute a new decision under that subsection for the first decision, but only if:
  - (a) the Minister is satisfied that the revocation and substitution is warranted by the availability of substantial new information about the impacts that the action:
    - (i) has or will have; or
    - (ii) is likely to have;on a matter protected by a provision of Part 3; or
  - (aa) the Minister is satisfied that the revocation and substitution is warranted by a substantial change in circumstances that was not foreseen at the time of the first decision and relates to the impacts that the action:
    - (i) has or will have; or
    - (ii) is likely to have;on a matter protected by a provision of Part 3; or
  - (b) if the first decision was that the action was not a controlled action because the Minister believed the action would be taken in the manner identified under subsection 77A(1) in the notice given under section 77—the Minister is satisfied that the action is not being, or will not be, taken in the manner identified; or
  - (c) if the first decision was that the action was not a controlled action because of a provision of a bilateral agreement or a declaration under section 33 and a management plan that is a bilaterally accredited management plan for the purposes of the agreement or an accredited management plan for the purposes of the declaration:
    - (i) the provision of the agreement or declaration no longer operates in relation to the action; or
    - (ii) the management plan is no longer in force under a law of the Commonwealth, a State or a self-governing Territory identified in or under the agreement or declaration; or
  - (d) the Minister is requested under section 79 to reconsider the decision.

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*Reversing decision that provision of Part 3 is not controlling provision*

- (2) A provision of Part 3 letting an action be taken if the Minister has decided that a particular provision (the **prohibiting provision**) of that Part is not a controlling provision for the action does not prevent the Minister from acting under subsection (1) to revoke a decision that the prohibiting provision is not a controlling provision for an action and substitute a decision that the prohibiting provision is a controlling provision for the action.

*Decision not to be revoked after approval granted or refused or action taken*

- (3) The Minister must not revoke the first decision after:
- (a) the Minister has granted or refused an approval of the taking of the action; or
  - (b) the action is taken.

*General effect of change of decision*

- (4) When the first decision is revoked and a new decision is substituted for it:
- (a) any provisions of this Chapter that applied in relation to the action because of the first decision cease to apply in relation to the action; and
  - (b) any provisions of this Chapter that are relevant because of the new decision apply in relation to the action.

*Change of designation of proponent*

- (5) If the Minister believes a person (the **first proponent**) designated under section 75 as proponent of an action is no longer an appropriate person to be the designated proponent of the action, the Minister may revoke the designation and designate another person (the **later proponent**) as proponent of the action.

*Consent to designation*

- (6) The Minister may designate the other person as proponent of the action only if:
- (a) he or she consents to it and the person proposing to take the action agrees to it; or



- (b) the other person is the person proposing to take the action.

*Effect of change of designated proponent*

- (7) If the Minister revokes the designation of the first proponent and designates the later proponent:
- (a) the provisions of this Chapter that applied to the first proponent cease to apply to the first proponent in relation to the action but apply to the later proponent; and
  - (b) for the purposes of those provisions the later proponent is taken to have done anything the first proponent did in relation to the action; and
  - (c) for the purposes of those provisions anything done in relation to the first proponent in relation to the action is taken to have been done in relation to the later proponent.

**79 Reconsideration of decision on request by a State or Territory**

- (1) This section applies if:
- (a) the Minister (the *Environment Minister*) makes a decision about whether a provision of Division 1 of Part 3 is a controlling provision for an action proposed to be taken in a State or self-governing Territory; and
  - (b) the person proposing to take the action did not refer the proposal to the Minister with a statement that the person thought the action was a controlled action.

Note 1: Division 1 of Part 3 deals with requirements for approvals for actions involving matters of national environmental significance.

Note 2: This section also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

- (2) Within 5 business days of being notified of the decision, a Minister of the State or Territory may request the Environment Minister to reconsider the Environment Minister's decisions made under subsection 75(1).

Note: Subsection 75(1) provides for decisions about whether the action is a controlled action and what the controlling provisions for the action are.

- (3) Within 20 business days after receiving a request to reconsider a decision, the Environment Minister must:
- (a) reconsider the decision; and

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- (b) either confirm it or revoke it and substitute a new decision for it; and
- (c) give written notice of the outcome of the reconsideration and reasons for the outcome to:
  - (i) the Minister who requested the reconsideration; and
  - (ii) the person proposing to take the action; and
  - (iii) the designated proponent of the action; and
- (d) after giving notice as described in paragraph (c), publish notice of the outcome and the reasons for it in accordance with the regulations.

Note: Section 156 sets out rules about time limits.

## **Part 8—Assessing impacts of controlled actions**

### **Division 1—Simplified outline of this Part**

#### **80 Simplified outline of this Part**

The following is a simplified outline of this Part:

This Part provides for the assessment of impacts of controlled actions, to provide information for decisions whether or not to approve the taking of the actions. However, this Part does not apply to actions that a bilateral agreement or Ministerial declaration says are to be assessed in another way.

For actions that are to be assessed under this Part, the Minister must choose one of the following methods of assessment:

- (a) an accredited assessment process;
- (b) an assessment on preliminary documentation (see Division 4);
- (c) a public environment report (see Division 5);
- (d) an environmental impact statement (see Division 6);
- (e) a public inquiry (see Division 7).

## Division 2—Application of this Part

### 81 Application

- (1) This Part applies to the assessment of the relevant impacts of an action that the Minister has decided under Division 2 of Part 7 is a controlled action.
- (2) This section has effect subject to sections 83 and 84.
- (3) This section does not limit section 82.

### 82 What are the *relevant impacts* of an action?

*If the Minister has decided the action is a controlled action*

- (1) If the Minister has decided under Division 2 of Part 7 that an action is a controlled action, the *relevant impacts* of the action are the impacts that the action:
  - (a) has or will have; or
  - (b) is likely to have;on the matter protected by each provision of Part 3 that the Minister has decided under that Division is a controlling provision for the action.

*If the Minister has not decided whether the action is controlled*

- (2) If an action is a controlled action or would be apart from Division 1 or 2 of Part 4 (which provide that approval under Part 9 is not needed for an action covered by a bilateral agreement or declaration)—the *relevant impacts* of the action are impacts that the action:
  - (a) has or will have; or
  - (b) is likely to have;on the matter protected by each provision of Part 3 that is a controlling provision for the action or would be apart from whichever of those Divisions is relevant.

*Relationship between subsections (1) and (2)*

- (3) Subsection (1) has effect despite subsection (2).

### **83 This Part does not apply if action covered by bilateral agreement**

- (1) This Part does not apply in relation to an action if:
- (a) the action is to be taken in a State or self-governing Territory; and
  - (b) a bilateral agreement between the Commonwealth and the State or Territory declares that actions in a class that includes the action need not be assessed under this Part; and
  - (c) the provision of the bilateral agreement making the declaration is in operation in relation to the action.

Note 1: Subsection (1) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

Note 2: Section 47 deals with bilateral agreements making declarations described in paragraph (1)(b).

Note 2A: An action will be in a class of actions declared not to need assessment under this Part only if the action has been assessed in a manner specified in the bilateral agreement.

Note 3: Division 3 of Part 5 explains how the operation of a bilateral agreement may be ended or suspended. Also, under section 49, bilateral agreements do not operate in relation to actions in Commonwealth areas, or actions taken by the Commonwealth or a Commonwealth agency, unless they expressly provide that they do.

- (2) If the action is to be taken in 2 or more States or self-governing Territories, this section does not operate unless it operates in relation to each of those States or Territories.

### **84 This Part does not apply if action covered by declaration**

*When this Part does not apply*

- (1) This Part does not apply in relation to an action if:
- (a) the Minister has declared in writing that actions in a class that includes the action need not be assessed under this Part; and
  - (b) the declaration is in operation.

Note: An action will be in a class of actions declared not to need assessment under this Part only if the action has been assessed in a manner specified in the declaration.



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*Declaration*

- (2) The Minister may declare in writing that actions in a specified class of actions assessed by the Commonwealth or a Commonwealth agency in a specified manner do not require assessment under this Part.

*Prerequisites for making a declaration*

- (3) The Minister may make a declaration only if he or she is satisfied that:
- (a) assessment of an action in the specified manner will include assessment of the impacts the action:
    - (i) has or will have; or
    - (ii) is likely to have;on each matter protected by a provision of Part 3; and
  - (b) the specified manner of assessment meets the standards (if any) prescribed by the regulations; and
  - (c) if the taking of an action assessed in the specified manner must be approved under Part 9, he or she will receive a report including, or accompanied by, enough information about 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 purpose of each controlling provision) the taking of the action.

*Further requirements for making a declaration*

- (3A) Sections 34A, 34B, 34BA, 34C, 34D, 34E and 34F apply in relation to the making of a declaration under this section in the same way that they apply to the making of a declaration under section 33.

*Specified manner of assessment*

- (4) The manner of assessment that may be specified in a declaration includes assessment by a Commonwealth agency under a law of the Commonwealth. This does not limit subsection (2).

*Publishing declaration*

- (5) The Minister must publish a declaration in accordance with the regulations.

*Revoking declaration*

- (6) The Minister may, by instrument in writing published in accordance with the regulations, revoke a declaration.

*Minister must not give preference*

- (7) In making or revoking a declaration relating to an action taken:
- (a) by a person for the purposes of trade between Australia and another country or between 2 States; or
  - (b) by a constitutional corporation;
- the Minister must not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

## **Division 3—Decision on assessment approach**

### **Subdivision A—Simplified outline of this Division**

#### **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;
- (b) an assessment on preliminary documentation;
- (c) a public environment report;
- (d) an environmental impact statement;
- (e) a public inquiry.

### **Subdivision B—Deciding on approach for assessment**

#### **86 Designated proponent must provide preliminary information for assessment**

The designated proponent of an action, or a person proposing to take an action, must give the Minister in the prescribed way the prescribed information relating to the action.

Note: The Minister must not decide on an approach for assessment until he or she receives information under this section. See subsection 88(1).

#### **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 the action:
  - (a) assessment by an accredited assessment process;

- (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.

*Minister must consult before making decision*

- (2) If:
- (a) the action is to be taken in a State or self-governing Territory and
  - (b) a controlling provision for the action is in Division 1 of Part 3 (about matters of national environmental significance);
- the Minister must invite the appropriate Minister of the State or Territory to provide information relevant to deciding which approach is appropriate, before deciding on the approach to be used for assessment of the relevant impacts of the action.

Note: Subsection (2) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

*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 or under section 86; 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 subsection (2); 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:

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- (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 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 whichever of the following days is later (or either of them if they are the same):
  - (a) the day the Minister decides under Division 2 of Part 7 that the action is a controlled action;
  - (b) the day the Minister is given information relating to the action as required by section 86.

Note: Section 156 sets out rules about time limits.

*Extended time if difference of opinion with State or Territory*

- (2) However, subsection (1) has effect as if it referred to 30 business days (instead of 20 business days) if the Minister believes that information provided in response to an invitation under subsection 87(2) cannot be considered adequately to make the decision in the time allowed by subsection (1) apart from this subsection.

*Subsection (2) does not require decision to be delayed*

- (3) To avoid doubt, subsection (2) does not require the Minister to delay making a decision:
- (a) until information is received in response to an invitation under subsection 87(2); or
  - (b) until 20 business days after the Minister is given information relating to the action under section 86.

*Time does not run while further information sought*

- (4) If the Minister has requested more information under section 89 for the purposes of deciding on the approach to be used for assessment of the relevant impacts of the action, 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**

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



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Minister may request the designated proponent to provide specified information relevant to making the decision.

**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 designated proponent of 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.

- (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.

## **Division 4—Assessment on preliminary documentation**

### **92 Application**

This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action must be assessed by assessment on preliminary documentation under this Division.

### **93 Public comment on information included in referral**

- (1) Within 10 business days of the decision, the Minister must give the designated proponent a written direction:
  - (a) to publish within 10 business days in accordance with the regulations:
    - (i) specified information included in the referral to the Minister of the proposal to take the action; and
    - (ii) specified information that was given to the Minister under section 86; and
    - (iii) specified information relating to the action that was given to the Minister after the referral but before the Minister made the decision under section 87; and
    - (iv) an invitation for anyone to give the designated proponent comments relating to the information or the action within a period of the length specified in the direction; and
  - (b) to give to the Minister a copy and summary of any comments received within the period specified in the invitation.
- (2) The designated proponent must comply with the direction.

### **94 Revised documentation**

- (1) After the period for comment, the designated proponent must give the Minister:
  - (a) a document that sets out the information provided to the Minister previously in relation to the action, with any changes or additions needed to take account of any comments received by the designated proponent; or

- (b) if the designated proponent did not receive any comments—a written statement to that effect.
- (2) The Minister may refuse to accept a document referred to in paragraph (1)(a) if he or she believes on reasonable grounds that it is inadequate for the purposes of making an informed decision on approving under Part 9 (for the purposes of each controlling provision) the taking of the action.

## **95 Assessment report**

### *Preparation*

- (1) The Secretary must prepare, and give to the Minister, a report relating to the action within 20 business days after:
  - (b) if the designated proponent has received comments in response to an invitation under section 93—the day the Minister accepted from the designated proponent the document described in paragraph 94(1)(a); or
  - (c) if the designated proponent has not received any comments in response to an invitation under section 93—the day the designated proponent gave the Minister the statement to that effect under paragraph 94(1)(b).

### *Publication*

- (2) The Secretary must provide to a person who asks for the report a copy of it (either free or at a reasonable charge determined by the Secretary).

### *Discretion not to publish*

- (3) However, the Secretary may refuse to provide a copy of so much of the report as:
  - (a) is an exempt document under the *Freedom of Information Act 1982* on the grounds of the security of the Commonwealth or its providing advice to the Minister; or
  - (b) the Secretary is satisfied is commercial-in-confidence.

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*Commercial-in-confidence*

- (4) The Secretary must not be satisfied that a part of the report is commercial-in-confidence unless a person demonstrates to the Secretary that:
- (a) release of the information in that part would cause competitive detriment to the person; and
  - (b) the information in that part is not in the public domain; and
  - (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
  - (d) the information is not readily discoverable.

## **Division 5—Public environment reports**

### **96 Application**

This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action must be assessed by a public environment report under this Division.

### **97 Minister must prepare guidelines for draft public environment report**

- (1) The Minister must prepare written guidelines for the content of a draft report about the relevant impacts of the action. The Minister must do so:
  - (a) within 20 business days of the decision that the relevant impacts of the action must be assessed by a public environment report under this Division; or
  - (b) if the Minister invites a person to comment on a draft of the guidelines within a period specified by the Minister—within 20 business days after the end of that period (or the latest of those periods, if there is more than one).
- (2) In preparing the guidelines, the Minister must seek to ensure that the draft report will:
  - (a) contain enough information about the action and its relevant impacts to 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; and
  - (b) address the matters (if any) prescribed by the regulations.
- (3) The guidelines may also provide for the draft report to include information about other certain and likely impacts of the action if:
  - (a) the action is to be taken in a State or self-governing Territory; and
  - (b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the draft report includes information about those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and



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(c) the action:

- (i) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or
- (ii) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

Note: Paragraph (3)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

(4) Division 2 does not limit:

- (a) subsection (3); or
- (b) section 98 so far as it relates to guidelines prepared in reliance on that subsection.

(5) In preparing the guidelines, the Minister may:

- (a) invite anyone to comment on a draft of the guidelines within a period specified by the Minister; and
- (b) take account of the comments received (if any).

**98 Designated proponent must invite comment on draft public environment report**

*Designated proponent's obligations*

(1) The designated proponent of the action must:

- (a) prepare a draft report about the relevant impacts of the action (and any other impacts mentioned under subsection 97(3) in the guidelines for the content of the draft report); and
- (b) obtain the Minister's approval for publication of the draft report; and
- (c) publish in accordance with the regulations:
  - (i) the draft report; and
  - (ii) an invitation for anyone to give the designated proponent comments relating to the draft report or the action within the period specified in the invitation; and
- (d) give the Minister a copy and summary of the comments (if any) received within the period specified in the invitation.

*Approval of publication of draft report*

- (2) The Minister may only approve the publication of the draft report if he or she is satisfied that the draft report adequately addresses the guidelines for the content of the draft report.

*Period for comment*

- (3) The period specified in the invitation to comment must be the period specified in writing given by the Minister to the designated proponent. The Minister must not specify a period of less than 20 business days.

## **99 Finalising public environment report**

*Designated proponent must finalise report*

- (1) After the end of the period specified in the invitation to comment under section 98, the designated proponent must finalise the draft report, taking account of the comments received (if any), and give the finalised report to the Minister.

*Form of finalised report*

- (2) The designated proponent may give the finalised report to the Minister in the form of:
  - (a) a revised version of the draft report; or
  - (b) the draft report and a supplement to the draft report.

*Refusal to accept finalised report*

- (3) The Minister may refuse to accept the finalised report if he or she is satisfied on reasonable grounds that the finalised report is inadequate for the purposes of making an informed decision on approving under Part 9 (for the purposes of each controlling provision) the taking of the action.

*Publication of finalised report*

- (4) After the Minister has accepted the finalised report, the designated proponent must publish it in accordance with the regulations.

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**100 Assessment report**

*Preparation*

- (1) The Secretary must prepare, and give to the Minister, a report relating to the action within 20 business days after the day on which the Minister accepted the finalised report from the designated proponent.

*Publication*

- (2) The Secretary must provide to a person who asks for the report a copy of it (either free or at a reasonable charge determined by the Secretary).

*Discretion not to publish*

- (3) However, the Secretary may refuse to provide a copy of so much of the report as:
  - (a) is an exempt document under the *Freedom of Information Act 1982* on the grounds of the security of the Commonwealth or its providing advice to the Minister; or
  - (b) the Secretary is satisfied is commercial-in-confidence.

*Commercial-in-confidence*

- (4) The Secretary must not be satisfied that a part of the report is commercial-in-confidence unless a person demonstrates to the Secretary that:
  - (a) release of the information in that part would cause competitive detriment to the person; and
  - (b) the information in that part is not in the public domain; and
  - (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
  - (d) the information is not readily discoverable.

## **Division 6—Environmental impact statements**

### **101 Application**

This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action must be assessed by an environmental impact statement under this Division.

### **102 Minister must prepare guidelines for draft environmental impact statement**

- (1) The Minister must prepare written guidelines for the content of a draft statement about the action and its relevant impacts. The Minister must do so:
  - (a) within 20 business days of the decision that the relevant impacts of the decision must be assessed by an environmental impact statement under this Division; or
  - (b) if the Minister invites a person to comment on a draft of the guidelines within a period specified by the Minister—within 20 business days after the end of that period (or the latest of those periods, if there is more than one).
- (2) In preparing the guidelines, the Minister must seek to ensure that the draft statement will:
  - (a) contain enough information about the action and its relevant impacts to 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; and
  - (b) address any matters specified by the regulations.
- (3) The guidelines may also provide for the draft statement to include information about other certain and likely impacts of an action if:
  - (a) the action is to be taken in a State or self-governing Territory; and
  - (b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the draft statement includes information about those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and

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(c) the action:

- (i) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or
- (ii) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

Note: Paragraph (3)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

(4) Division 2 does not limit:

- (a) subsection (3); or
- (b) section 103 so far as it relates to guidelines prepared in reliance on that subsection.

(5) In preparing the guidelines, the Minister may:

- (a) invite anyone to comment on a draft of the guidelines within a period specified by the Minister; and
- (b) take account of the comments (if any) received.

**103 Designated proponent must invite comment on draft environmental impact statement**

*Designated proponent's obligations*

(1) The designated proponent of the action must:

- (a) prepare a draft statement about the relevant impacts of the action (and any other impacts mentioned under subsection 102(3) in the guidelines for the content of the draft statement); and
- (b) obtain the Minister's approval for publication of the draft statement; and
- (c) publish in accordance with the regulations:
  - (i) the draft statement; and
  - (ii) an invitation for anyone to give the designated proponent comments relating to the draft statement or the action within the period specified in the invitation; and

- (d) give the Minister a copy and summary of the comments (if any) received within the period specified in the invitation.

*Approval of publication of draft statement*

- (2) The Minister may only approve the publication of the draft statement if he or she is satisfied that the draft statement adequately addresses the guidelines for the content of the draft statement.

*Period for comment*

- (3) The period specified in the invitation to comment must be the period specified in writing given by the Minister to the designated proponent. The Minister must not specify a period of less than 20 business days.

## **104 Finalising draft environmental impact statement**

*Designated proponent must finalise statement*

- (1) After the period specified in the invitation to comment under section 103, the designated proponent must:
  - (a) finalise the draft statement, taking account of the comments (if any) received in response to the invitation; and
  - (b) give the finalised statement to the Minister.

*Form of finalised statement*

- (2) The designated proponent may give the finalised statement to the Minister in the form of:
  - (a) a revised version of the draft statement; or
  - (b) the draft statement and a supplement to the draft statement.

*Refusal to accept finalised statement*

- (3) The Minister may refuse to accept the finalised statement if he or she is satisfied on reasonable grounds that it is inadequate for the purposes of making an informed decision on approving under Part 9 (for the purposes of each controlling provision) the taking of the action.



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*Publication of finalised statement*

- (4) After the Minister has accepted the finalised statement, the designated proponent must publish it in accordance with the regulations.

**105 Assessment report**

*Preparation*

- (1) The Secretary must prepare, and give to the Minister, a report relating to the action within 30 business days after the day on which the Minister accepted from the designated proponent the finalised statement.

*Publication*

- (2) The Secretary must provide to a person who asks for the report a copy of it (either free or at a reasonable charge determined by the Secretary).

*Discretion not to publish*

- (3) However, the Secretary may refuse to provide a copy of so much of the report as:
  - (a) is an exempt document under the *Freedom of Information Act 1982* on the grounds of the security of the Commonwealth or its providing advice to the Minister; or
  - (b) the Secretary is satisfied is commercial-in-confidence.

*Commercial-in-confidence*

- (4) The Secretary must not be satisfied that a part of the report is commercial-in-confidence unless a person demonstrates to the Secretary that:
  - (a) release of the information in that part would cause competitive detriment to the person; and
  - (b) the information in that part is not in the public domain; and
  - (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
  - (d) the information is not readily discoverable.

## **Division 7—Inquiries**

### **Subdivision A—Preliminary**

#### **106 Simplified outline**

The following is a simplified outline of this Division:

This Division provides for the Minister to appoint commissions to carry out inquiries in a flexible way into the impacts of actions.

Commissioners have powers to call witnesses, obtain documents and inspect places for the purposes of their inquiries.

Commissioners must report to the Minister and publish their reports.

### **Subdivision B—Establishment of inquiries**

#### **107 Appointing commissioners and setting terms of reference**

- (1) If the Minister decides that the relevant impacts of an action must be assessed by inquiry under this Division, the Minister must:
  - (a) appoint in writing one or more persons (the *commissioners*) as a commission to conduct the inquiry and report to the Minister in relation to the action; and
  - (b) specify in writing (the *terms of reference*):
    - (i) the matters relating to the action that are to be the subject of the inquiry and report; and
    - (ii) the period within which the commission must report to the Minister.
- (2) If the Minister appoints 2 or more commissioners for an inquiry, the Minister must appoint one of them to preside at the inquiry.

Note 1: The Minister may revoke an appointment and amend terms of reference. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: Subdivision E contains more provisions about the basis on which a commissioner holds office.

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- (3) In specifying in the terms of reference the matters relating to the action that are to be the subject of the inquiry and report, the Minister:
- (a) must specify the relevant impacts of the action; and
  - (b) may specify other certain or likely impacts of the action.
- (4) However, the Minister may specify other certain or likely impacts of the action only if:
- (a) the action is to be taken in a State or self-governing Territory; and
  - (b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the inquiry reports on those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and
  - (c) the action:
    - (i) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or
    - (ii) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.
- Note: Paragraph (4)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.
- (5) The Minister may also specify in the terms of reference the manner in which the commission is to carry out the inquiry.

**108 Publicising inquiry**

- (1) As soon as practicable, the commission must publish in accordance with the regulations and in any other way it thinks fit:
- (a) the terms of reference; and
  - (b) the information relating to the action given to the Minister under this Chapter before the Minister made the decision under Division 3 to use an inquiry to assess the relevant impacts of the action.

- (2) The commission need not publish the information described in paragraph (1)(b) if, before the Minister appointed the commission, the designated proponent of the action published:
- (a) a draft report under section 98 (which deals with draft public environment reports); or
  - (b) a draft statement under section 103 (which deals with draft environmental impact statements).

However, in this case the commission must publish as described in subsection (1) notice of the fact that the draft report or draft statement has already been published.

## **Subdivision C—Conduct of inquiries**

### **109 Procedure of inquiries**

- (1) A commission must comply with the terms of reference in conducting its inquiry.
- (2) Subject to this Division, a commission:
  - (a) may determine the procedure to be followed in its inquiry; and
  - (b) is not subject to any directions by an employee of the Commonwealth or by a Commonwealth agency; and
  - (c) is not bound by the rules of evidence.

### **110 Inquiry to be public**

- (1) A hearing held as part of an inquiry must be conducted in public, except so far as the commission directs otherwise.
- (2) The commission must make publicly available (in any way the commission thinks fit) the content of any submission or evidence given to the commission in writing, except so far as the commission directs otherwise.
- (3) If the commission believes that it is desirable in the public interest, the commission may:
  - (a) give directions that all or part of the inquiry be held in private, specifying the persons who may be present; and
  - (b) give directions prohibiting or restricting the publication of all or specified passages of submissions or evidence given to the commission orally or in writing.

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## 111 Calling witnesses

### *Summoning witnesses*

- (1) A commissioner may, by writing signed by the commissioner, summon a person to appear before the commission at a time and place specified in the summons to give evidence and produce any documents mentioned in the summons.

### *Failure of witness to attend*

- (2) A person served with a summons to appear as a witness at an inquiry by a commission must not:
  - (a) fail to attend as required by the summons; or
  - (b) fail to appear and report from day to day unless excused or released from further attendance by or on behalf of the commission.

Note: A defendant bears an evidential burden in relation to the excuse or release from further attendance mentioned in paragraph (2)(b). See subsection 13.3(3) of the *Criminal Code*.

### *Offence*

- (3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction by imprisonment for not more than 6 months, a fine of not more than 30 penalty units, or both.

### *Allowances for witnesses*

- (4) A person summoned by a commission to appear as a witness at an inquiry is entitled to be paid by the Commonwealth such allowances for travelling and other expenses as are prescribed by the regulations.

## 112 Dealing with witnesses

### *Power to administer oath or affirmation*

- (1) A commissioner may administer an oath or affirmation to a person appearing as a witness before the commission.

Note: This means that proceedings before the commission are *judicial proceedings* for the purposes of Part III of the *Crimes Act 1914*, which creates various offences relating to judicial proceedings.

*Refusal to be sworn or to answer questions*

- (2) A person appearing as a witness at an inquiry by a commission must not:
- (a) refuse or fail to be sworn or to make an affirmation; or
  - (b) refuse or fail to answer a question that the person is required to answer by the commissioner (or the commissioner presiding at the inquiry if there is more than one commissioner for the inquiry); or
  - (c) refuse or fail to produce a document that the person was required to produce by a summons served on the person.

*Offence*

- (3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction by imprisonment for not more than 6 months, a fine of not more than 30 penalty units, or both.

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

*No privilege against self-incrimination*

- (4) An individual is not excused from answering a question or producing a document on the ground that answering the question or producing the document would tend to incriminate the individual or to expose the individual to a penalty.

*Answers and documents cannot be used in criminal proceedings*

- (5) However, none of the following is admissible in evidence in criminal proceedings against the individual (except proceedings under section 491):
- (a) the answer to the question;
  - (b) the production of the document;
  - (c) any information, document or thing obtained as a direct or indirect consequence of answering the question or producing the document.

*Sworn witnesses may also give written evidence on oath*

- (6) A commission may permit a person who is appearing as a witness before the commission and has been sworn or has made an



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affirmation to give evidence by tendering a written statement and verifying it by oath or affirmation.

### 113 Dealing with documents given to commission

*Inspecting and copying documents produced or given at inquiry*

- (1) A commissioner, or a person assisting a commission and authorised by a commissioner to do so, may:
  - (a) inspect a document produced or given to the commission; and
  - (b) make a copy of, or take an extract from, the document.

*Keeping documents produced or given at inquiry*

- (2) A commission may keep for a reasonable period a document produced or given to the commission.

### 114 Inspections of land, buildings and places

- (1) If a commissioner, or a person authorised by a commissioner, enters any land, building or place by consent as described in section 115 or under a warrant issued under section 116, the commissioner or person may:
  - (a) inspect the land, building or place; and
  - (b) inspect any material on the land, or on or in the building or place.
- (2) However, the commissioner or authorised person may not make the inspection if:
  - (a) the person occupying or in charge of the land, building or place asks the commissioner or authorised person to produce his or her identity card or other written evidence of his or her identity; and
  - (b) the commissioner or person does not produce it.
- (3) A person (the *offender*) is guilty of an offence punishable on conviction by imprisonment for not more than 6 months if:
  - (a) the offender obstructs or hinders another person; and
  - (b) the offender knows the other person is a commissioner, or a person authorised by a commissioner, acting under subsection (1) or a warrant issued under section 116.

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

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

### **115 Entering premises by consent**

- (1) A commissioner, or a person authorised by a commissioner, may enter land, a building or a place at any reasonable time for any reasonable purpose of an inquiry, if the person (the *occupant*) occupying or in charge of the land, building or place consents.
- (2) Before obtaining the consent, the commissioner or authorised person must inform the occupant that the occupant may refuse to give consent.
- (3) The commissioner or authorised person may not enter the land, building or place if:
  - (a) the occupant asks the commissioner or authorised person to produce his or her identity card or other written evidence of his or her identity; and
  - (b) the commissioner or authorised person does not produce it.
- (4) An entry by a commissioner or authorised person with the occupant's consent is not lawful if the occupant's consent was not voluntary.

### **116 Entering premises under warrant**

- (1) A commissioner may apply to a magistrate for a warrant authorising the commissioner or a person authorised by the commissioner to enter any land, building or place if the commissioner has reason to believe that it is necessary or desirable for the purposes of an inquiry for the commissioner or person to enter the land, building or place for the purposes of the inquiry.

Note: Section 117 allows applications for warrants to be made by telephone.

- (2) If the magistrate is satisfied by information on oath or affirmation that the issue of the warrant is reasonably required for the purposes of the inquiry, he or she may grant a warrant authorising the person named in the warrant to enter the land, building or place for the purposes specified in the warrant.

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- (3) The magistrate must specify in the warrant the date after which the warrant ceases to have effect.
- (4) The person named in a warrant may not enter the land, building or place if:
  - (a) the person occupying or in charge of the land, building or place asks the person named in the warrant to produce his or her identity card or other written evidence of his or her identity; and
  - (b) the person named in the warrant does not produce it.

**117 Warrants by telephone or other electronic means**

*Application*

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

*Voice communication*

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

*Information*

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

*Issue of warrant*

- (4) The magistrate may complete and sign the same form of warrant that would be issued under section 116 if, after considering the information and having received and considered any further information he or she required, the magistrate is satisfied that:
  - (a) a warrant in the terms of the application should be issued urgently; or

- (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

*Notification*

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

*Form of warrant*

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

*Completed form of warrant to be given to magistrate*

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

*Attachment*

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

*Presumption*

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

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**118 Identity cards**

- (1) The Minister may cause to be issued to a commissioner or a person authorised by a commissioner an identity card:
  - (a) in a form approved by the Minister; and
  - (b) containing a recent photograph of the person to whom it is issued.
- (2) As soon as practicable after the commission to which the commissioner was appointed has reported to the Minister on its inquiry, the commissioner or authorised person must return his or her identity card to the Minister.
- (3) A person must not contravene subsection (2).

Penalty: 1 penalty unit.

**119 Contempt**

- (1) A person is guilty of an offence punishable on conviction by a fine of not more than 30 penalty units if:
  - (a) the person insults, disturbs or uses insulting language towards another person; and
  - (b) the person knows the other person is a commissioner exercising the powers or performing the functions or duties of a commissioner.
- (2) A person is guilty of an offence punishable on conviction by a fine of not more than 30 penalty units if:
  - (a) the person creates a disturbance, or takes part in creating or continuing a disturbance, in or near a place; and
  - (b) the person knows the place is a place where a commission is holding an inquiry.
- (3) A person must not:
  - (a) interrupt an inquiry by a commission; or
  - (b) do any other act or thing that would, if a commission were a court of record, constitute a contempt of that court.

Penalty: 30 penalty units.

## **120 Protection of commissioners and witnesses**

### *Protection of commissioners*

- (1) In performing his or her duties as a commissioner, a commissioner has the same protection and immunity as a Justice of the High Court.

### *Rights and obligations of witnesses*

- (2) A person appearing before a commission as a witness at an inquiry:
  - (a) has the same protection as a witness in proceedings in the High Court; and
  - (b) is subject to the same liabilities in any civil or criminal proceedings as such a witness (in addition to the penalties provided by this Division).

### *Interfering with witness is an offence*

- (3) A person must not:
  - (a) use violence to or inflict injury on; or
  - (b) cause or procure violence, damage, loss or disadvantage to; or
  - (c) cause or procure the punishment of;another person (the *witness*) because the witness will appear or did appear as a witness at an inquiry or because of any submission or evidence the witness gave to a commission.

### *Interference with a witness' employment*

- (4) An employer must not dismiss an employee, or prejudice an employee in his or her employment, because the employee appeared as a witness or gave any submission or evidence at an inquiry by a commission.

### *Interference with employee who proposes to give evidence*

- (5) An employer must not dismiss or threaten to dismiss an employee or prejudice, or threaten to prejudice, an employee in his or her employment, because the employee proposes to appear as a witness or to give a submission or evidence at an inquiry by a commission.



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*Offences*

- (6) A person who contravenes subsection (3), (4) or (5) is guilty of an offence punishable on conviction by imprisonment for not more than 6 months, a fine of not more than 30 penalty units, or both.

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

*Burden of proof in proceedings relating to witness*

- (7) In proceedings arising out of subsection (4), the employer has the burden of proving that the employee was not dismissed or prejudiced because the employee appeared as a witness or gave a submission or evidence at an inquiry by a commission, if it is established that:
- (a) the employee was dismissed from, or prejudiced in, his or her employment; and
  - (b) before the employee was dismissed or prejudiced, the employee appeared as a witness, or gave any submission or evidence, at an inquiry by a commission.

*Burden of proof in proceedings relating to employee proposing to give evidence*

- (8) In any proceedings arising out of subsection (5), the employer has the burden of proving that the employee was not dismissed, prejudiced in his or her employment or threatened with dismissal or prejudice because the employee proposed to appear as a witness or give evidence at an inquiry by a commission, if it is established that:
- (a) the employee was dismissed, prejudiced or threatened; and
  - (b) the employee made the proposal before the employee was dismissed, prejudiced or threatened.

*Relationship of subsections (3), (4) and (5)*

- (9) Subsections (4) and (5) do not limit subsection (3).

## **Subdivision D—Inquiry reports**

### **121 Timing of report**

The commission must report to the Minister on the inquiry within the period specified by the Minister in the terms of reference.

### **122 Publication of report**

- (1) After reporting to the Minister, the commission must publish the report in accordance with the regulations.
- (2) However, the commission must not publish the report so far as it sets out any submission or evidence whose publication the commission prohibited or restricted by a direction under paragraph 110(3)(b).

## **Subdivision E—Commissioners' terms and conditions**

### **123 Basis of appointment**

- (1) A commissioner is to be appointed on a full-time basis or a part-time basis.
- (2) A commissioner appointed on a full-time basis must not engage in paid employment outside the duties of the commissioner's office without the Minister's approval.
- (3) A commissioner appointed on a part-time basis must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of the commissioner's duties.

### **124 Remuneration**

- (1) A commissioner who is not appointed or engaged under the *Public Service Act 1999* is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration is in operation, the commissioner is to be paid the remuneration that is prescribed.
- (2) A commissioner is to be paid the allowances that are prescribed.

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- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**125 Leave of absence**

- (1) A commissioner appointed on a full-time basis has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant a commissioner appointed on a full-time basis leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (3) The commissioner (the *presiding commissioner*) appointed to preside at an inquiry may grant leave of absence to any other commissioner for the inquiry on the terms and conditions that the presiding commissioner determines, if the other commissioner has been appointed on a part-time basis.

**126 Resignation**

A commissioner may resign his or her appointment by giving the Minister a written resignation.

**127 Termination of appointment**

- (1) The Minister may terminate a commissioner's appointment for misbehaviour or physical or mental incapacity.
- (2) The Minister must terminate the appointment of a commissioner if:
- (a) the commissioner:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the commissioner fails, without reasonable excuse, to comply with section 128 (about disclosure of interests); or
  - (c) the Minister becomes aware that the commissioner has a pecuniary or other interest in the subject-matter of the inquiry

and the Minister considers that the commissioner should not continue to participate in the conduct of the inquiry.

- (3) The Minister must terminate the appointment of a commissioner on a full-time basis if:
  - (a) the commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (b) the commissioner engages, except with the Minister's approval, in paid employment outside the duties of his or her office.
- (4) The Minister must terminate the appointment of a commissioner on a part-time basis if:
  - (a) the commissioner is absent, except on leave of absence, from 3 consecutive meetings of his or her commission (if it consists of 2 or more commissioners); or
  - (b) the commissioner engages in paid employment that, in the Minister's opinion, conflicts or could conflict with the proper performance of the duties of his or her office.

### **128 Disclosure of interests**

- (1) A commissioner must give written notice to the Minister of all direct and indirect pecuniary interests that he or she has or acquires in a business or in a body corporate carrying on a business.
- (2) If a commissioner has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of his or her duties, he or she must:
  - (a) inform the Minister of the interest; and
  - (b) ensure that the interest is disclosed in the report of his or her inquiry.

### **129 Other terms and conditions**

A commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

## Part 9—Approval of actions

### Division 1—Decisions on approval and conditions

#### Subdivision A—General

#### 130 Timing of decision on approval

*Basic rule*

- (1) Within whichever of the following periods is relevant, the Minister must decide for the purposes of each controlling provision whether or not to approve the taking of a controlled action:
  - (a) 30 business days, or such longer period as the Minister specifies in writing, if the action is the subject of an assessment report;
  - (b) 40 business days, or such longer period as the Minister specifies in writing, if a commission has conducted an inquiry relating to the action.

*Start of period—basic rule*

- (1A) The relevant period starts on the first business day after the day the Minister receives the assessment report or the report of the commission (as appropriate).

*Start of period—certain actions in States and Territories*

- (1B) However, if the action is to be taken in a State or self-governing Territory and is covered by subsection (1C), the relevant period starts on the later of the following days:
  - (a) the day worked out under subsection (1A);
  - (b) the first business day after the day the Minister receives from the State or self-governing Territory a notice:
    - (i) stating that the certain and likely impacts of the action on things other than matters protected by the controlling provisions for the action have been assessed to the greatest extent practicable; and

(ii) explaining how they have been assessed.

Note 1: This means that the Minister cannot grant an approval until he or she has received notice from a State or Territory as described in paragraph (1B)(b).

Note 2: Subsection (1B) also applies in relation to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

*Actions to which subsection (1B) applies*

(1C) Subsection (1B) applies to an action only if it:

- (a) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or
- (b) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

*Start of period—actions in 2 or more jurisdictions*

(1D) If the action is to be taken in more than one State or self-governing Territory, the relevant period does not start until after the last day on which the Minister receives from one of those States or Territories a notice described in paragraph (1B)(b).

*Exception for certain actions*

(1E) Subsection (1B) does not apply if:

- (a) the action:
  - (i) is a nuclear action; or
  - (ii) is to be taken in a Commonwealth marine area; or
  - (iii) is to be taken on Commonwealth land; or
  - (iv) is to be taken by the Commonwealth or a Commonwealth agency; and
- (b) the relevant impacts of the action have been assessed under Part 8.

*What is an **assessment report**?*

(2) An **assessment report** is a report given to the Minister as described in:



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- (a) subsection 47(4) (about assessments under a bilateral agreement); or
- (b) subsection 84(3) (about assessments in a manner specified in a declaration); or
- (c) subsection 87(4) (about assessments by accredited assessment processes); or
- (d) subsection 95(1) (about assessments on preliminary documentation); or
- (e) subsection 100(1) (about public environment reports); or
- (f) subsection 105(1) (about environmental impact statements).

*Time may be extended only to consider other Ministers' comments*

- (3) The Minister may specify a longer period for the purposes of paragraph (1)(a) or (b) only if:
  - (a) the Minister has received comments about a proposed decision from another Minister in accordance with an invitation under section 131; and
  - (b) the Minister is satisfied that it would not be practicable to consider them adequately and make a decision within the period that would apply if the longer period were not specified.

*Notice of extension of time*

- (4) If the Minister specifies a longer period for the purposes of paragraph (1)(a) or (b), he or she must:
  - (a) give a copy of the specification to the person proposing to take the action; and
  - (b) publish the specification in accordance with the regulations.

*Time does not run while further information is sought*

- (5) If, under section 132, the Minister has requested more information for the purposes of making a decision whether or not to approve the taking of an action, 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.

**131 Inviting comments from other Ministers before decision**

- (1) Before the Minister (the *Environment Minister*) decides whether or not to approve the taking of an action, and what conditions (if any) to attach to an approval, he or she must:
  - (a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the action of the decision the Environment Minister proposes to make; and
  - (b) invite the other Minister to give the Environment Minister comments on the proposed decision within 10 business days.
- (2) A Minister invited to comment may make comments that:
  - (a) relate to economic and social matters relating to the action; and
  - (b) may be considered by the Environment Minister consistently with the principles of ecologically sustainable development.This does not limit the comments such a Minister may give.

**132 Requesting further information for approval decision**

If the Minister believes on reasonable grounds that he or she does not have enough information to make an informed decision whether or not to approve for the purposes of a controlling provision the taking of an action, the Minister may request any of the following to provide specified information relevant to making the decision:

- (a) the person proposing to take the action;
- (b) the designated proponent of the action;
- (c) if a commission has conducted an inquiry under Division 7 of Part 8 relating to the action—the commission.

**133 Grant of approval***Approval*

- (1) After receiving an assessment report relating to a controlled action, or the report of a commission that has conducted an inquiry relating to a controlled action, the Minister may approve for the purposes of a controlling provision the taking of the action by a person.

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*Content of approval*

- (2) An approval must:
- (a) be in writing; and
  - (b) specify the action that may be taken; and
  - (c) name the person who may take the action; and
  - (d) specify each provision of Part 3 for which the approval has effect; and
  - (e) specify the period for which the approval has effect; and
  - (f) set out any conditions attached to the approval.

*Notice of approval*

- (3) The Minister must:
- (a) give a copy of the approval to the person; and
  - (b) provide a copy of the approval to a person who asks for it (either free or for a reasonable charge determined by the Minister).

*Limit on publication of approval*

- (4) However, the Minister must not provide under subsection (3) a copy of so much of the approval as:
- (a) is an exempt document under the *Freedom of Information Act 1982* on the grounds of commercial confidence; or
  - (b) the Minister believes it is in the national interest not to provide.

The Minister may consider the defence or security of the Commonwealth when determining what is in the national interest. This does not limit the matters the Minister may consider.

*Circumstances in which approval must not be granted*

- (5) The Minister must not approve for the purposes of a provision of Part 3 the taking in a State or self-governing Territory of an action that is covered by subsection (6) before the Minister receives from the State or Territory a notice described in paragraph 130(1B)(b). This does not apply if:
- (a) the action:
    - (i) is a nuclear action; or
    - (ii) is to be taken in a Commonwealth marine area; or

- (iii) is to be taken on Commonwealth land; or
- (iv) is to be taken by the Commonwealth or a Commonwealth agency; and
- (b) the relevant impacts of the action have been assessed under Part 8.

Note: Subsection (5) also applies in relation to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

*Actions to which subsection (5) applies*

- (6) Subsection (5) applies to an action only if it:
  - (a) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or
  - (b) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

*Notice of refusal of approval*

- (7) If the Minister refuses to approve for the purposes of a controlling provision the taking of an action by the person who proposed to take the action, the Minister must give the person notice of the refusal.

Note: Under section 13 of the *Administrative Decisions (Judicial Review) Act 1977*, the person may request reasons for the refusal, and the Minister must give them.

## **134 Attaching conditions to approval**

*Generally*

- (1) The Minister may attach a condition to the approval of the action if he or she is satisfied that the condition is necessary or convenient for:
  - (a) protecting a matter protected by a provision of Part 3 for which the approval has effect; or
  - (b) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).

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*Conditions to protect matters from the approved action*

- (2) The Minister may attach a condition to the approval of the action if he or she is satisfied that the condition is necessary or convenient for:
- (a) protecting from the action any matter protected by a provision of Part 3 for which the approval has effect; or
  - (b) repairing or mitigating damage that may or will be, or has been, caused by the action to any matter protected by a provision of Part 3 for which the approval has effect.

This subsection does not limit subsection (1).

*Other conditions that may be attached to approval*

- (3) The conditions that may be attached to an approval include:
- (a) conditions relating to any security to be given by the person by bond, guarantee or cash deposit:
    - (i) to comply with this Act and the regulations; and
    - (ii) not to contravene a condition attached to the approval; and
    - (iii) to meet any liability of the person whose taking of the action is approved to the Commonwealth for measures taken by the Commonwealth under section 499 (which lets the Commonwealth repair and mitigate damage caused by a contravention of this Act) in relation to the action; and
  - (b) conditions requiring the person to insure against any specified liability of the person to the Commonwealth for measures taken by the Commonwealth under section 499 in relation to the approved action; and
  - (c) conditions requiring the person taking the action to comply with conditions specified in an instrument (including any kind of authorisation) made or granted under a law of a State or self-governing Territory or another law of the Commonwealth; and
  - (d) conditions requiring an environmental audit of the action to be carried out periodically by a person who can be regarded as being independent from the person whose taking of the action is approved; and
  - (e) conditions requiring the preparation, submission for approval by the Minister, and implementation of a plan for managing

the impacts of the approved action on a matter protected by a provision of Part 3 for which the approval has effect such as a plan for conserving habitat of a species or ecological community; and

- (f) conditions requiring specified environmental monitoring or testing to be carried out; and
- (g) conditions requiring compliance with a specified industry standard or code of practice.

This subsection does not limit the kinds of conditions that may be attached to an approval.

*Considerations in deciding on condition*

- (4) In deciding whether to attach a condition to an approval, the Minister must consider:
  - (a) any relevant conditions that have been imposed under a law of a State or self-governing Territory or another law of the Commonwealth on the taking of the action; and
  - (aa) information provided by the person proposing to take the action or by the designated proponent of the action; and
  - (b) the desirability of ensuring as far as practicable that the condition is a cost-effective means for the Commonwealth and the person taking the action to achieve the object of the condition.

*Validity of decision*

- (5) A failure to consider information as required by paragraph (4)(aa) does not invalidate a decision about attaching a condition to the approval.

### **135 Certain approvals and conditions must not give preference**

- (1) This section deals with the approval:
  - (a) for the purposes of section 21 or 22A of a nuclear action:
    - (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
    - (ii) by a constitutional corporation; or
  - (b) for the purposes of section 25 of an action that is prescribed for the purposes of subsection 25(1) and is taken:



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- (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
  - (ii) by a constitutional corporation.
- (2) The Minister must not grant the approval, or attach a condition to the approval, that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

**Subdivision B—Considerations for approvals and conditions**

**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 relating to the action; and
  - (c) if the action was assessed under Division 5 or 6 of Part 8 (which deal with public environment reports and environmental impact statements)—the report or statement about the action finalised by the designated proponent; 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 by another Minister in accordance with an invitation under section 131.

*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 the person's history in relation to environmental matters.

*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 Subdivision to consider.

### **137 Requirements for decisions about World Heritage**

In deciding whether or not to approve, for the purposes of section 12 or 15A, 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 the World Heritage Convention; or
- (b) the Australian World Heritage management principles; or
- (c) a plan that has been prepared for the management of a declared World Heritage property under section 316 or as described in section 321.

### **137A Requirements for decisions about National Heritage places**

In deciding whether or not to approve for the purposes of section 15B or 15C the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with:

- (a) the National Heritage management principles; or
- (b) an agreement to which the Commonwealth is party in relation to a National Heritage place; or

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- (c) a plan that has been prepared for the management of a National Heritage place under section 324S or as described in section 324X.

**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.

**139 Requirements for decisions about threatened species and endangered communities**

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.

**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).

**140A No approval for certain nuclear installations**

The Minister must not approve an action consisting of or involving the construction or operation of any of the following nuclear installations:

- (a) a nuclear fuel fabrication plant;
- (b) a nuclear power plant;
- (c) an enrichment plant;
- (d) a reprocessing facility.

## Division 2—Requirement to comply with conditions

### 142 Compliance with conditions on approval

- (1) A person whose taking of an action has been approved under this Part must not contravene any condition attached to the approval.

Civil penalty:

- (a) for an individual—1,000 penalty units, or such lower amount as is prescribed by the regulations;
- (b) for a body corporate—10,000 penalty units, or such lower amount as is prescribed by the regulations.
- (2) A contravention of a condition attached to an approval under this Part does not invalidate the approval.

### 142A Offence of breaching conditions on approval

- (1) A person whose taking of an action has been approved under this Part is guilty of an offence if:
- (a) the person takes an action or omits to take an action; and
- (b) the action or omission contravenes a condition attached to the approval and the person is reckless as to that fact; and
- (c) the action or omission results or will result in a significant impact on a matter protected by a provision of Part 3.

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

- (2) Strict liability applies to paragraph (1)(c).

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

- (3) A person whose taking of an action has been approved under this Part is guilty of an offence if:
- (a) the person takes an action or omits to take an action; and
- (b) the action or omission contravenes a condition attached to the approval and the person is reckless as to that fact; and

- (c) the action or omission is likely to have a significant impact on a matter protected by a provision of Part 3 and the person is reckless as to that fact.

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

- (4) An offence against subsection (1) or (3) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 120 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.



## **Division 3—Variation of conditions and suspension and revocation of approvals**

### **143 Variation of conditions attached to approval**

- (1) The Minister may, by written instrument, revoke, vary or add to any conditions attached to an approval under this Part of an action if:
    - (a) any condition attached to the approval has been contravened;  
or
    - (b) both of the following conditions are satisfied:
      - (i) the action has had a significant impact that was not identified in assessing the action on any matter protected by a provision of Part 3 for which the approval has effect, or the Minister believes the action will have such an impact;
      - (ii) the Minister believes it is necessary to revoke, vary or add a condition to protect the matter from the impact;
    - (c) the person whose taking of the action was approved agrees to the proposed revocation, variation or addition and the Minister is satisfied that any conditions attached to the approval after the proposed revocation, variation or addition are necessary or convenient for:
      - (i) protecting a matter protected by any provision of Part 3 for which the approval has effect; or
      - (ii) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).
  - (2) The Minister may, by written instrument, revoke any condition attached to an approval under this Part of an action if the Minister is satisfied that the condition is not needed to protect any matter protected by a provision of Part 3 for which the approval has effect.
  - (3) In deciding whether or not to revoke, vary or add to any conditions attached to the approval of the taking of an action by a person, the Minister may have regard to the person's history in relation to environmental matters.
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- (4) The revocation, variation or addition takes effect on the day specified in the instrument. The Minister must not specify a day earlier than the day the instrument is made.
- (5) As soon as possible after making the instrument, the Minister must:
  - (a) give a copy of it to the person to whose action the approval relates; and
  - (b) publish the instrument in accordance with the regulations.

Note: If the person is not satisfied with changed conditions attached to the approval of the person's action, he or she can ask the Minister to reverse the change by making another change to the conditions under this section.

- (6) However, the Minister must not publish so much of the instrument as:
  - (a) is an exempt document under the *Freedom of Information Act 1982* on the grounds of commercial confidence; or
  - (b) the Minister believes it is in the national interest not to publish.

The Minister may consider the defence or security of the Commonwealth when determining what is in the national interest. This does not limit the matters the Minister may consider.

#### **144 Suspension of approval**

- (1) The Minister may, by written instrument, suspend the effect of an approval under this Part for the purposes of a specified provision of Part 3 for a specified period (which must not start before the day on which the instrument is made) if the Minister believes on reasonable grounds that:
  - (a) a significant impact on the matter protected by the provision has occurred because of the contravention of a condition attached to the approval; or
  - (b) the conditions specified in subsection (2) are satisfied.
- (2) The conditions are that:
  - (a) the action has had, or the Minister believes that the action will have, a significant impact that was not identified in assessing the action on a matter protected by a provision of Part 3 for which the approval has effect; and

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- (b) the approval would not have been granted if information that the Minister has about that impact had been available when the decision to approve the action was made.
- (3) In deciding whether or not to suspend an approval of the taking of an action by a person, the Minister may have regard to the person's history in relation to environmental matters.
- (4) During the specified period, the specified provision of Part 3 applies as if the Minister had not given the approval.
- (5) As soon as possible after making the instrument, the Minister must:
  - (a) give a copy of it to the person to whose action the approval relates; and
  - (b) publish the instrument in accordance with the regulations.

**145 Revocation of approval**

- (1) The Minister may, by written instrument, revoke an approval under this Part for the purposes of a specified provision of Part 3 if:
  - (a) a significant impact on the matter protected by the provision has occurred because of the contravention of a condition attached to the approval; or
  - (b) the conditions specified in subsection (2) are satisfied.
- (2) The conditions are that:
  - (a) the action has had, or the Minister believes that the action will have, a significant impact that was not identified in assessing the action on a matter protected by a provision of Part 3 for which the approval has effect; and
  - (b) the approval would not have been granted if information that the Minister has about that impact had been available when the decision to approve the action was made.
- (2A) The Minister may, by written instrument, revoke an approval under this Part of an action for the purposes of a specified provision of Part 3 if he or she believes that:
  - (a) the impacts that the action has had, will have or is likely to have were not accurately identified in information available to the Minister when the approval was given; and
  - (b) the information did not accurately identify those impacts because of negligence or a deliberate act or omission by the

person proposing to take the action or the designated proponent of the action.

- (3) In deciding whether or not to revoke an approval of the taking of an action by a person, the Minister may have regard to the person's history in relation to environmental matters.
- (4) The revocation takes effect on the day specified in the instrument. The Minister must not specify a day earlier than the day the instrument is made.
- (5) As soon as possible after making the instrument, the Minister must:
  - (a) give a copy of it to the person to whose action the approval related; and
  - (b) publish the instrument in accordance with the regulations.

### **145A Reinstating suspended or revoked approval**

#### *Application*

- (1) This section applies if the Minister has, by written instrument:
  - (a) suspended an approval under this Part of the taking of an action by a person; or
  - (b) revoked an approval under this Part of the taking of an action by a person.

#### *Requesting reinstatement of approval*

- (2) Within 2 months after receiving a copy of the instrument under this Division, the person may request the Minister to reinstate the approval.

#### *Deciding whether to reinstate approval*

- (3) Within 20 business days of receiving the request, the Minister must decide whether or not to reinstate the approval.

#### *Considerations for decision*

- (4) Subdivision B of Division 1 applies to the decision whether or not to reinstate the approval in the same way as it applies to a decision whether or not to approve the taking of an action.

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*Extra time for decision*

- (5) A day is not to be counted for the purposes of subsection (3) if:
- (a) the Minister and the person agree in writing that it should not be counted; or
  - (b) the Minister has requested the person to provide information under subsection (6) and the day is on or before the day on which the Minister receives the last of the information requested.

*Requesting information for decision*

- (6) If the Minister believes on reasonable grounds that he or she does not have enough information to make an informed decision whether or not to reinstate the approval, the Minister may request the person to provide specified information relevant to making the decision.

*Reversal of decision to suspend or revoke approval*

- (7) If the Minister decides to reinstate the approval, it and any conditions attached to it immediately before the suspension or revocation have effect on and after the day of the decision (subject to any future suspension or revocation under this Division).

*Notice of decision about reversal*

- (8) The Minister must:
- (a) give the person written notice of the Minister's decision; and
  - (b) publish notice of the decision in accordance with the regulations.

## **Division 4—Transfer of approvals**

### **145B Transfer with Minister's consent**

#### *Transfer by written agreement*

- (1) A person (the *transferor*) whose taking of an action has been approved under this Part for the purposes of a provision of Part 3 may transfer the approval to another person (the *transferee*) by written agreement, subject to the Minister's consent.

#### *Transfer ineffective until Minister consents*

- (2) The transfer does not have effect for the purposes of this Act until the Minister consents in writing to the transfer. To avoid doubt, the Minister's consent to a transfer cannot take effect before the Minister gives the consent.

#### *Effect of consent*

- (3) If the Minister consents to the transfer:
  - (a) this Act (except Division 3) operates in relation to the transferor as if the Minister had revoked the approval when the Minister's consent took effect; and
  - (b) this Act operates in relation to the transferee as if, when the Minister's consent to the transfer took effect, he or she:
    - (i) had approved under this Part for the purposes of the provision of Part 3 the taking of the action by the transferee; and
    - (ii) had attached to the approval the conditions that were attached to the approval of the taking of the action by the transferor.

#### *Considerations in deciding whether to consent*

- (4) In deciding whether or not to consent to the transfer, the Minister may consider:
  - (a) whether the transferee would be a suitable person to be granted the approval, having regard to the transferee's history in relation to environmental matters; and



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- (b) whether the transferee can comply with the conditions attached to the approval.

*Giving copies of consents to transferor and transferee*

- (5) The Minister must give the transferor and the transferee a copy of the consent each.

## **Part 10—Strategic assessments**

### **Division 1—Strategic assessments generally**

#### **146 Minister may agree on strategic assessment**

- (1) The Minister may agree in writing with a person responsible for the adoption or implementation of a policy, plan or program that an assessment be made of the impacts of actions under the policy, plan or program on a matter protected by a provision of Part 3.
  - (1A) The agreement may also provide for the assessment of other certain and likely impacts of actions under the policy, plan or program if:
    - (a) the actions are to be taken in a State or self-governing Territory; and
    - (b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the assessment deal with those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the actions; and
    - (c) the actions:
      - (i) are to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or
      - (ii) are actions whose regulation is appropriate and adapted to give effect to Australia's obligation under an agreement with one or more other countries.
- Note: Paragraph (1A)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.
- (2) The agreement must provide for:
    - (aa) the preparation of draft terms of reference for a report on the impacts to which the agreement relates; and
    - (ab) the publication of the draft terms of reference for public comment for a period of at least 28 days that is specified by the Minister; and

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- (ac) the finalisation of the terms of reference, to the Minister's satisfaction, taking into account the comments (if any) received on the draft terms of reference; and
- (a) the preparation of a draft of a report on the impacts to which the agreement relates; and
- (b) the publication of the draft report for public comment for a period of at least 28 days that is specified by the Minister; and
- (c) the finalisation of the report, taking into account the comments (if any) received after publication of the draft report; and
- (d) the provision of the report to the Minister; and
- (e) the making of recommendations by the Minister to the person about the policy, plan or program (including recommendations for modification of the policy, plan or program); and
- (f) the endorsement of the policy, plan or program by the Minister if he or she is satisfied that:
  - (i) the report adequately addresses the impacts to which the agreement relates; and
  - (ii) either the recommended modifications of the policy, plan or program (if any) have been made or any modifications having the same effect have been made; and
- (g) any other matter prescribed by the regulations.

Note 1: If the impacts of actions under a policy, plan or program are assessed under an agreement under this Part, the Minister may decide on a less onerous approach for an assessment relating to an individual action under the policy, plan or program. See section 87.

Note 2: If the Minister endorses a policy, plan or program embodied in a management plan in force under a law, he or she may declare under section 33, or make a bilateral agreement declaring, that actions approved in accordance with the management plan do not need approval for the purposes of a specified provision of Part 3.

- (3) If the agreement relates to actions to be taken in a State or self-governing Territory, the Minister must tell the appropriate Minister of the State or Territory:
  - (a) that the agreement has been made; and
  - (b) what those actions are (in general terms).

## **Division 2—Assessment of Commonwealth-managed fisheries**

### **147 Simplified outline of this Division**

The following is a simplified outline of this Division:

The Australian Fisheries Management Authority must make agreements under Division 1 for the assessment of actions in fisheries managed under the *Fisheries Management Act 1991*. An agreement must be made whenever it is proposed to make a management plan or a determination not to have a plan. An agreement must be made within 5 years of the commencement of this Act for all fisheries that did not have plans at that commencement.

The Minister administering the *Torres Strait Fisheries Act 1984* must make agreements under Division 1 for the assessment of actions permitted by policies or plans for managing fishing in Torres Strait. All policies or plans must be covered by an agreement within 5 years after the commencement of this Act.

A further agreement for assessment must be made if the impact of the actions is significantly greater than assessed under an earlier agreement.

If the Minister endorses a policy or plan assessed under an agreement under Division 1, the Minister must make a declaration that actions under the policy or plan do not need approval under Part 9 for the purposes of section 23 or 24A (which protect the marine environment).

### **148 Assessment before management plan is determined**

*Plans under the Fisheries Management Act 1991*

- (1) Before the Australian Fisheries Management Authority determines a plan of management for a fishery under section 17 of the *Fisheries Management Act 1991*, the Authority must:

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- (a) make an agreement with the Minister under section 146 for assessment of the impacts of actions under the plan on each matter protected by a provision of Part 3; and
- (b) consider any recommendations made by the Minister under the agreement.

*Plans under the Torres Strait Fisheries Act 1984*

- (2) Before the Minister administering the *Torres Strait Fisheries Act 1984* determines a plan of management for a fishery under section 15A of that Act, he or she must:
  - (a) make an agreement under section 146 with the Minister (the ***Environment Minister***) administering this section for assessment of the impacts of actions under the plan on each matter protected by a provision of Part 3; and
  - (b) consider any recommendations made by the Environment Minister under the agreement.

**149 Assessment before determination that no plan required**

Before the Australian Fisheries Management Authority determines under subsection 17(1A) of the *Fisheries Management Act 1991* that a plan of management is not warranted for a fishery, the Authority must:

- (a) make an agreement with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions permitted under the Authority's policy for managing the fishery; and
- (b) consider any recommendations made by the Minister under the agreement.

**150 Assessment of all fisheries without plans must be started within 5 years**

*Fisheries managed under the Fisheries Management Act 1991*

- (1) This section applies to fisheries (as defined in the *Fisheries Management Act 1991*):
  - (a) that are managed under that Act (whether as a result of arrangements under section 71 or 72 of that Act or not); and

- (b) for which there were not plans of management in force under that Act when this Act commenced.

*Two-thirds of fisheries to be covered by agreements in 3 years*

- (2) Before the day that is the third anniversary of this Act commencing, the Australian Fisheries Management Authority must make agreements with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions that are permitted under the Authority's policies for managing at least  $\frac{2}{3}$  of the fisheries.

*All fisheries to be covered by agreements in 5 years*

- (3) Before the day that is the fifth anniversary of this Act commencing, the Australian Fisheries Management Authority must make agreements with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions that are permitted under the Authority's policies for managing the fisheries.

*Agreement not needed if fishery already subject to agreement*

- (4) However, subsection (3) does not require another agreement to be made in relation to a fishery if an agreement relating to the fishery has been made, before the day mentioned in that subsection, by the Authority and the Minister under section 146 because of subsection 148(1) or section 149.

**151 Assessment of all Torres Strait fisheries to be started within 5 years**

*Fisheries managed under the Torres Strait Fisheries Act 1984*

- (1) This section applies to actions that:
- (a) are involved in fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act); and
  - (b) were not covered by a plan of management in force under section 15A of that Act when this Act commenced.



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*Policies for all actions to be covered by agreements in 5 years*

- (2) Before the day that is the fifth anniversary of this Act commencing, the Minister administering the *Torres Strait Fisheries Act 1984* must make agreements under section 146 with the Minister administering this section for assessment of the impacts of the actions on each matter protected by a provision of Part 3, being actions that are permitted by policies under that Act.

*Agreement not needed if fishery already subject to agreement*

- (3) However, subsection (2) does not require another agreement to be made in relation to actions if an agreement covering them has been made under section 146, before the day mentioned in that subsection, by the Ministers mentioned in that subsection because of subsection 148(2).

**152 Further assessment if impacts greater than previously assessed**

*Application*

- (1) This section applies if the Minister (the *Environment Minister*) and the Minister administering the *Fisheries Management Act 1991* agree that the impacts that actions:
- (a) included in a fishery managed under that Act; or
  - (b) permitted under a policy or plan for managing fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act);
- have, will have or are likely to have on a matter protected by a provision of Part 3 are significantly greater than the impacts identified in the most recent report provided to the Environment Minister under an agreement made under section 146 relating to the fishery, policy or plan.

*Further assessment for management arrangements under the Fisheries Management Act 1991*

- (2) The Australian Fisheries Management Authority must make another agreement with the Minister under section 146 in relation to the Authority's policy for managing the fishery, unless there is a plan of management in force for the fishery under the *Fisheries Management Act 1991*.

*Further assessment for policy or plan for Torres Strait fishing*

- (3) The Minister administering the *Torres Strait Fisheries Act 1984* must make another agreement under section 146 in relation to the policy or plan for managing fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act).

**153 Minister must make declaration if he or she endorses plan or policy**

- (1) This section applies if the Minister makes an agreement under section 146 as required by this Division and endorses under the agreement:
- (a) a plan of management under the *Fisheries Management Act 1991* for a fishery; or
  - (b) policies of the Australian Fisheries Management Authority for managing a fishery for which there is not a plan of management under the *Fisheries Management Act 1991*; or
  - (c) a plan of management under the *Torres Strait Fisheries Act 1984* for a fishery; or
  - (d) policies for managing fishing under the *Torres Strait Fisheries Act 1984*.
- (2) The Minister must:
- (a) make a declaration under section 33 that actions approved in accordance with the accredited management plan consisting of the endorsed plan or policies do not require an approval under Part 9 for the purposes of subsection 23(1), (2) or (3) or subsection 24A(1), (2), (3), (4), (5) or (6); and
  - (b) accredit under section 33 the endorsed plan or policies as an accredited management plan for the purposes of the declaration.

Note: The declaration and accreditation will allow actions that would otherwise be prohibited by sections 23 and 24A to be taken without approval if they are taken in accordance with the accredited management plan. See section 32.

**154 This Division does not limit Division 1**

This Division does not limit Division 1.

## **Part 11—Miscellaneous rules about assessments and approvals**

### **Division 1—Rules about timing**

#### **155 This Chapter ceases to apply to lapsed proposals**

- (1) If:
  - (a) a person who proposes to take a controlled action or is the designated proponent of an action is required or requested under this Chapter to do something; and
  - (b) the person does not do the thing within a period that the Minister believes is a reasonable period;the Minister may give the person a written notice inviting the person to satisfy the Minister within a specified reasonable period that assessment of the action should continue or that the Minister should make a decision about approving the action.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* explain how documents may be served and when they are taken to be served.
- (2) If, by the end of the specified period, the person fails to satisfy the Minister that assessment of the action should continue or that the Minister should make a decision about approving the action, the Minister may declare in writing that this Chapter no longer applies to the action.
- (3) This Chapter (apart from this section) ceases to apply in relation to the action on the date specified in the declaration. The Minister must not specify a date earlier than the date of making of the declaration.
- (4) The Minister must:
  - (a) give a copy of the declaration to the person and to the Secretary; and
  - (b) publish the declaration in accordance with the regulations.

### **156 General rules about time limits**

- (1) If this Chapter specifies a time limit in business days in relation to a controlled action (or an action that the Minister believes may be or is a controlled action), the limit is to be worked out by reference to what is a business day in the place where the action is to be taken.
- (2) A day is not to be counted as a business day for the purposes of subsection (1) if it is not a business day in all the places in which the action is to be taken.
- (3) Failure to comply with a time limit set in this Chapter does not affect the validity of:
  - (a) a decision under this Chapter; or
  - (b) an assessment or approval under this Chapter.

Note: The Minister must make a statement to Parliament about some failures to comply with time limits. See section 518.

**Chapter 4** Environmental assessments and approvals

**Part 11** Miscellaneous rules about assessments and approvals

**Division 2** Actions in area offshore from a State or the Northern Territory

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## **Division 2—Actions in area offshore from a State or the Northern Territory**

### **157 Actions treated as though they were in a State or the Northern Territory**

- (1) A provision of this Chapter that is expressed to apply in relation to actions taken or to be taken in a State also applies in the same way to actions taken or to be taken on, under or over the seabed vested in the State by section 4 of the *Coastal Waters (State Title) Act 1980*.
- (2) So far as a provision of this Chapter that is expressed to apply in relation to actions taken or to be taken in a self-governing Territory relates to the Northern Territory, the provision also applies in the same way to actions taken or to be taken on, under or over the seabed vested in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*.

## **Division 3—Exemptions**

### **158 Exemptions from Part 3 and this Chapter**

- (1) A person proposing to take a controlled action, or the designated proponent of an action, may apply in writing to the Minister for an exemption from a specified provision of Part 3 or of this Chapter.
- (2) The Minister must decide within 20 business days of receiving the application whether or not to grant the exemption.
- (3) The Minister may, by written notice, exempt a specified person from the application of a specified provision of Part 3 or of this Chapter in relation to a specified action.
- (4) The Minister may do so only if he or she is satisfied that it is in the national interest that the provision not apply in relation to the person or the action.
- (5) In determining the national interest, the Minister may consider Australia's defence or security or a national emergency. This does not limit the matters the Minister may consider.
- (6) A provision specified in the notice does not apply in relation to the specified person or action on or after the day specified in the notice. The Minister must not specify a day earlier than the day the notice is made.
- (7) Within 10 business days after making the notice, the Minister must:
  - (a) publish a copy of the notice and his or her reasons for granting the exemption in accordance with the regulations;  
and
  - (b) give a copy of the notice to the person specified in the notice.



**Division 4—Application of Chapter to actions that are not controlled actions**

**Subdivision A—Minister’s advice on authorising actions**

**159 Simplified outline of this Subdivision**

The following is a simplified outline of this Subdivision:

A Commonwealth agency or employee must consider advice from the Minister before authorising one of the following actions with a significant impact on the environment:

- (a) providing foreign aid;
- (b) managing aircraft operations in airspace;
- (c) adopting or implementing a major development plan for an airport;
- (d) an action prescribed by the regulations.

The agency or employee must inform the Minister of the proposal to authorise the action.

The environmental impacts of the action must be assessed in accordance with a declaration made by the Minister accrediting a Commonwealth assessment process, or by one of the following methods chosen by the Minister:

- (a) a specially accredited process;
- (b) an assessment on preliminary documentation under Division 4 of Part 8;
- (c) a public environment report under Division 5 of Part 8;
- (d) an environmental impact statement under Division 6 of Part 8;

(e) an inquiry under Division 7 of Part 8.

The Minister must give the agency or employee advice on protecting the environment from the action, within 30 days of receiving the report of the assessment.

## 160 Requirement to take account of Minister's advice

### *Requirement*

- (1) Before a Commonwealth agency or employee of the Commonwealth gives an authorisation (however described) of an action described in subsection (2), the agency or employee must obtain and consider advice from the Minister in accordance with this Subdivision.

Note: The giving of an authorisation for an action may be constituted by the renewal of an authorisation of the action or the variation of an authorisation for a different action.

### *Relevant actions*

- (2) Subsection (1) applies in relation to:
- (a) the entry by the Commonwealth, under Australia's foreign aid program, into a contract, agreement or arrangement for the implementation of a project that has, will have or is likely to have a significant impact on the environment anywhere in the world; and
  - (b) the adoption or implementation of a plan for aviation airspace management involving aircraft operations that have, will have or are likely to have a significant impact on the environment; and
  - (c) the adoption or implementation of a major development plan (as defined in the *Airports Act 1996*); and
  - (d) any other action prescribed by the regulations for the purposes of this paragraph.
- (2A) Regulations may prescribe an action for the purposes of paragraph (2)(d):
- (a) partly by reference to the action's having, or being likely to have, a significant impact on the environment; or

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- (b) partly by reference to a specified person believing that the action has, will have or is likely to have a significant impact on the environment; or
- (c) wholly or partly by reference to legislation under which the authorisation of the action is to be granted.

This does not limit the ways in which regulations may prescribe an action.

*This section does not apply to actions like those already assessed*

- (3) Subsection (1) does not apply in relation to a particular authorisation (the **later authorisation**) if the agency or employee has complied with, or is complying with, this Subdivision in relation to another authorisation or proposed authorisation and is satisfied of one or both of the matters in subsection (4).

*Which actions are like actions?*

- (4) For the purposes of subsection (3), the agency or employee must be satisfied that:
  - (a) the Minister's advice relating to the other authorisation deals or will deal with all the impacts that the action to which the later authorisation relates has, will have or is likely to have on the environment; or
  - (b) the impacts that the action to which the later authorisation relates has, will have or is likely to have on the environment:
    - (i) are an extension of the corresponding impacts of the action to which the other authorisation relates; and
    - (ii) are not significantly different in nature from those corresponding impacts; and
    - (iii) do not significantly add to those corresponding impacts.

*State law excluded in relation to aviation*

- (5) A law of a State or Territory does not apply in relation to the assessment of the certain or likely environmental impacts of an action described in paragraph (2)(b) if subsection (1) applies in relation to authorisation of the action, or would apply apart from subsection (3).

## **161 Seeking the Minister's advice**

### *Requirement for referral*

- (1) If a Commonwealth agency or employee of the Commonwealth proposing to give an authorisation (however described) of an action thinks the agency or employee is required by section 160 to obtain and consider the Minister's advice before giving the authorisation, the agency or employee must:
  - (a) refer the proposal to the Minister; and
  - (b) nominate a person to act as designated proponent of the action.

### *Minister may request referral*

- (2) The Minister may request a Commonwealth agency or employee of the Commonwealth to:
  - (a) refer to the Minister a proposal to give an authorisation (however described) of an action; and
  - (b) nominate a person to act as designated proponent of the action;if the Minister thinks the agency or employee is required by section 160 to obtain and consider the Minister's advice before giving the authorisation.

### *Complying with Minister's request*

- (3) The Commonwealth agency or employee must comply with the Minister's request.

### *Content of referral*

- (4) A referral must include the information prescribed by the regulations.

## **162 Assessment of the action**

Part 8 (except sections 82, 83 and 84) and the other provisions of this Act (so far as they relate to that Part) apply in relation to the action proposed to be authorised as if:

- (a) the referral of the proposal to give the authorisation were a referral of a proposal to take the action; and

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- (b) the Minister had decided under Division 2 of Part 7 that the action was a controlled action when the proposal to give the authorisation was referred to the Minister; and
- (c) the person nominated to act as the designated proponent had been designated as the proponent of the action by the Minister under section 75; and
- (d) a reference in Part 8 or those provisions to the relevant impacts of the action were a reference to the impact that the action has, will have or is likely to have on the environment; and
- (e) a reference in Part 8 or those provisions to making an informed decision on approving under Part 9 (for the purposes of each controlling provision) the taking of the action were a reference to giving informed advice about the proposal to give an authorisation of the action.

**163 Providing advice**

- (1) The Minister must give advice on the following matters to the Commonwealth agency or employee of the Commonwealth who referred the proposal to give an authorisation of the action:
  - (a) whether the agency or employee should give the authorisation;
  - (b) what conditions (if any) should be attached to the authorisation (if possible) to protect the environment;
  - (c) any other matter relating to protection of the environment from the action.
- (2) The Minister must give the advice within 30 days of receiving:
  - (a) a report mentioned in subsection 84(3) or section 95, 100 or 105 (as applied by section 162); or
  - (b) a report of an inquiry under Division 7 of Part 8 (as applied by section 162) relating to the action.

**164 Reporting on response to advice**

As soon as practicable after considering the Minister's advice, the Commonwealth agency or employee of the Commonwealth must give the Minister a report stating:

- (a) what action has been taken in relation to the Minister's advice; and

- (b) if the agency or employee did not give effect to some or all of the Minister's advice—why the agency or employee did not do so.

### **Subdivision B—Assessment of applications for permits relating to whales, dolphins and porpoises**

#### **165 Assessment of applications for permits relating to whales, dolphins and porpoises**

##### *Overview*

- (1) This section provides for the assessment of an action for which a person is applying for a permit under Division 3 of Part 13 (about whales and other cetaceans).

##### *Application of Part 8*

- (2) Part 8 (except sections 82, 83 and 84) and the other provisions of this Act (so far as they relate to that Part) apply in relation to the action proposed to be authorised by the permit as if:
  - (a) the application for the permit were a referral of a proposal to take the action; and
  - (b) the Minister had decided under Division 2 of Part 7 that the action was a controlled action when the application was made; and
  - (c) the person applying for the permit had been designated as the proponent of the action by the Minister under section 75; and
  - (d) a reference in Part 8 or those provisions to the relevant impacts of the action were a reference to the impact that the action has, will have or is likely to have on cetaceans; and
  - (e) a reference in Part 8 or those provisions to making an informed decision on approving under Part 9 (for the purposes of each controlling provision) the taking of the action were a reference to making an informed decision about whether or not to issue the permit.

##### *Assessment report must be considered in decision on permit*

- (5) The Minister must consider the assessment report relating to the action when deciding whether to grant the permit for the action.

### **Subdivision C—Assessment under agreement with State or Territory**

#### **166 This Subdivision applies if Ministers agree it should**

- (1) This Subdivision applies if the Minister and a Minister of a State or self-governing Territory agree that it should apply in relation to an action that:
  - (a) is to be taken in the State or Territory by a constitutional corporation; or
  - (b) if the agreement is with a Minister of a Territory—is to be taken in the Territory; or
  - (c) is to be taken in the State or Territory by a person for the purposes of trade or commerce:
    - (i) between Australia and another country; or
    - (ii) between 2 States; or
    - (iii) between a State and a Territory; or
    - (iv) between 2 Territories; or
  - (d) is to be taken in the State or Territory and is an action whose assessment under this Subdivision is an appropriate means of giving effect to Australia's obligations under an agreement with one or more other countries.
- (2) This section applies to the adoption or implementation of a policy, plan or program in the same way as it applies to any other action.
- (3) Despite subsection (1), this Subdivision does not apply in relation to an action to be taken in 2 or more States or self-governing Territories unless there is an agreement between the Minister and a Minister of each of those States and Territories that this Subdivision should apply in relation to the action.

#### **167 Making an agreement**

##### *Power to make agreement*

- (1) The Minister may make a written agreement with a Minister of a State or self-governing Territory to apply this Subdivision in relation to an action to be taken in the State or Territory.



*Prerequisites for making agreement*

- (2) The Minister may agree only if he or she is satisfied that the action is not a controlled action.

*Minister must not make an agreement that gives preference*

- (3) The Minister must not enter into an agreement that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of the action:
- (a) by a constitutional corporation; or
  - (b) by a person for the purposes of trade or commerce between Australia and another country or between 2 States.

## **168 Content of an agreement**

*Generally*

- (1) An agreement to apply this Subdivision in relation to an action must:
- (a) either specify that one of Divisions 4, 5, 6 and 7 of Part 8 is to apply in relation to the action or specify that Division 1 of Part 10 is to apply in relation to the action; and
  - (b) if it specifies that one of Divisions 4, 5 and 6 of Part 8 is to apply—specify the person who is taken to be the designated proponent of the action for the purposes of that Division.

*Agreement applying Division 4 of Part 8*

- (2) An agreement that specifies that Division 4 of Part 8 (about assessment on preliminary documentation) is to apply in relation to an action may deal with how the Minister will exercise his or her power under section 94 to refuse to accept a document.

*Agreement applying Division 5 of Part 8*

- (3) An agreement that specifies that Division 5 of Part 8 (about public environment reports) is to apply in relation to an action may deal with how the Minister will exercise his or her power:
- (a) under section 97 to prepare guidelines for the content of a draft report; or

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- (b) under section 98 to approve publication of a draft report or specify a period for comment; or
- (c) under section 99 to refuse a finalised report.

*Agreement applying Division 6 of Part 8*

- (4) An agreement that specifies that Division 6 of Part 8 (about environmental impact statements) is to apply in relation to an action may deal with how the Minister will exercise his or her power:
  - (a) under section 102 to prepare guidelines for the content of a draft statement; or
  - (b) under section 103 to approve publication of a draft statement or specify a period for comment; or
  - (c) under section 104 to refuse a finalised statement.

*Agreement applying Division 7 of Part 8*

- (5) An agreement that specifies that Division 7 of Part 8 (about inquiries) is to apply in relation to an action may deal with how the Minister will exercise his or her power under section 107:
  - (a) to appoint one or more persons as commissioners, and to appoint a person to preside; or
  - (b) to specify the matters relating to the action that are to be the subject of the inquiry and report; or
  - (c) to specify the time within which the commission must report to the Minister; or
  - (d) to specify the manner in which the commission is to carry out the inquiry.

*Agreement applying Part 10*

- (6) An agreement that specifies that Division 1 of Part 10 is to apply may:
  - (a) be in the same document as an agreement mentioned in that Division; or
  - (b) specify the manner in which an agreement the Minister makes under that Division is to provide for matters that that Division requires that agreement to provide for.

## 169 Application of a Division of Part 8

### *Provisions that apply*

- (1) If the agreement states that a particular Division of Part 8 is to apply in relation to the assessment of an action, the following provisions of this Act (the ***applied provisions***) apply in relation to the action as set out in subsection (2):
  - (a) that Division;
  - (b) the other provisions of this Act (except Part 9), so far as they relate to that Division.

### *Modification of applied provisions*

- (2) The applied provisions apply in relation to the action as if:
  - (a) the Minister had decided under Division 2 of Part 7 that the action was a controlled action; and
  - (b) the Minister had decided that the relevant impacts of the action must be assessed under the Division specified in the agreement applying the Division; and
  - (c) the person specified in the agreement as the person who is taken to be the designated proponent of the action for the purposes of that Division had been designated as the proponent of the action by the Minister under section 75; and
  - (d) a reference in the applied provisions to the relevant impacts of the action were a reference to the impact that the action has, will have or is likely to have on the environment; and
  - (e) a reference in the applied provisions to making an informed decision on approving under Part 9 (for the purposes of each controlling provision) the taking of the action were a reference to making an informed report and recommendations relating to the action.

### *Modification of section 93*

- (3) Also, if the agreement states that Division 4 of Part 8 is to apply in relation to the assessment of an action, that Division applies in relation to the action as if subparagraphs 93(1)(a)(i), (ii) and (iii) merely referred to specified information relating to the action.

**Chapter 4** Environmental assessments and approvals

**Part 11** Miscellaneous rules about assessments and approvals

**Division 4** Application of Chapter to actions that are not controlled actions

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*Minister must give copy of report to State or Territory Minister*

- (4) The Minister must give a copy of the report he or she receives from the Secretary or commission of inquiry under the applied provisions in relation to the action to each Minister of a State or Territory who is party to the agreement.

**170 Application of Division 1 of Part 10**

If an agreement to apply this Subdivision states that Division 1 of Part 10 is to apply:

- (a) that Division applies as if:
- (i) the reference in subsection 146(1) to relevant impacts of actions were a reference to the impacts the actions have, will have or are likely to have on the environment; and
  - (ii) paragraph 146(2)(f) were omitted; and
- (b) the Minister must give a copy of the report provided to the Minister under the agreement made under section 146, and of any recommendations made by the Minister under the agreement, to each Minister of a State or Territory who is party to the agreement to apply this Subdivision.

## **Division 5—Publication of information relating to assessments**

### **170A Publication of information relating to assessments**

The Secretary must publish on the Internet every week notice of the following:

- (a) the publication in the immediately preceding week by the Minister under section 45 of a notice of the Minister's intention to develop a draft bilateral agreement;
- (b) each referral (if any) of an action received by the Minister under Division 1 of Part 7 in the immediately preceding week;
- (c) each decision (if any) in the immediately preceding week under Division 2 of Part 7 that an action is a controlled action;
- (d) each decision (if any) in the immediately preceding week under Division 3 of Part 8 about which approach is to be used for assessment of the relevant impacts of an action;
- (e) the information and invitations (if any) published in the immediately preceding week under Division 4 of Part 8 (about assessment on preliminary documentation);
- (f) each set of guidelines (if any) prepared in the immediately preceding week by the Minister under Division 5 or 6 of Part 8 for a report or statement;
- (g) each public invitation (if any) issued in the immediately preceding week by the Minister to comment on a draft of guidelines under Division 5 or 6 of Part 8 for a report or statement;
- (h) each draft or finalised report or statement published in the immediately preceding week under Division 5 or 6 of Part 8 by a designated proponent;
- (i) the availability of each assessment report given to the Minister under Division 4, 5 or 6 of Part 8 in the immediately preceding week;
- (j) any other matter prescribed by the regulations.

## **Chapter 5—Conservation of biodiversity and heritage**

### **Part 12—Identifying and monitoring biodiversity and making bioregional plans**

#### **Division 1—Identifying and monitoring biodiversity**

##### **171 Identifying and monitoring biodiversity**

- (1) The Minister may, on behalf of the Commonwealth, co-operate with, and give financial or other assistance to, any person for the purpose of identifying and monitoring components of biodiversity.
- (2) Without limiting subsection (1), the co-operation and assistance may include co-operation and assistance in relation to all or any of the following:
  - (a) identifying and monitoring components of biodiversity that are important for its conservation and ecologically sustainable use;
  - (b) identifying components of biodiversity that are inadequately understood;
  - (c) collecting and analysing information about the conservation status of components of biodiversity;
  - (d) collecting and analysing information about processes or activities that are likely to have a significant impact on the conservation and ecologically sustainable use of biodiversity;
  - (e) assessing strategies and techniques for the conservation and ecologically sustainable use of biodiversity;
  - (f) systematically determining biodiversity conservation needs and priorities.
- (3) In this Act:

*components of biodiversity* includes species, habitats, ecological communities, genes, ecosystems and ecological processes.
- (4) For the purposes of this section, the components of biological diversity that are important for its conservation and ecologically

sustainable use are to be identified having regard to the matters set out in Annex I to the Biodiversity Convention.

- (5) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

### **172 Inventories of listed threatened species etc. on Commonwealth land**

- (1) The Minister must prepare inventories that identify, and state the abundance of, the listed threatened species, listed threatened ecological communities, listed migratory species and listed marine species on Commonwealth land.
- (2) Commonwealth land must be covered by an inventory:
- (a) within 5 years after the commencement of this Act; or
  - (b) within 5 years after the land became Commonwealth land;
- whichever is later.
- (3) A Commonwealth agency that has an interest in Commonwealth land must provide all reasonable assistance in connection with the preparation under this section of an inventory that is to cover the land.

### **173 Surveys of cetaceans, listed threatened species etc. in Commonwealth marine areas**

- (1) The Minister must prepare surveys that identify, and state the extent of the range of:
- (a) cetaceans present in Commonwealth marine areas; and
  - (b) the listed threatened species, listed threatened ecological communities, listed migratory species and listed marine species in Commonwealth marine areas.
- (2) A Commonwealth marine area must be covered by a survey:
- (a) within 10 years after the commencement of this Act; or
  - (b) within 10 years after the area became a Commonwealth marine area;
- whichever is later.
- (3) A Commonwealth agency that has an interest in a Commonwealth marine area is to provide all reasonable assistance in connection



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with the preparation under this section of a survey that is to cover the area.

**174 Inventories and surveys to be updated**

The Minister must take reasonable steps to ensure that the inventories and surveys prepared under this Division are maintained in an up-to-date form.

**175 Obligations under this Act unaffected by lack of inventories or surveys**

Obligations imposed by this Act are not affected, in their application in relation to Commonwealth land or Commonwealth marine areas, by any lack of inventories or surveys for such land or areas.

## **Division 2—Bioregional plans**

### **176 Bioregional plans**

- (1) The Minister may prepare a bioregional plan for a bioregion that is within a Commonwealth area. In preparing the plan, the Minister must carry out public consultation on a draft of the plan in accordance with the regulations.
- (2) The Minister may, on behalf of the Commonwealth, co-operate with a State or a self-governing Territory, an agency of a State or of a self-governing Territory, or any other person in the preparation of a bioregional plan for a bioregion that is not wholly within a Commonwealth area.
- (3) The co-operation may include giving financial or other assistance.
- (4) A bioregional plan may include provisions about all or any of the following:
  - (a) the components of biodiversity, their distribution and conservation status;
  - (b) important economic and social values;
  - (ba) heritage values of places;
  - (c) objectives relating to biodiversity and other values;
  - (d) priorities, strategies and actions to achieve the objectives;
  - (e) mechanisms for community involvement in implementing the plan;
  - (f) measures for monitoring and reviewing the plan.
- (5) Subject to this Act, the Minister must have regard to a bioregional plan in making any decision under this Act to which the plan is relevant.

### **177 Obligations under this Act unaffected by lack of bioregional plans**

Obligations imposed by this Act are not affected, in their application in relation to Commonwealth areas, by a lack of bioregional plans for those areas.

## **Part 13—Species and communities**

### **Division 1—Listed threatened species and ecological communities**

#### **Subdivision A—Listing**

#### **178 Listing of threatened species**

- (1) The Minister must, by instrument published in the *Gazette*, establish a list of threatened species divided into the following categories:
  - (a) extinct;
  - (b) extinct in the wild;
  - (c) critically endangered;
  - (d) endangered;
  - (e) vulnerable;
  - (f) conservation dependent.
- (2) The list, as first established, must contain only the species contained in Schedule 1 to the *Endangered Species Protection Act 1992*, as in force immediately before the commencement of this Act.
- (3) The Minister must include:
  - (a) in the extinct category of the list, as first established, only the species mentioned in subsection (2) that were listed as presumed extinct; and
  - (b) in the endangered category of the list, as first established, only the native species mentioned in subsection (2) that were listed as endangered; and
  - (c) in the vulnerable category of the list, as first established, only the species mentioned in subsection (2) that were listed as vulnerable.
- (4) If the Minister is satisfied that a species included in the list, as first established, in:
  - (a) the extinct category; or
  - (b) the endangered category; or

(c) the vulnerable category;  
is not eligible to be included in that or any other category, or is eligible to be, or under subsection 186(3), (4) or (5) can be, included in another category, the Minister must, within 6 months after the commencement of this Act, amend the list accordingly in accordance with this Subdivision.

### **179 Categories of threatened species**

- (1) A native species is eligible to be included in the *extinct* category at a particular time if, at that time, there is no reasonable doubt that the last member of the species has died.
- (2) A native species is eligible to be included in the *extinct in the wild* category at a particular time if, at that time:
  - (a) it is known only to survive in cultivation, in captivity or as a naturalised population well outside its past range; or
  - (b) it has not been recorded in its known and/or expected habitat, at appropriate seasons, anywhere in its past range, despite exhaustive surveys over a time frame appropriate to its life cycle and form.
- (3) A native species is eligible to be included in the *critically endangered* category at a particular time if, at that time, it is facing an extremely high risk of extinction in the wild in the immediate future, as determined in accordance with the prescribed criteria.
- (4) A native species is eligible to be included in the *endangered* category at a particular time if, at that time:
  - (a) it is not critically endangered; and
  - (b) it is facing a very high risk of extinction in the wild in the near future, as determined in accordance with the prescribed criteria.
- (5) A native species is eligible to be included in the *vulnerable* category at a particular time if, at that time:
  - (a) it is not critically endangered or endangered; and
  - (b) it is facing a high risk of extinction in the wild in the medium-term future, as determined in accordance with the prescribed criteria.

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- (6) A native species is eligible to be included in the *conservation dependent* category at a particular time if, at that time, the species is the focus of a specific conservation program, the cessation of which would result in the species becoming vulnerable, endangered or critically endangered within a period of 5 years.

**180 Native species of marine fish**

- (1) A native species of marine fish is eligible to be included in a category mentioned in a paragraph of subsection 178(1) at a particular time if, at that time, the species meets the prescribed criteria for that category.
- (2) A subsection of section 179 referring to a category (the *relevant category*) does not apply to a native species of marine fish if regulations are in force for the purposes of subsection (1) of this section prescribing criteria for the relevant category.

**181 Listing of threatened ecological communities**

- (1) The Minister must, by instrument published in the *Gazette*, establish a list of threatened ecological communities divided into the following categories:
- (a) critically endangered;
  - (b) endangered;
  - (c) vulnerable.
- (2) Subject to subsection (3), the Minister must not include an ecological community in a particular category of the list, as first established, unless satisfied that the ecological community is eligible to be included in that category when the list is first published.
- (3) The list, as first established, must contain only the ecological communities listed in Schedule 2 to the *Endangered Species Protection Act 1992* immediately before the commencement of this Act, and they must be listed in the endangered category.
- (4) If the Minister is satisfied that an ecological community included in the endangered category of the list, as first established under subsection (3), is not eligible to be included in that or any other category, or is eligible to be included in another category, the Minister must, within 6 months after the commencement of this

Act, amend the list accordingly in accordance with this Subdivision.

- (5) An instrument (other than an instrument establishing the list mentioned in subsection (3)) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **182 Critically endangered, endangered and vulnerable communities**

- (1) An ecological community is eligible to be included in the ***critically endangered*** category at a particular time if, at that time, it is facing an extremely high risk of extinction in the wild in the immediate future, as determined in accordance with the prescribed criteria.
- (2) An ecological community is eligible to be included in the ***endangered*** category at a particular time if, at that time:
  - (a) it is not critically endangered; and
  - (b) it is facing a very high risk of extinction in the wild in the near future, as determined in accordance with the prescribed criteria.
- (3) An ecological community is eligible to be included in the ***vulnerable*** category at a particular time if, at that time:
  - (a) it is not critically endangered nor endangered; and
  - (b) it is facing a high risk of extinction in the wild in the medium-term future, as determined in accordance with the prescribed criteria.

### **183 Listing of key threatening processes**

- (1) The Minister must, by instrument published in the *Gazette*, establish a list of threatening processes that are key threatening processes.
- (2) The list, as first established, must contain only the key threatening processes contained in Schedule 3 to the *Endangered Species Protection Act 1992*, as in force immediately before the commencement of this Act.

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**184 Minister may amend lists**

- (1) Subject to this Subdivision, the Minister may, by instrument published in the *Gazette*, amend a list referred to in section 178, 181 or 183 by:
  - (a) including items in the list; or
  - (b) deleting items from the list; or
  - (c) in the case of the list referred to in section 178 or 181—transferring items from one category in the list to another category in the list; or
  - (d) correcting an inaccuracy or updating the name of a listed threatened species or listed threatened ecological community.
- (2) An instrument (other than an instrument mentioned in paragraph (1)(d)) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) Despite section 48 of the *Acts Interpretation Act 1901* as it applies in relation to an instrument because of section 46A of that Act, amendments of the kind mentioned in paragraphs (1)(b) and (c) take effect on the first day on which they are no longer liable to be disallowed, or to be taken to have been disallowed, under section 48 of that Act as it so applies.
- (4) When an instrument is laid before each House of the Parliament in accordance with section 48 of the *Acts Interpretation Act 1901*, the Minister must cause a statement to be laid before each House with the instrument explaining:
  - (a) in the case of an item that has been included in a list by the instrument—why the item was so included; or
  - (b) in the case of an item that has been deleted from a list by the instrument—why the item was so deleted; or
  - (c) in the case of an item that has been transferred by the instrument from one category in the list referred to in section 178 or 181 to another category in that list—why the item has been so transferred.
- (5) The Minister must cause a notice summarising the information contained in an instrument to be published in accordance with the regulations (if any).



### **185 Maintaining the lists in up-to-date condition**

- (1) The Minister must take all reasonably practical steps to amend as necessary:
  - (a) the list referred to in section 178 so that it contains in each category all native species that are eligible to be, or under subsection 186(3), (4) or (5) can be, included in that category; and
  - (b) the list referred to in section 181 so that it contains in each category all ecological communities that are eligible to be included in that category.
- (2) The Minister must decide whether to amend the list referred to in section 181 to include an ecological community that is described as critically endangered, endangered or vulnerable in a list that is:
  - (a) kept by:
    - (i) a State; or
    - (ii) a self-governing Territory; or
    - (iii) the body known as the Australian and New Zealand Environment and Conservation Council; and
  - (b) identified by the Minister by a notice published in the *Gazette*.

### **186 Amending list of threatened native species**

- (1) Subject to subsections (3), (4) and (5), the Minister must not:
  - (a) include (whether as a result of a transfer or otherwise) a native species in a particular category; or
  - (b) delete (whether as a result of a transfer or otherwise) a native species from a particular category;unless satisfied that the native species is eligible, or is no longer eligible, as the case requires, to be included in that category.
- (2) In deciding whether to include a native species in, or delete a native species from, a particular category (whether as a result of a transfer or otherwise), the Minister must not consider any matter that does not relate to the survival of the native species concerned.
- (3) The Minister may include a native species in the critically endangered category if satisfied that:

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- (a) it so closely resembles in appearance, at any stage of its biological development, a species that is eligible to be included in that category (see subsection 179(3)) that it is difficult to differentiate between the 2 species; and
  - (b) this difficulty poses an additional threat to the last-mentioned species; and
  - (c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as critically endangered.
- (4) The Minister may include a native species in the endangered category if satisfied that:
- (a) it so closely resembles in appearance, at any stage of its biological development, a species that is eligible to be included in that category (see subsection 179(4)) that it is difficult to differentiate between the 2 species; and
  - (b) this difficulty poses an additional threat to the last-mentioned species; and
  - (c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as endangered.
- (5) The Minister may include a native species in the vulnerable category if satisfied that:
- (a) it so closely resembles in appearance, at any stage of its biological development, a species that is eligible to be included in that category (see subsection 179(5)) that it is difficult to differentiate between the 2 species; and
  - (b) this difficulty poses an additional threat to the last-mentioned species; and
  - (c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as vulnerable.

**187 Amending list of ecological communities**

- (1) The Minister must not:
- (a) include (whether as a result of a transfer or otherwise) an ecological community in a particular category of the list; or
  - (b) delete (whether as a result of a transfer or otherwise) an ecological community from a particular category;
- unless satisfied that the ecological community is eligible, or is no longer eligible, as the case requires, to be included in that category.

- (2) In deciding whether to include an ecological community in, or delete an ecological community from, a particular category (whether as a result of a transfer or otherwise), the Minister must not consider any matter that does not relate to the survival of the ecological community concerned.

### **188 Amending list of key threatening processes**

- (1) The Minister must not add a threatening process to the list unless satisfied that it is eligible to be treated as a key threatening process.
- (2) The Minister must not delete a threatening process from the list unless satisfied that it is no longer eligible to be treated as a key threatening process.
- (3) A process is a *threatening process* if it threatens, or may threaten, the survival, abundance or evolutionary development of a native species or ecological community.
- (4) A threatening process is eligible to be treated as a key threatening process if:
  - (a) it could cause a native species or an ecological community to become eligible for listing in any category, other than conservation dependent; or
  - (b) it could cause a listed threatened species or a listed threatened ecological community to become eligible to be listed in another category representing a higher degree of endangerment; or
  - (c) it adversely affects 2 or more listed threatened species (other than conservation dependent species) or 2 or more listed threatened ecological communities.

### **189 Minister must consider advice from Scientific Committee**

- (1) Subject to section 192, in deciding whether to amend:
  - (a) the list referred to in section 178 or 181; or
  - (b) the list referred to in section 183;the Minister must, in accordance with the regulations (if any), obtain and consider advice from the Scientific Committee on the proposed amendment.

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- (2) In preparing advice under subsection (1), the Scientific Committee may obtain advice from a person with expertise relevant to the subject matter of the proposed amendment.
- (3) In preparing advice for a proposed amendment of a list referred to in paragraph (1)(a), the Scientific Committee must not consider any matter that does not relate to the survival of the native species or ecological community concerned.
- (4) If a native species, ecological community or threatening process has been nominated under section 191 to be listed, the Scientific Committee must give its advice to the Minister within 12 months, or such longer period as the Minister specifies, after the Scientific Committee receives the nomination from the Minister under that section.
- (5) The Minister must:
  - (a) decide whether to amend the list; and
  - (b) if the Minister decides to amend the list—cause the necessary instrument to be published in the *Gazette*;  
within 90 days after receiving the Scientific Committee’s advice on the amendment.
- (6) A member of the Scientific Committee has a duty not to disclose to any other person the advice, or any information relating to the advice, before the end of that period of 90 days unless the disclosure:
  - (a) is for the official purposes of the Scientific Committee; or
  - (b) if an instrument is published in the *Gazette* relating to an amendment of a list to which the advice relates—occurred after the publication.

**190 Scientific Committee may provide advice about species or communities becoming threatened**

- (1) If the Scientific Committee is of the opinion that a native species or ecological community is not eligible to be included in any category of the list mentioned in section 178 or 181, the Committee may give advice to the Minister concerning any action that is necessary to prevent the species or community becoming threatened.

- (2) The Minister is to have regard to any advice given under subsection (1) in performing any function, or exercising any power, under this Act relevant to the species or community.

**191 Nomination of threatened species etc.**

- (1) A person may, in accordance with the regulations (if any), nominate to the Minister:
- (a) a native species to be included in a particular category of the list referred to in section 178; or
  - (b) an ecological community to be included in a particular category of the list referred to in section 181; or
  - (c) a threatening process to be included in the list referred to in section 183.
- (2) The Minister must forward a nomination to the Scientific Committee within 10 business days of receiving the nomination. However, the Minister need not forward a nomination that the Minister rejects under subsection (6).
- (3) If the Minister decides that a nominated native species or ecological community is not eligible to be included in the nominated category, the Minister must, in accordance with the regulations (if any):
- (a) advise the person who made the nomination of the Minister's decision; and
  - (b) give to that person a statement of reasons why the native species or ecological community is not eligible to be included in the nominated category.
- (4) If the Minister decides that a threatening process is not eligible to be listed, the Minister must, in accordance with the regulations (if any):
- (a) advise the person who made the nomination of the Minister's decision; and
  - (b) give to that person a statement of reasons why the threatening process is not eligible to be listed.
- (5) The Minister may, at any time, request a person who has made a nomination to provide additional information about the subject of the nomination within such period as the Minister specifies.

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- (6) The Minister may reject a nomination if satisfied that it is vexatious, frivolous or not made in good faith.

**192 Rediscovery of threatened species that were extinct**

- (1) If the Minister is satisfied that a native species that is listed in the extinct category has been definitely located in nature since it was last listed as extinct, the Minister may, under section 184, transfer the species from the extinct category to another category without considering advice from the Scientific Committee.
- (2) Subsection (1) does not prevent the Minister from making such an amendment after having considered advice from the Scientific Committee.

**193 Species posing a serious threat to human health**

- (1) If the Minister is satisfied that a native species poses a serious threat to human health, the Minister may, by instrument published in the *Gazette*, determine that the species is not appropriate for inclusion in any of the categories of the list referred to in section 178.
- (2) While the determination is in force, the species is not to be added to that list.
- (3) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) The Minister must cause a notice summarising the information contained in an instrument to be published in accordance with the regulations (if any).

**194 Minister to make lists available to the public**

The Minister must, in accordance with the regulations (if any), make copies of up-to-date lists available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory.

## **Subdivision B—Permit system**

### **195 Subdivision does not apply to cetaceans**

This Subdivision does not apply to a member of a listed threatened species that is a cetacean.

### **196 Recklessly killing or injuring member of listed threatened species or community**

- (1) A person is guilty of an offence if:
  - (a) the person takes an action; and
  - (b) the action results in the death or injury of a member of a native species or a member of an ecological community; and
  - (c) the member is a member of a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and
  - (d) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraph (1)(d).

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

### **196A Strict liability for killing or injuring member of listed threatened species or community**

- (1) A person is guilty of an offence if:
  - (a) the person takes an action; and
  - (b) the action results in the death or injury of a member of a native species or a member of an ecological community; and
  - (c) the member is a member of a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and



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(d) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

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

(3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

**196B Recklessly taking etc. member of listed threatened species or community**

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

(a) the person takes, trades, keeps or moves a member of a native species or a member of an ecological community; and

(b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and

(c) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

(3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

**196C Strict liability for taking etc. member of listed threatened species or community**

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

(a) the person takes, trades, keeps or moves a member of a native species or a member of an ecological community; and

- (b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and
- (c) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

#### **196D Trading etc. member of listed threatened species or community taken in Commonwealth area**

- (1) A person is guilty of an offence if:
  - (a) the person trades, keeps or moves a member of a native species or a member of an ecological community; and
  - (b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and
  - (c) the member has been taken in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraph (1)(c).

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

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**196E Strict liability for trading etc. member of listed threatened species or community taken in Commonwealth area**

- (1) A person is guilty of an offence if:
- (a) the person trades, keeps or moves a member of a native species or a member of an ecological community; and
  - (b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and
  - (c) the member has been taken in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

**197 Certain actions are not offences**

Sections 196, 196A, 196B, 196C, 196D, 196E and 207B do not apply to:

- (a) an action authorised by a permit that was issued under section 201 and is in force; or
- (b) an action provided for by, and done in accordance with, a recovery plan in force under Division 5; or
- (c) an action that is covered by an approval in operation under Part 9 for the purposes of a subsection of section 18 or of section 18A; or
- (d) an action that:
  - (i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of section 18 or 18A; and
  - (ii) is taken in accordance with a management plan that is an accredited management plan for the purposes of the declaration; or

- (e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by a member of a listed threatened species or listed threatened ecological community; or
- (f) an action that is reasonably necessary to prevent a risk to human health; or
- (g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or
- (h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or
- (i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or
- (j) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or
- (k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 208A.

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

### **198 Operation of sections 18 and 18A not affected**

To avoid doubt, sections 196, 196A, 196B, 196C, 196D, 196E and 197 do not affect the operation of section 18 or 18A.

### **199 Failing to notify taking of listed threatened species or listed ecological community**

- (1) This section applies to an action taken by a person if all of the following conditions are met:
  - (a) the person's action either:
    - (i) results in the death or injury of a member of a listed threatened species (except a conservation dependent species), or a member of a listed threatened ecological community, that is in or on a Commonwealth area; or
    - (ii) consists of, or involves, trading, taking, keeping or moving a member of a listed threatened species (except a conservation dependent species), or a member of a

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listed threatened ecological community, that is in or on a Commonwealth area;

- (b) the person's action does not constitute an offence against section 196, 196A, 196B, 196C, 196D or 196E;
- (c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 197 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 196, 196A, 196B, 196C, 196D or 196E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 204 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

- (2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:
  - (a) that the action was taken; and
  - (b) of other particulars (if any) about the action that are prescribed by the regulations.
- (3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.
- (4) Subsection (2) does not apply to the person if he or she, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action.
- (5) A person is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:
  - (a) fails to do an act; and
  - (b) the failing to do the act results in a contravention of subsection (2).

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

## 200 Application for permits

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 201.

- (2) The application must be accompanied by the fee prescribed by the regulations (if any).
- (3) As soon as practicable after receiving the application, the Minister must cause notice of the application to be given to each person and body registered under section 266A (about registration for consultation on permit applications).
- (4) The notice must:
  - (a) state that an application for a permit has been made; and
  - (b) set out details of the application; and
  - (c) invite persons and bodies to make written submissions to the Minister about whether a permit should be issued; and
  - (d) specify:
    - (i) an address for lodgment of submissions; and
    - (ii) a day by which submissions must be lodged.
- (5) The day specified must not be a day occurring within 5 days after the last day on which the notice was given.

#### **201 Minister may issue permits**

- (1) Subject to subsection (3), the Minister may, on application by a person under section 200, issue a permit to the person.
- (2) A permit authorises its holder to take an action specified in the permit without breaching section 196, 196A, 196B, 196C, 196D, 196E or 207B.
- (3) The Minister must not issue the permit unless satisfied that:
  - (a) the specified action will contribute significantly to the conservation of the listed threatened species or listed threatened ecological community concerned; or
  - (b) the impact of the specified action on a member of the listed threatened species or listed threatened ecological community concerned is incidental to, and not the purpose of, the taking of the action and:
    - (i) the taking of the action will not adversely affect the survival or recovery in nature of that species or ecological community; and

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- (ii) the taking of the action is not inconsistent with a recovery plan that is in force for that species or ecological community; and
  - (iii) the holder of the permit will take all reasonable steps to minimise the impact of the action on that species or ecological community; or
  - (c) the specified action is of particular significance to indigenous tradition and will not adversely affect the survival or recovery in nature of the listed threatened species or listed threatened ecological community concerned; or
  - (d) the specified action is necessary in order to control pathogens and is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed threatened species or listed threatened ecological community concerned.
- (4) In this Act:
- indigenous tradition* means the body of traditions, observances, customs and beliefs of indigenous persons generally or of a particular group of indigenous persons.
- (5) In making a decision on the application, the Minister must consider all written submissions made by persons or bodies registered under section 266A (about registration for consultation on permit applications) to the Minister on or before the day, and at the address for lodgment, specified in the notice under section 200.

**202 Conditions of permits**

- (1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).
- (2) The Minister may, in accordance with the regulations:
  - (a) vary or revoke a condition of a permit; or
  - (b) impose further conditions of a permit.
- (3) Without limiting subsections (1) and (2), conditions of a permit may include conditions stating the period within which the action specified in the permit may be taken.



### **203 Contravening conditions of a permit**

The holder of a permit is guilty of an offence punishable on conviction by a fine not exceeding 300 penalty units if:

- (a) he or she does, or fails to do, an act or thing; and
- (b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

### **204 Authorities under permits**

- (1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.
- (2) The holder of a permit must not give an authority unless:
  - (a) the permit contains a condition permitting the holder to do so; and
  - (b) the authority is given in accordance with any requirements set out in the condition.
- (3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (4) The giving of an authority does not prevent the taking of any action by the holder of the permit.
- (5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.
- (6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

### **205 Transfer of permits**

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

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**206 Suspension or cancellation of permits**

The Minister may, in accordance with the regulations:

- (a) suspend a permit for a specified period; or
- (b) cancel a permit.

**206A Review of decisions about permits**

An application may be made to the Administrative Appeals Tribunal for review of a decision:

- (a) to issue or refuse a permit; or
- (b) to specify, vary or revoke a condition of a permit; or
- (c) to impose a further condition of a permit; or
- (d) to transfer or refuse to transfer a permit; or
- (e) to suspend or cancel a permit.

**207 Fees**

Such fees as are prescribed (if any) are payable in respect of the following:

- (a) the grant or the transfer of a permit;
- (b) the variation or revocation of a condition of a permit;
- (c) the imposition of a further condition of a permit.

**Subdivision BA—Protecting critical habitat**

**207A Register of critical habitat**

- (1) The Minister must cause to be kept in accordance with the regulations (if any) a register in which the Minister may list habitat identified by the Minister in accordance with the regulations as being critical to the survival of a listed threatened species or listed threatened ecological community.
- (2) The regulations must require the Minister to consider scientific advice in identifying the habitat.
- (3) The register must be made available for public inspection in accordance with the regulations (if any).

- (4) Habitat listed in the register in relation to a species or ecological community is **critical habitat** for the species or ecological community.

### **207B Offence of knowingly damaging critical habitat**

- (1) A person is guilty of an offence if:
- (a) the person takes an action; and
  - (b) the person knows that the action significantly damages or will significantly damage critical habitat for a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and
  - (c) the habitat is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraph (1)(c).
- Note: For **strict liability**, see section 6.1 of the *Criminal Code*.
- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.
- (4) To avoid doubt, this section does not affect the operation of Division 2, 3 or 4.

### **207C Sale or lease of Commonwealth land containing critical habitat**

- (1) This section applies to a Commonwealth agency that executes a contract for the sale or lease to someone else of Commonwealth land that includes critical habitat for a listed threatened species or listed threatened ecological community. It does not matter whether the Commonwealth agency executes the contract for the Commonwealth or on its own behalf.
- (2) The Commonwealth agency must ensure that the contract includes a covenant the effect of which is to protect the critical habitat.

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- (3) The Commonwealth agency must take reasonable steps to ensure as far as practicable that the covenant binds the successors in title of the buyer or lessee (as appropriate).

**Subdivision C—Miscellaneous**

**208A Minister may accredit plans or regimes**

The Minister may, by instrument in writing, accredit for the purposes of this Division:

- (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
- (b) a plan of management for a fishery made by a State or self-governing Territory and that is in force in the State or Territory; or
- (c) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force;

if satisfied that:

- (d) the plan or regime requires persons engaged in fishing under the plan or regime to take all reasonable steps to ensure that members of listed threatened species are not killed or injured as a result of the fishing; and
- (e) the fishery to which the plan or regime relates does not, or is not likely to, adversely affect the survival or recovery in nature of the species.

**208 Regulations**

The regulations may:

- (a) provide for the transportation, treatment and disposal of members of listed threatened species or listed threatened ecological communities killed, injured or taken in contravention of this Division; and
- (b) provide for the methods or equipment by which members of listed threatened species or listed threatened ecological communities may be killed or taken otherwise than in contravention of this Division; and

- (c) provide for the gathering and dissemination of information relating to listed threatened species or listed threatened ecological communities; and
- (d) provide for the protection and conservation of listed threatened species or listed threatened ecological communities; and
- (e) provide for any matter incidental to or connected with any of the above paragraphs.

## Division 2—Migratory species

### Subdivision A—Listing

#### 209 Listed migratory species

- (1) The Minister must, by instrument published in the *Gazette*:
  - (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 species from time to time included in appendices to the Bonn Convention and for which Australia is a Range State under the Convention; and
  - (b) all species from time to time included in lists 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 instrument published in the *Gazette*, approve an international agreement for the purposes of subsection (3) if satisfied it is an agreement relevant to the conservation of migratory species.
- (5) An instrument mentioned in subsection (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) The Minister may, by instrument published in the *Gazette*, correct an inaccuracy or update the name of a migratory species.

## **Subdivision B—Permit system**

### **210 Subdivision does not apply to members of listed threatened species or cetaceans**

This Subdivision does not apply to a member of a listed migratory species that is a member of a listed threatened species or a cetacean.

### **211 Recklessly killing or injuring member of listed migratory species**

- (1) A person is guilty of an offence if:
  - (a) the person takes an action; and
  - (b) the action results in the death or injury of a member of a migratory species; and
  - (c) the member is a member of a listed migratory species; and
  - (d) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraph (1)(d).

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

### **211A Strict liability for killing or injuring member of listed migratory species**

- (1) A person is guilty of an offence if:
  - (a) the person takes an action; and
  - (b) the action results in the death or injury of a member of a migratory species; and
  - (c) the member is a member of a listed migratory species; and



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(d) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

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

(3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

**211B Recklessly taking etc. member of listed migratory species**

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

(a) the person takes, trades, keeps or moves a member of a migratory species; and

(b) the member is a member of a listed migratory species; and

(c) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

(3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

**211C Strict liability for taking etc. member of listed migratory species**

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

(a) the person takes, trades, keeps or moves a member of a migratory species; and

(b) the member is a member of a listed migratory species; and

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(c) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

(3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

**211D Trading etc. member of listed migratory species taken in Commonwealth area**

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

(a) the person trades, keeps or moves a member of a migratory species; and

(b) the member is a member of a listed migratory species; and

(c) the member has been taken in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

(3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

**211E Strict liability for trading etc. member of listed migratory species taken in Commonwealth area**

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

(a) the person trades, keeps or moves a member of a migratory species; and

(b) the member is a member of a listed migratory species; and

(c) the member has been taken in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

(3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

**212 Certain actions are not offences**

Sections 211, 211A, 211B, 211C, 211D and 211E do not apply to:

- (a) an action authorised by a permit that was issued under section 216 and is in force; or
- (b) an action provided for by, and taken in accordance with, a wildlife conservation plan made or adopted under Division 5 and in force; or
- (c) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 20(1) or section 20A; or
- (d) an action that:
  - (i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of section 20 or 20A; and
  - (ii) is taken in accordance with a management plan that is an accredited management plan for the purposes of the declaration; or
- (e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by a member of a listed migratory species; or
- (f) an action that is reasonably necessary to prevent a risk to human health; or
- (g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or
- (h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or

- (i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or
- (j) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or
- (k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 222A.

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

### **213 Operation of sections 20 and 20A not affected**

To avoid doubt, sections 211, 211A, 211B, 211C, 211D, 211E and 212 do not affect the operation of section 20 or 20A.

### **214 Failing to notify taking etc. of listed migratory species**

- (1) This section applies to an action taken by a person if all of the following conditions are met:
  - (a) the person's action either:
    - (i) results in the death or injury of a member of a listed migratory species that is in or on a Commonwealth area; or
    - (ii) consists of, or involves, trading, taking, keeping or moving a member of a listed migratory species that is in or on a Commonwealth area;
  - (b) the person's action does not constitute an offence against section 211, 211A, 211B, 211C, 211D or 211E;
  - (c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 212 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 211, 211A, 211B, 211C, 211D or 211E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 219 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

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- (2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:
  - (a) that the action was taken; and
  - (b) of other particulars (if any) about the action that are prescribed by the regulations.
- (3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.
- (4) Subsection (2) does not apply to the person if he or she, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action.
- (5) A person is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:
  - (a) fails to do an act; and
  - (b) the failing to do the act results in a contravention of subsection (2).

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

## **215 Application for permits**

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 216.
- (2) The application must be accompanied by the fee prescribed by the regulations (if any).
- (3) As soon as practicable after receiving the application, the Minister must cause notice of the application to be given to each person and body registered under section 266A (about registration for consultation on permit applications).
- (4) The notice must:
  - (a) state that an application for a permit has been made; and
  - (b) set out details of the application; and
  - (c) invite persons and bodies to make written submissions to the Minister about whether a permit should be issued; and
  - (d) specify:

- (i) an address for lodgment of submissions; and
  - (ii) a day by which submissions must be lodged.
- (5) The day specified must not be a day occurring within 5 days after the last day on which the notice was given.

### **216 Minister may issue permits**

- (1) Subject to subsection (3), the Minister may, on application by a person under section 215, issue a permit to the person.
- (2) A permit authorises its holder to take an action specified in the permit without breaching section 211, 211A, 211B, 211C, 211D or 211E.
- (3) The Minister must not issue the permit unless satisfied that:
  - (a) the specified action will contribute significantly to the conservation of the listed migratory species concerned or other listed migratory species; or
  - (b) the impact of the specified action on a member of the listed migratory species concerned is incidental to, and not the purpose of, the taking of the action and:
    - (i) the taking of the action will not adversely affect the conservation status of that species or a population of that species; and
    - (ii) the taking of the action is not inconsistent with a wildlife conservation plan for that species that is in force; and
    - (iii) the holder of the permit will take all reasonable steps to minimise the impact of the action on that species; or
  - (c) the specified action is of particular significance to indigenous tradition and will not adversely affect the conservation status of the listed migratory species concerned, or a population of that species; or
  - (d) the specified action is necessary in order to control pathogens and is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed migratory species concerned.
- (4) In making a decision on the application, the Minister must consider all written submissions made by persons or bodies registered under section 266A (about registration for consultation on permit

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applications) to the Minister on or before the day, and at the address for lodgment, specified in the notice under section 215.

**217 Conditions of permits**

- (1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).
- (2) The Minister may, in accordance with the regulations:
  - (a) vary or revoke a condition of a permit; or
  - (b) impose further conditions of a permit.

**218 Contravening conditions of a permit**

The holder of a permit is guilty of an offence punishable on conviction by a fine not exceeding 300 penalty units if:

- (a) he or she does, or fails to do, an act or thing; and
- (b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

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

**219 Authorities under permits**

- (1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.
- (2) The holder of a permit must not give an authority unless:
  - (a) the permit contains a condition permitting the holder to do so; and
  - (b) the authority is given in accordance with any requirements set out in the condition.
- (3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (4) The giving of an authority does not prevent the taking of any action by the holder of the permit.



- (5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.
- (6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

## **220 Transfer of permits**

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

## **221 Suspension or cancellation of permits**

The Minister may, in accordance with the regulations:

- (a) suspend a permit for a specified period; or
- (b) cancel a permit.

## **221A Review of decisions about permits**

An application may be made to the Administrative Appeals Tribunal for review of a decision:

- (a) to issue or refuse a permit; or
- (b) to specify, vary or revoke a condition of a permit; or
- (c) to impose a further condition of a permit; or
- (d) to transfer or refuse to transfer a permit; or
- (e) to suspend or cancel a permit.

## **222 Fees**

Such fees as are prescribed (if any) are payable in respect of the following:

- (a) the grant or the transfer of a permit;
- (b) the variation or revocation of a condition of a permit;
- (c) the imposition of a further condition of a permit.

## **Subdivision C—Miscellaneous**

### **222A Minister may accredit plans or regimes**

The Minister may, by instrument in writing, accredit for the purposes of this Division:

- (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
- (b) a plan of management for a fishery made by a State or self-governing Territory and that is in force in the State or Territory; or
- (c) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force;

if satisfied that:

- (d) the plan or regime requires persons engaged in fishing under the plan or regime to take all reasonable steps to ensure that members of listed migratory species are not killed or injured as a result of the fishing; and
- (e) the fishery to which the plan or regime relates does not, or is not likely to, adversely affect the conservation status of a listed migratory species or a population of that species.

### **223 Regulations**

The regulations may:

- (a) provide for the transportation, treatment and disposal of members of listed migratory species killed, injured or taken in contravention of this Division; and
- (b) provide for the methods or equipment by which members of listed migratory species may be killed or taken otherwise than in contravention of this Division; and
- (c) provide for the gathering and dissemination of information relating to listed migratory species; and
- (d) provide for the protection and conservation of listed migratory species; and
- (e) provide for any matter incidental to or connected with any of the above paragraphs.

## **Division 3—Whales and other cetaceans**

### **Subdivision A—Application of Division**

#### **224 Application of Division**

- (1) This Division extends to acts, omissions, matters and things outside Australia (whether in a foreign country or not), except so far as the contrary intention appears.
- (2) A provision of this Division (other than an export/import provision) that has effect in relation to a place outside the outer limits of the Australian Whale Sanctuary applies only in relation to:
  - (a) Australian citizens; and
  - (b) persons who:
    - (i) are not Australian citizens; and
    - (ii) hold permanent visas under the *Migration Act 1958*; and
    - (iii) are domiciled in Australia or an external Territory; and
  - (c) corporations incorporated in Australia or an external Territory; and
  - (d) the Commonwealth; and
  - (e) Commonwealth agencies; and
  - (f) Australian aircraft; and
  - (g) Australian vessels; and
  - (h) members of crews of Australian aircraft and Australian vessels (including persons in charge of aircraft or vessels).
- (3) This Division applies to a vessel as if it were an Australian vessel if:
  - (a) the vessel is a boat within the meaning of the *Fisheries Management Act 1991*; and
  - (b) a declaration, under subsection 4(2) of that Act, that the vessel is taken to be an Australian boat is in force.
- (4) In this section:

***export/import provision*** means:

  - (a) section 232A; or

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- (b) section 232B; or
- (c) any other provision of this Division, in so far as that provision relates to section 232A or 232B.

**Subdivision B—Australian Whale Sanctuary**

**225 Australian Whale Sanctuary**

- (1) The Australian Whale Sanctuary is established in order to give formal recognition of the high level of protection and management afforded to cetaceans in Commonwealth marine areas and prescribed waters.
- (2) The Australian Whale Sanctuary comprises:
  - (a) the waters of the exclusive economic zone (other than the coastal waters of a State or the Northern Territory); and
  - (b) so much of the coastal waters of a State or the Northern Territory as are prescribed waters; and
  - (c) any marine or tidal waters that are inside the baseline of the territorial sea adjacent to an external Territory, whether or not within the limits of an external Territory.

Note: Generally the baseline is the lowest astronomical tide along the coast but it also includes lines enclosing bays and indentations that are not bays and straight baselines that depart from the coast.

**226 Prescribed waters**

- (1) The regulations may declare the whole, or a specified part, of the coastal waters of a State or the Northern Territory to be prescribed waters.
- (2) Before the Governor-General makes a regulation under subsection (1), the Minister must obtain the agreement of the relevant Minister of the State or the Northern Territory.

**227 Coastal waters**

- (1) Section 15B of the *Acts Interpretation Act 1901* does not apply in relation to this Division.
- (2) The *coastal waters* of a State or the Northern Territory are:
  - (a) the part or parts of the territorial sea that are:

- (i) within 3 nautical miles of the baseline of the territorial sea; and
- (ii) adjacent to that State or Territory; and
- (b) any marine or tidal waters that are inside that baseline and are adjacent to that State or Territory but are not within the limits of a State or that Territory.

Note: Generally the baseline is the lowest astronomical tide along the coast but it also includes lines enclosing bays and indentations that are not bays and straight baselines that depart from the coast.

- (3) Any part of the territorial sea that is adjacent to the Jervis Bay Territory is, for the purposes of subsection (2), taken to be adjacent to New South Wales.

### **228 Minister may make declaration for coastal waters**

- (1) If the Minister is satisfied that a law of a State or the Northern Territory adequately protects cetaceans in the coastal waters, or a part of the coastal waters, of the State or Territory, the Minister may make a declaration accordingly, whether or not those coastal waters or that part are prescribed waters.
- (2) A declaration must be in writing.

### **Subdivision C—Offences**

#### **229 Recklessly killing or injuring a cetacean**

- (1) A person is guilty of an offence if:
  - (a) the person takes an action; and
  - (b) the action results in the death or injury of a cetacean; and
  - (c) the cetacean is in:
    - (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or
    - (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

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Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

**229A Strict liability for killing or injuring a cetacean**

- (1) A person is guilty of an offence if:
- (a) the person takes an action; and
  - (b) the action results in the death or injury of a cetacean; and
  - (c) the cetacean is in:
    - (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or
    - (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

**229B Intentionally taking etc. a cetacean**

- (1) A person is guilty of an offence if:
- (a) the person takes, trades, keeps, moves or interferes with a cetacean; and
  - (b) the cetacean is in:
    - (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or

- (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraph (1)(b).

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

- (4) In this Act:

*interfere* with a cetacean includes harass, chase, herd, tag, mark or brand the cetacean.

#### **229C Strict liability for taking etc. a cetacean**

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

(a) the person takes, trades, keeps, moves or interferes with a cetacean; and

(b) the cetacean is in:

(i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or

(ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a) and (b).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.



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**229D Treating an illegally killed or taken cetacean**

- (1) A person is guilty of an offence if:
- (a) the person treats a cetacean; and
  - (b) the cetacean has been:
    - (i) killed in contravention of section 229 or 229A; or
    - (ii) taken in contravention of section 229B or 229C.
- Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
- Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.
- (2) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.
- (3) In this Act:
- treat* a cetacean means divide or cut up, or extract any product from, the cetacean.

**230 Possession of cetaceans**

- (1) Subject to section 231, a person is guilty of an offence if:
- (a) the person has in his or her possession:
    - (i) a cetacean; or
    - (ii) a part of a cetacean; or
    - (iii) a product derived from a cetacean; and
  - (b) the cetacean has been:
    - (i) killed in contravention of section 229 or 229A; or
    - (ii) taken in contravention of section 229B or 229C.
- Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
- (2) An offence against this section is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

**231 Certain actions are not offences**

Sections 229, 229A, 229B, 229C, 229D and 230 do not apply to:

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- (a) an action authorised by a permit that was issued under section 238 and is in force; or
- (b) an action provided for by, and taken in accordance with, a recovery plan, or a wildlife conservation plan, made or adopted under Division 5 and in force; or
- (c) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering of a cetacean; or
- (d) an action that is reasonably necessary to prevent a risk to human health; or
- (e) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or
- (f) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or
- (g) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or
- (h) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 245.

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

### **232 Action to be taken on killing etc. cetaceans**

- (1) This section applies to an action taken by a person if all of the following conditions are met:
  - (a) the person's action:
    - (i) results in the injury or death of a cetacean, or consists of taking a cetacean, in the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters of a State or the Northern Territory for which a declaration under section 228 is in force) or in waters beyond the outer limits of the Australian Whale Sanctuary; or
    - (ii) consists of treating a cetacean killed, injured or taken in contravention of section 229, 229A, 229B or 229C;
  - (b) the person's action does not constitute an offence against section 229, 229A, 229B, 229C or 229D;

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(c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 231 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 229, 229A, 229B, 229C or 229D.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 241 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

(2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:

(a) that the action was taken; and

(b) of other particulars (if any) about the action that are prescribed by the regulations.

(3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.

(4) Subsection (2) does not apply to the person if he or she, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action.

(5) A person is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:

(a) fails to do an act; and

(b) the failing to do the act results in a contravention of subsection (2).

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

**Subdivision D—Offences relating to exports and imports**

**232A Export of cetaceans**

(1) Subject to section 235, a person is guilty of an offence if the person exports:

(a) a cetacean; or

(b) a part of a cetacean; or

- (c) a product derived from a cetacean.
- (2) An offence against this section is punishable on conviction by imprisonment for not more than 10 years or a fine not exceeding 1,000 penalty units, or both.

### **232B Import of cetaceans**

- (1) Subject to section 235, a person is guilty of an offence if the person imports:
  - (a) a cetacean; or
  - (b) a part of a cetacean; or
  - (c) a product derived from a cetacean.
- (2) An offence against this section is punishable on conviction by imprisonment for not more than 10 years or a fine not exceeding 1,000 penalty units, or both.

### **233 Possession of unlawfully imported cetaceans**

- (1) Subject to section 235, a person is guilty of an offence if:
  - (a) the person has in his or her possession:
    - (i) a cetacean; or
    - (ii) a part of a cetacean; or
    - (iii) a product derived from a cetacean; and
  - (b) the cetacean, part or product, as the case may be, has been unlawfully imported.

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

- (2) An offence against this section is punishable on conviction by imprisonment for not more than 5 years or a fine not exceeding 1,000 penalty units, or both.

### **234 Treating unlawfully imported cetaceans**

- (1) Subject to section 235, a person is guilty of an offence if:
  - (a) the person treats a cetacean; and
  - (b) the cetacean has been unlawfully imported.

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

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- (2) An offence against this section is punishable on conviction by imprisonment for not more than 5 years or a fine not exceeding 1000 penalty units, or both.

**235 Sections 232A, 232B, 233 and 234 do not apply to certain actions**

Sections 232A, 232B, 233 and 234 do not apply to:

- (a) an action authorised by a permit that was issued under section 238 and is in force; or
- (b) an action provided for by, and taken in accordance with, a recovery plan, or a wildlife conservation plan, made or adopted under Division 5 and that is in force; or
- (c) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by a cetacean; or
- (d) an action that is reasonably necessary to prevent a risk to human health; or
- (e) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or
- (f) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or
- (g) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour.

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

**Subdivision E—Miscellaneous offences**

**236 Offences relating to foreign whaling vessels**

- (1) The master of a foreign whaling vessel is guilty of an offence if the vessel is brought into a port in Australia or an external Territory and the master has not obtained the written permission of the Minister for the vessel to be brought into the port.

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

- (2) Subsection (1) is an offence of strict liability.

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

- (3) An offence against subsection (1) is punishable on conviction by a fine not exceeding 500 penalty units.
- (4) Subsection (1) does not apply if:
- (a) the vessel is brought into the port in accordance with a prescribed agreement between Australia and any other country or countries; or
  - (b) the vessel is brought into the port under the direction of a person exercising powers under a law of the Commonwealth or of a State; or
  - (c) an unforeseen emergency renders it necessary to bring the vessel into the port in order to secure the safety of the vessel or human life.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

- (5) In this Act:

***foreign whaling vessel*** means a vessel, other than an Australian vessel, designed, equipped or used for:

- (a) killing, taking, treating or carrying whales; or
- (b) supporting the operations of a vessel or vessels designed, equipped or used for killing, taking, treating or carrying whales.

***master***, in relation to a foreign whaling vessel, means the person (other than a ship's pilot) in charge or command of the vessel.

## **Subdivision F—Permit system**

### **237 Application for permits**

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 238.

Note: The action to be covered by the permit will undergo assessment under Part 8 as it applies because of section 165.

- (2) The application must be accompanied by the fee prescribed by the regulations (if any).
- (3) As soon as practicable after receiving the application, the Minister must cause notice of the application to be given to each person and

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body registered under section 266A (about registration for consultation on permit applications).

- (4) The notice must:
  - (a) state that an application for a permit has been made; and
  - (b) set out details of the application; and
  - (c) invite persons and bodies to make written submissions to the Minister about whether a permit should be issued; and
  - (d) specify:
    - (i) an address for lodgment of submissions; and
    - (ii) a day by which submissions must be lodged.
- (5) The day specified must not be a day occurring within 5 days after the last day on which the notice was given.

**238 Minister may issue permits**

- (1) Subject to subsections (3) and (4), the Minister may, on application by a person under section 237, issue a permit to the person.
- (2) A permit authorises its holder to take an action specified in the permit without breaching sections 229, 229A, 229B, 229C, 229D, 230, 232A, 232B, 233 and 234.
- (3) The Minister must not issue the permit unless satisfied that:
  - (a) the specified action will contribute significantly to the conservation of cetaceans; or
  - (b) if the specified action will interfere with cetaceans, the interference is incidental to, and not the purpose of, the taking of the action and:
    - (i) the taking of the action will not adversely affect the conservation status of a species of cetacean or a population of that species; and
    - (ii) the taking of the action is not inconsistent with a recovery plan or wildlife conservation plan that is in force for a species of cetacean; and
    - (iii) the holder of the permit will take all reasonable steps to minimise the interference with cetaceans; or
  - (c) the specified action is whale watching and is carried out in accordance with the regulations (if any) made for the purposes of this section; or



- (d) all of the following subparagraphs apply:
- (i) the specified action is the export of a part of a cetacean;
  - (ii) the export of the part is an export that, under the regulations, is taken to be an export of a personal item;
  - (iii) the export of the part will not be detrimental to the conservation of cetaceans;
  - (iv) the export of the part is not for commercial purposes; or
- (e) all of the following subparagraphs apply:
- (i) the specified action is the import of a part of a cetacean;
  - (ii) the import of the part is an import that, under the regulations, is taken to be an import of a personal item;
  - (iii) the import of the part will not be detrimental to the conservation of cetaceans;
  - (iv) the import of the part is not for commercial purposes.

Note: In deciding whether to issue the permit, the Minister must consider the assessment report that relates to the action to be covered by the permit and was prepared as a result of Part 8 applying because of section 165.

- (3A) In making a decision on the application, the Minister must consider all written submissions made by persons or bodies registered under section 266A (about registration for consultation on permit applications) to the Minister on or before the day, and at the address for lodgment, specified in the notice under section 237.
- (4) The Minister must not grant a permit authorising its holder to kill a cetacean or to take a cetacean for live display.
- (5) In this Act:

***whale watching*** means any activity conducted for the purpose of observing a whale, including but not limited to being in the water for the purposes of observing or swimming with a whale, or otherwise interacting with a whale.

### **239 Conditions of permits**

- (1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).
- (2) The Minister may, in accordance with the regulations:
- (a) vary or revoke a condition of a permit; or
  - (b) impose further conditions of a permit.

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**240 Contravening conditions of a permit**

The holder of a permit is guilty of an offence punishable upon conviction by a fine not exceeding 300 penalty units if:

- (a) he or she does, or fails to do, an act or thing; and
- (b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

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

**241 Authorities under permits**

- (1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.
- (2) The holder of a permit must not give an authority unless:
  - (a) the permit contains a condition permitting the holder to do so; and
  - (b) the authority is given in accordance with any requirements set out in the condition.
- (3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (4) The giving of an authority does not prevent the taking of any action by the holder of the permit.
- (5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.
- (6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

**242 Transfer of permits**

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

### **243 Suspension or cancellation of permits**

The Minister may, in accordance with the regulations:

- (a) suspend a permit for a specified period; or
- (b) cancel a permit.

### **243A Review of decisions about permits**

An application may be made to the Administrative Appeals Tribunal for review of a decision:

- (a) to issue or refuse a permit; or
- (b) to specify, vary or revoke a condition of a permit; or
- (c) to impose a further condition of a permit; or
- (d) to transfer or refuse to transfer a permit; or
- (e) to suspend or cancel a permit.

### **244 Fees**

Such fees as are prescribed (if any) are payable in respect of the following:

- (a) the grant or the transfer of a permit;
- (b) the variation or revocation of a condition of a permit;
- (c) the imposition of a further condition of a permit.

## **Subdivision G—Miscellaneous**

### **245 Minister may accredit plans or regimes**

The Minister may, by instrument in writing, accredit for the purposes of this Division:

- (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
- (b) a plan of management for a fishery made by a State or self-governing Territory and that is in force in the State or Territory; or
- (ba) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force;

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if satisfied that:

- (c) the plan requires persons engaged in fishing under the plan to take all reasonable steps to ensure that cetaceans are not killed or injured as a result of the fishing; and
- (d) the fishery to which the plan relates does not, or is not likely to, adversely affect the conservation status of a species of cetacean or a population of that species.

**246 Vesting of whales in Commonwealth**

(1) If:

(a) a cetacean is:

- (i) in the Australian Whale Sanctuary, other than the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force; or
- (ii) in waters beyond the outer limits of the Australian Whale Sanctuary; and

(a) a person kills, injures or takes the cetacean, whether or not in contravention of this Division;

the cetacean vests, by force of this section, in the Commonwealth.

(2) The Commonwealth is not liable in any action, suit or proceedings in respect of any matter relating to a cetacean at any time before the taking of possession of the cetacean by the Commonwealth.

**247 Regulations**

The regulations may:

- (a) provide for the transportation, treatment and disposal of cetaceans killed, injured or taken in contravention of this Division; and
- (b) provide for the methods or equipment by which cetaceans may be killed, taken or interfered with otherwise than in contravention of this Division; and
- (c) provide for the gathering and dissemination of information relating to cetaceans; and
- (d) provide for the protection and conservation of cetaceans; and
- (e) provide for any matter incidental to or connected with any of the above paragraphs.

## **Division 4—Listed marine species**

### **Subdivision A—Listing**

#### **248 Listed marine species**

- (1) The Minister must, by instrument published in the *Gazette*, establish a list of marine species for the purposes of this Part.
- (2) The list, as first established, must contain only the following:
  - (a) all species in the Family Hydrophiidae (sea-snakes);
  - (b) all species in the Family Laticaudidae (sea-snakes);
  - (c) all species in the Family Otariidae (eared seals);
  - (d) all species in the Family Phocidae (“true” seals);
  - (e) all species in the Genus *Crocodylus* (crocodiles);
  - (f) all species in the Genus *Dugong* (dugong);
  - (g) all species in the Family Cheloniidae (marine turtles);
  - (h) the species *Dermochelys coriacea* (leatherback turtles);
  - (i) all species in the Family Syngnathidae (seahorses, sea-dragons and pipefish);
  - (j) all species in the Family Solenostomidae (ghost pipefish);
  - (k) all species in the Class Aves (birds) that occur naturally in Commonwealth marine areas.
- (3) The Minister must establish the list within 30 days after the commencement of this Act.
- (4) The Minister must cause a notice summarising the information contained in the instrument to be published in accordance with the regulations (if any).

#### **249 Minister may amend list**

- (1) Subject to this Subdivision, the Minister may, by instrument published in the *Gazette*, amend the list:
  - (a) by including items in the list; or
  - (b) by deleting items from the list; or
  - (c) by correcting an inaccuracy or updating the name of a marine species.

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- (2) An instrument mentioned in paragraph (1)(a) or (b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) Despite section 48 of the *Acts Interpretation Act 1901* as it applies in relation to an instrument because of section 46A of that Act, amendments of a list that delete items from the list take effect on the first day on which they are no longer liable to be disallowed, or to be taken to have been disallowed, under section 48 of that Act as it so applies.
- (4) When an instrument is laid before each House of the Parliament in accordance with section 48 of the *Acts Interpretation Act 1901*, the Minister must cause a statement to be laid before each House with the instrument explaining:
  - (a) in the case of an item that has been included in the list by the instrument—why the item was so included; or
  - (b) in the case of an item that has been deleted from the list by the instrument—why the item was so deleted.
- (5) The Minister must cause a notice summarising the information contained in an instrument to be published in accordance with the regulations (if any).

**250 Adding marine species to the list**

- (1) The Minister must not add a marine species to the list unless:
  - (a) the Minister is satisfied that it is necessary to include the species in the list in order to ensure the long-term conservation of the species; and
  - (b) the species occurs naturally in a Commonwealth marine area.
- (2) Before adding a marine species to the list, the Minister must consult with each Minister who has an interest in a Commonwealth marine area where the species occurs naturally.

**251 Minister must consider advice from Scientific Committee**

- (1) In deciding whether to add an item to, or delete an item from, the list, the Minister must, in accordance with the regulations (if any), obtain and consider advice from the Scientific Committee on the scientific aspects of the addition or deletion of the item concerned.

- (2) The Minister must:
  - (a) decide whether to add an item to, or delete an item from, the list; and
  - (b) if the Minister decides to add or delete the item—cause the necessary instrument to be published in the *Gazette*; within 90 days after receiving the Scientific Committee’s advice on the addition or deletion of the item.
- (3) A member of the Scientific Committee has a duty not to disclose to any other person the advice, or any information relating to the advice, before the end of that period of 90 days unless the disclosure:
  - (a) is for the official purposes of the Scientific Committee; or
  - (b) if an instrument is published in the *Gazette* relating to an addition or deletion to which the advice relates—occurred after the publication.

### **252 Minister to make lists available to the public**

The Minister must, in accordance with the regulations (if any), make copies of up-to-date lists available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory.

### **Subdivision B—Permit system**

#### **253 Subdivision does not apply to members of certain species and cetaceans**

This Subdivision does not apply to a member of a listed marine species that is a member of a listed migratory species, a member of a listed threatened species or a cetacean.

#### **254 Recklessly killing or injuring member of listed marine species**

- (1) A person is guilty of an offence if:
  - (a) the person takes an action; and
  - (b) the action results in the death or injury of a member of a marine species; and
  - (c) the member is a member of a listed marine species; and
  - (d) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraph (1)(d).

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

**254A Strict liability for killing or injuring member of listed marine species**

- (1) A person is guilty of an offence if:
- (a) the person takes an action; and
  - (b) the action results in the death or injury of a member of a marine species; and
  - (c) the member is a member of a listed marine species; and
  - (d) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

**254B Recklessly taking etc. member of listed marine species**

- (1) A person is guilty of an offence if:
- (a) the person takes, trades, keeps or moves a member of a marine species; and
  - (b) the member is a member of a listed marine species; and
  - (c) the member is in or on a Commonwealth area.



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

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

(3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

#### **254C Strict liability for taking etc. member of listed marine species**

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

- (a) the person takes, trades, keeps or moves a member of a marine species; and
- (b) the member is a member of a listed marine species; and
- (c) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

(3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

#### **254D Trading etc. member of listed marine species taken in Commonwealth area**

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

- (a) the person trades, keeps or moves a member of a marine species; and
- (b) the member is a member of a listed marine species; and
- (c) the member has been taken in or on a Commonwealth area.

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

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Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

(3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

**254E Strict liability for trading etc. member of listed marine species taken in Commonwealth area**

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

- (a) the person trades, keeps or moves a member of a marine species; and
- (b) the member is a member of a listed marine species; and
- (c) the member has been taken in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

(3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

**255 Certain actions are not offences**

Sections 254, 254A, 254B, 254C, 254D and 254E do not apply to:

- (a) an action authorised by a permit that was issued under section 258 and is in force; or
- (b) an action provided for by, and taken in accordance with, a wildlife conservation plan made under Division 5 and in force; or
- (c) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 26(1) or (2) or 27A(1), (2), (3) or (4); or

- (d) an action that:
  - (i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 26(1) or (2) or 27A(1), (2), (3) or (4); and
  - (ii) is taken in accordance with a management plan that is an accredited management plan for the purposes of the declaration; or
- (e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by an animal; or
- (f) an action that is reasonably necessary to prevent a risk to human health; or
- (g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or
- (h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or
- (i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or
- (j) an action taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or
- (k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 265.

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

## **256 Failing to notify taking etc. of listed marine wildlife**

- (1) This section applies to an action taken by a person if all of the following conditions are met:
  - (a) the person's action either:
    - (i) results in the death or injury of a member of a listed marine species that is in or on a Commonwealth area; or
    - (ii) consists of, or involves, trading, taking, keeping or moving a member of a listed marine species that is in or on a Commonwealth area;

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(b) the person's action does not constitute an offence against section 254, 254A, 254B, 254C, 254D or 254E;

(c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 255 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 254, 254A, 254B, 254C, 254D or 254E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 261 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

(2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:

(a) that the action was taken; and

(b) of other particulars (if any) about the action that are prescribed by the regulations.

(3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.

(4) Subsection (2) does not apply to the person if he or she, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action.

(5) A person is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units if a person:

(a) fails to do an act; and

(b) the failing to do the act results in a contravention of subsection (2).

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

**257 Application for permits**

(1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 258.

(2) The application must be accompanied by the fee prescribed by the regulations (if any).

- (3) As soon as practicable after receiving the application, the Minister must cause notice of the application to be given to each person and body registered under section 266A (about registration for consultation on permit applications).
- (4) The notice must:
  - (a) state that an application for a permit has been made; and
  - (b) set out details of the application; and
  - (c) invite persons and bodies to make written submissions to the Minister about whether a permit should be issued; and
  - (d) specify:
    - (i) an address for lodgment of submissions; and
    - (ii) a day by which submissions must be lodged.
- (5) The day specified must not be a day occurring within 5 days after the last day on which the notice was given.

### **258 Minister may issue permits**

- (1) Subject to subsection (3), the Minister may, on application by a person under section 257, issue a permit to the person.
- (2) A permit authorises its holder to take the actions specified in the permit without breaching section 254, 254A, 254B, 254C, 254D or 254E.
- (3) The Minister must not issue the permit unless satisfied that:
  - (a) the specified action will significantly contribute to the conservation of the listed marine species concerned or other listed marine species; or
  - (b) the impact of the specified action on a member of the listed marine species concerned is incidental to, and not the purpose of, the taking of the action and:
    - (i) the taking of the action will not adversely affect the conservation status of that species or a population of that species; and
    - (ii) the taking of the action is not inconsistent with a wildlife conservation plan for that species that is in force; and
    - (iii) the holder of the permit will take all reasonable steps to minimise the impact of the action on that species; or

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- (c) the specified action is of particular significance to indigenous tradition and will not adversely affect the conservation status of the listed marine species concerned; or
  - (d) the specified action is necessary in order to control pathogens and are conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed marine species concerned.
- (4) In making a decision on the application, the Minister must consider all written submissions made by persons or bodies registered under section 266A (about registration for consultation on permit applications) to the Minister on or before the day, and at the address for lodgment, specified in the notice under section 257.

**259 Conditions of permits**

- (1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).
- (2) The Minister may, in accordance with the regulations:
  - (a) vary or revoke a condition of a permit; or
  - (b) impose further conditions of a permit.

**260 Contravening conditions of a permit**

The holder of a permit is guilty of an offence punishable upon conviction by a fine not exceeding 300 penalty units if:

- (a) he or she does, or fails to do, an act or thing; and
- (b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

**261 Authorities under permits**

- (1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.
- (2) The holder of a permit must not give an authority unless:
  - (a) the permit contains a condition permitting the holder to do so; and

- (b) the authority is given in accordance with any requirements set out in the condition.
- (3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (4) The giving of an authority does not prevent the taking of any action by the holder of the permit.
- (5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.
- (6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

### **262 Transfer of permits**

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

### **263 Suspension or cancellation of permits**

The Minister may, in accordance with the regulations:

- (a) suspend a permit for a specified period; or
- (b) cancel a permit.

### **263A Review of decisions about permits**

An application may be made to the Administrative Appeals Tribunal for review of a decision:

- (a) to issue or refuse a permit; or
- (b) to specify, vary or revoke a condition of a permit; or
- (c) to impose a further condition of a permit; or
- (d) to transfer or refuse to transfer a permit; or
- (e) to suspend or cancel a permit.

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**264 Fees**

Such fees as are prescribed (if any) are payable in respect of the following:

- (a) the grant or the transfer of a permit;
- (b) the variation or revocation of a condition of a permit;
- (c) the imposition of a further condition of a permit.

**Subdivision C—Miscellaneous**

**265 Minister may accredit plans or regimes**

The Minister may, by instrument in writing, accredit for the purposes of this Division:

- (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
- (b) a plan of management for a fishery made by a State or self-governing Territory and that is in force in the State or Territory; or
- (ba) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force;

if satisfied that:

- (c) the plan requires persons engaged in fishing under the plan to take all reasonable steps to ensure that members of listed marine species are not killed or injured as a result of the fishing; and
- (d) the fishery to which the plan relates does not, or is not likely to, adversely affect the conservation status of a listed marine species or a population of that species.

**266 Regulations**

The regulations may:

- (a) provide for the transportation, treatment and disposal of members of listed marine species killed, injured or taken in contravention of this Division; and



- (b) provide for the methods or equipment by which members of listed marine species may be killed or taken otherwise than in contravention of this Division; and
- (c) provide for the gathering and dissemination of information relating to listed marine species; and
- (d) provide for the protection and conservation of listed marine species; and
- (e) provide for any matter incidental to or connected with any of the above paragraphs.

## **Division 4A—Register for consultations about permits**

### **266A Register for consultation about permit applications**

- (1) At intervals of not more than 12 months, the Minister must cause to be published a notice inviting applications from persons or bodies wishing to be registered for a specified period of at least 12 months to be told of each application for a permit under Division 1, 2, 3 or 4. The notice must be published:
  - (a) in the *Gazette*; and
  - (b) in a daily newspaper that circulates generally in each State and self-governing Territory; and
  - (c) in any other way required by the regulations (if any).
- (2) The Minister must register any person or body that applies in writing for registration.
- (3) Registration has effect for the period specified in the notice.

# **Environment Protection and Biodiversity Conservation Act 1999**

## **Act No. 91 of 1999 as amended**

This compilation was prepared on 10 April 2006  
taking into account amendments up to Act No. 17 of 2006

**Volume 2** includes: Table of Contents  
Sections 267 – 528  
Note 1  
Table of Acts  
Act Notes  
Table of Amendments  
Notes 2 and 3  
Table A

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

## **Chapter 5—Conservation of biodiversity and heritage**

### **Part 13—Species and communities**



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## **Division 5—Plans**

### **Subdivision A—Recovery plans and threat abatement plans**

#### **267 Simplified outline of this Subdivision**

The following is a simplified outline of this Subdivision:

Recovery plans for listed threatened species and ecological communities and threat abatement plans for key threatening processes bind the Commonwealth and Commonwealth agencies.

The Minister must ensure that a recovery plan is in force for each listed threatened species and ecological community.

The Minister need ensure a threat abatement plan is in force for a key threatening process only if the Minister decides that a plan is a feasible, effective and efficient way of abating the process. The Minister must consult before making such a decision.

A recovery plan or threat abatement plan can be made by the Minister alone or jointly with relevant States and Territories, or the Minister can adopt a State or Territory plan. There must be public consultation and advice from the Scientific Committee about the plan, regardless of how it is made or adopted.

#### **268 Compliance with recovery plans and threat abatement plans**

A Commonwealth agency must not take any action that contravenes a recovery plan or a threat abatement plan.

#### **269 Implementing recovery and threat abatement plans**

- (1) Subject to subsection (2), the Commonwealth must implement a recovery plan or threat abatement plan to the extent to which it applies in Commonwealth areas.
- (2) If a recovery plan or a threat abatement plan applies outside Commonwealth areas in a particular State or self-governing Territory, the Commonwealth must seek the co-operation of the State or Territory with a view to implementing the plan jointly with

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the State or Territory to the extent to which the plan applies in the State or Territory.

**269A Making or adopting a recovery plan**

*Ensuring recovery plan is always in force*

- (1) The Minister must exercise his or her powers under this section to ensure that there is always in force a recovery plan for:
  - (a) each listed threatened species (except one that is extinct or is a conservation dependent species); and
  - (b) each listed threatened ecological community;once the first recovery plan for the species or community has come into force.

*Making a plan*

- (2) The Minister may make a written recovery plan for the purposes of the protection, conservation and management of:
  - (a) a listed threatened species (except one that is extinct or is a conservation dependent species); or
  - (b) a listed threatened ecological community.

Note: Section 273 requires recovery plans to be made and in force by certain deadlines.

*Making a plan jointly with a State or Territory*

- (3) The Minister may make a written recovery plan for the purposes of the protection, conservation and management of a listed threatened species (except one that is extinct or is a conservation dependent species) or a listed threatened ecological community jointly with the States and self-governing Territories in which the species or community occurs, or with agencies of those States and Territories.

*Content of a plan*

- (4) The Minister must not make a recovery plan under subsection (2) or (3) unless the plan meets the requirements of section 270.

*Prerequisites to making a plan*

- (5) Before making a recovery plan under subsection (2) or (3) for a listed threatened species or listed threatened ecological community, the Minister must:
- (a) consult the appropriate Minister of each State and self-governing Territory in which the species or community occurs, with a view to:
    - (i) taking the views of each of those States and Territories into account in making the plan under subsection (2); or
    - (ii) making the plan jointly under subsection (3);unless the species or community occurs only in a Commonwealth area; and
  - (b) consider the advice of the Scientific Committee given under section 274; and
  - (c) consult about the plan and consider comments in accordance with sections 275 and 276.

*Limits on making a plan*

- (6) The Minister must not make a recovery plan under subsection (2) for a species or ecological community that occurs wholly or partly outside a Commonwealth area unless the Minister is satisfied that it is not reasonably practicable to make the plan under subsection (3):
- (a) with each of the States and self-governing Territories in which the species or community occurs; and
  - (b) in the case of a species or ecological community that occurs partly inside and partly outside a Commonwealth area—within the time required by subsection 273(2).

*Adopting a State or Territory plan*

- (7) The Minister may, by instrument in writing, adopt as a recovery plan a plan made by a State, a self-governing Territory or an agency of a State or self-governing Territory (whether or not the plan is in force in the State or Territory). The Minister may adopt the plan with such modifications as are specified in the instrument. This subsection has effect subject to section 277.

Note: Section 277 requires that:

- (a) an adopted plan have the content required for a recovery plan by section 270; and

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- (b) there has been adequate consultation in making the plan adopted; and
- (c) the Minister consult the Scientific Committee about the content of the plan.

*Effect of adopting a plan*

- (8) A plan adopted under subsection (7) has effect as if it had been made under subsection (2) (whether it was adopted with modifications or not).

**270 Content of recovery plans**

- (1) A recovery plan must provide for the research and management actions necessary to stop the decline of, and support the recovery of, the listed threatened species or listed threatened ecological community concerned so that its chances of long-term survival in nature are maximised.
- (2) In particular, a recovery plan must:
  - (a) state the objectives to be achieved (for example, removing a species or community from a list, or indefinite protection of existing populations of a species or community); and
  - (b) state criteria against which achievement of the objectives is to be measured (for example, a specified number and distribution of viable populations of a species or community, or the abatement of threats to a species or community); and
  - (c) specify the actions needed to achieve the objectives; and
  - (ca) identify threats to the species or community; and
  - (d) identify the habitats that are critical to the survival of the species or community concerned and the actions needed to protect those habitats; and
  - (e) identify any populations of the species or community concerned that are under particular pressure of survival and the actions needed to protect those populations; and
  - (f) state the estimated duration and cost of the recovery process; and
  - (g) identify:
    - (i) interests that will be affected by the plan's implementation; and

- (ii) organisations or persons who will be involved in evaluating the performance of the recovery plan; and
  - (h) specify any major benefits to native species or ecological communities (other than those to which the plan relates) that will be affected by the plan's implementation; and
  - (j) meet prescribed criteria (if any) and contain provisions of a prescribed kind (if any).
- (3) In making a recovery plan, regard must be had to:
- (a) the objects of this Act; and
  - (b) the most efficient and effective use of the resources that are allocated for the conservation of species and ecological communities; and
  - (c) minimising any significant adverse social and economic impacts, consistently with the principles of ecologically sustainable development; and
  - (d) meeting Australia's obligations under international agreements between Australia and one or more countries relevant to the species or ecological community to which the plan relates; and
  - (e) the role and interests of indigenous people in the conservation of Australia's biodiversity.

### **270A Decision whether to have a threat abatement plan**

#### *Decision*

- (1) The Minister may at any time decide whether to have a threat abatement plan for a threatening process in the list of key threatening processes established under section 183. The Minister must do so:
- (a) within 90 days of the threatening process being included in the list; and
  - (b) within 5 years of the last decision whether to have a threat abatement plan for the process, if that decision was not to have a threat abatement plan for the process.

#### *Basis for decision*

- (2) The Minister must decide to have a threat abatement plan for the process if he or she believes that having and implementing a threat

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abatement plan is a feasible, effective and efficient way to abate the process. The Minister must decide not to have a threat abatement plan if he or she does not believe that.

*Consultation before making a decision*

- (3) Before making a decision under this section, the Minister must:
- (a) request the Scientific Committee to give advice within a specified period; and
  - (b) take reasonable steps to request any Commonwealth agency, any State, any self-governing Territory, and any agency of a State or self-governing Territory, that would be affected by or interested in abatement of the process to give advice within a specified period;
- on the feasibility, effectiveness or efficiency of having and implementing a threat abatement plan to abate the process.

*Consulting others*

- (4) Subsection (3) does not prevent the Minister from requesting any other person or body to give advice within a specified period on the feasibility, effectiveness or efficiency of having and implementing a threat abatement plan to abate the process.

*Request may be made before listing*

- (5) A request for advice on the feasibility, effectiveness or efficiency of having and implementing a threat abatement plan to abate the process may be made before or after the process is included in the list of key threatening processes established under section 183.

*Time for giving advice*

- (6) The Minister must not make a decision whether to have a threat abatement plan for the process before the end of the period within which he or she has requested a person or body to give advice on the feasibility, effectiveness or efficiency of having and implementing a threat abatement plan to abate the process.

*Considering views expressed in consultation*

- (7) When the Minister is making a decision under this section, he or she must consider the advice that a person or body gave on request within the period specified in the request.

*Publishing decision and reasons*

- (8) The Minister must publish in accordance with the regulations (if any):
- (a) a decision whether or not to have a threat abatement plan for a key threatening process; and
  - (b) the Minister's reasons for the decision.

*Special rules for processes included in original list*

- (9) Subsections (3), (4), (5), (6) and (7) do not apply in relation to a decision about a process included in the list under section 183 as first established.

## **270B Making or adopting a threat abatement plan**

*Application*

- (1) This section applies only if the Minister's most recent decision under section 270A in relation to a key threatening process is to have a threat abatement plan for the process.

Note: Section 273 sets a deadline of 3 years from the decision for ensuring that a threat abatement plan is in force for the process.

*Making a plan*

- (2) The Minister may make a written threat abatement plan for the purposes of reducing the effect of the process.

*Making a plan jointly with a State or Territory*

- (3) The Minister may make a written threat abatement plan for the purposes of reducing the effect of the process, jointly with the States and self-governing Territories in which the process occurs or with agencies of those States and Territories.

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*Content of a plan*

- (4) The Minister must not make a threat abatement plan under subsection (2) or (3) unless the plan meets the requirements of section 271.

*Prerequisites to making a plan*

- (5) Before making a threat abatement plan for the process under subsection (2) or (3), the Minister must:
- (a) consult the appropriate Minister of each State and self-governing Territory in which the process occurs, with a view to:
    - (i) taking the views of each of those States and Territories into account in making the plan under subsection (2); or
    - (ii) making the plan jointly under subsection (3);unless the process occurs only in a Commonwealth area; and
  - (b) consider the advice of the Scientific Committee given under section 274; and
  - (c) consult about the plan and consider comments in accordance with sections 275 and 276.

*Limits on making a plan*

- (6) The Minister must not make a threat abatement plan under subsection (2) for a process that occurs wholly or partly outside a Commonwealth area unless the Minister is satisfied that it is not reasonably practicable to make the plan:
- (a) jointly with each of the States and self-governing Territories in which the process occurs; and
  - (b) within 3 years of the decision to have the plan.

*Adopting a State or Territory plan*

- (7) The Minister may, by instrument in writing, adopt as a threat abatement plan for the process a plan made by a State, a self-governing Territory or an agency of a State or self-governing Territory (whether or not the plan is in force in the State or Territory). The Minister may adopt the plan with such modifications as are specified in the instrument. This subsection has effect subject to section 277.

Note: Section 277 requires that:



- (a) an adopted plan have the content required for a threat abatement plan by section 271; and
- (b) there has been adequate consultation in making the plan adopted; and
- (c) the Minister consult the Scientific Committee about the content of the plan.

*Effect of adopting a plan*

- (8) A plan adopted under subsection (7) has effect as if it had been made under subsection (2), whether it was adopted with modifications or not.

**271 Content of threat abatement plans**

- (1) A threat abatement plan must provide for the research, management and other actions necessary to reduce the key threatening process concerned to an acceptable level in order to maximise the chances of the long-term survival in nature of native species and ecological communities affected by the process.
- (2) In particular, a threat abatement plan must:
  - (a) state the objectives to be achieved; and
  - (b) state criteria against which achievement of the objectives is to be measured; and
  - (c) specify the actions needed to achieve the objectives; and
  - (d) state the estimated duration and cost of the threat abatement process; and
  - (e) identify organisations or persons who will be involved in evaluating the performance of the threat abatement plan; and
  - (f) specify any major ecological matters (other than the species or communities threatened by the key threatening process that is the subject of the plan) that will be affected by the plan's implementation; and
  - (g) meet prescribed criteria (if any) and contain provisions of a prescribed kind (if any).
- (3) In making a threat abatement plan, regard must be had to:
  - (a) the objects of this Act; and
  - (b) the most efficient and effective use of the resources that are allocated for the conservation of species and ecological communities; and

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- (c) minimising any significant adverse social and economic impacts consistently with the principles of ecologically sustainable development; and
- (d) meeting Australia's obligations under international agreements between Australia and one or more countries relevant to the species or ecological community threatened by the key threatening process that is the subject of the plan; and
- (e) the role and interests of indigenous people in the conservation of Australia's biodiversity.

**272 Eradication of non-native species**

If:

- (a) the actions specified under paragraph 270(2)(c) in a recovery plan, or under paragraph 271(2)(c) in a threat abatement plan, include the eradication of a non-native species; and
- (b) the species is threatened in a country in which its native habitat occurs;

the recovery plan, or threat abatement plan, must require the Commonwealth to offer to provide stock of the species to that country before the eradication proceeds.

**273 Ensuring plans are in force**

*When a plan comes into force*

- (1A) A recovery plan or a threat abatement plan comes into force on the day on which it is made or adopted, or on a later day specified by the Minister in writing.

*Recovery plan for species and communities in Commonwealth areas only*

- (1) A recovery plan for a listed threatened species or listed threatened ecological community that occurs only in Commonwealth areas must be made and come into force:
  - (a) in the case of a native species listed in Schedule 1 to the *Endangered Species Protection Act 1992*, for which a recovery plan under that Act was not in force immediately before the commencement of this Act—within the remainder

- of the period allowed by section 36 of that Act for the preparation of the plan for that species; or
- (b) in the case of a listed threatened species (other than a native species mentioned in paragraph (a)) in:
- (i) the critically endangered category—within 2 years after the species in question became included in that category; or
  - (ii) the endangered category or the extinct in the wild category—within 3 years after the species in question became included in that category; or
  - (iii) the vulnerable category—within 5 years after the species in question became included in that category; or
- (c) in the case of an ecological community (if any) listed in Schedule 2 to the *Endangered Species Protection Act 1992*, for which a recovery plan under that Act was not in force immediately before the commencement of this Act—within the remainder of the period allowed by section 36 of that Act for the preparation of the plan for that community; or
- (d) in the case of a listed threatened ecological community (other than a community mentioned in paragraph (c)) in:
- (i) the critically endangered category—within 2 years after the community in question became included in that category; or
  - (ii) the endangered category—within 3 years after the community in question became included in that category; or
  - (iii) the vulnerable category—within 5 years after the community in question became included in that category.

*Recovery plan for species and communities partly in Commonwealth areas*

- (2) A recovery plan for a listed threatened species or a listed threatened ecological community that occurs in and outside a Commonwealth area must be made:
- (a) in the case of a listed threatened species in:
- (i) the critically endangered category—within 2 years after the species in question became included in that category; or

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- (ii) the endangered category or the extinct in the wild category—within 3 years after the species in question became included in that category; or
  - (iii) the vulnerable category—within 5 years after the species in question became included in that category; or
- (b) in the case of a listed threatened ecological community in:
- (i) the critically endangered category—within 2 years after the community in question became included in that category; or
  - (ii) the endangered category—within 3 years after the community in question became included in that category; or
  - (iii) the vulnerable category—within 5 years after the community in question became included in that category.

*Recovery plan for species and communities wholly outside Commonwealth areas*

- (3) A recovery plan for a listed threatened species or listed threatened ecological community that occurs only outside Commonwealth areas must be made as soon as reasonably practicable after the species or ecological community is included in the list referred to in section 178 or 181 (as appropriate).

*Deadline for threat abatement plan*

- (4) A threat abatement plan for a key threatening process must be made and in force within 3 years of the decision under section 270A to have the plan.

*Ensuring threat abatement plan is in force*

- (5) Once the first threat abatement plan for a key threatening process is in force, the Minister must exercise his or her powers under this Subdivision to ensure that a threat abatement plan is in force for the process until the Minister decides under section 270A not to have a threat abatement plan for the process.

Note: The Minister may revoke a threat abatement plan for a key threatening process if the Minister decides under section 270A not to have a threat abatement plan for the process. See section 283A.

### **274 Scientific Committee to advise on plans**

- (1) The Minister must obtain and consider the advice of the Scientific Committee on:
  - (a) the content of recovery and threat abatement plans; and
  - (b) the times within which, and the order in which, such plans should be made.
- (2) In giving advice about a recovery plan, the Scientific Committee must take into account the following matters:
  - (a) the degree of threat to the survival in nature of the species or ecological community in question;
  - (b) the potential for the species or community to recover;
  - (c) the genetic distinctiveness of the species or community;
  - (d) the importance of the species or community to the ecosystem;
  - (e) the value to humanity of the species or community;
  - (f) the efficient and effective use of the resources allocated to the conservation of species and ecological communities.
- (3) In giving advice about a threat abatement plan, the Scientific Committee must take into account the following matters:
  - (a) the degree of threat that the key threatening process in question poses to the survival in nature of species and ecological communities;
  - (b) the potential of species and ecological communities so threatened to recover;
  - (c) the efficient and effective use of the resources allocated to the conservation of species and ecological communities.

### **275 Consultation on plans**

- (1) Before making a recovery plan or threat abatement plan under this Subdivision, the Minister must:
  - (a) take reasonable steps to ensure that copies of the proposed plan are available for purchase, for a reasonable price, at prescribed places in each State and self-governing territory; and
  - (b) give a copy of it, together with a notice of a kind referred to in subsection (2), to the Scientific Committee; and
  - (c) cause the notice to be published:

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- (i) in the *Gazette*; and
  - (ii) in a daily newspaper that circulates generally in each State, and self-governing Territory, in which the relevant listed threatened native species, listed threatened ecological community or key threatening process occurs; and
  - (iii) in any other way required by the regulations (if any).
- (2) The notice must:
- (a) specify the places where copies of the proposed plan may be purchased; and
  - (b) invite persons to make written comments about the proposed plan; and
  - (c) specify:
    - (i) an address for lodgment of comments; and
    - (ii) a day by which comments must be made.
- (3) The day specified must not be a day occurring within 3 months after the notice is published in the *Gazette*.

**276 Consideration of comments**

The Minister:

- (a) must, in accordance with the regulations (if any), consider all comments on a proposed recovery plan or threat abatement plan made in response to an invitation under section 275; and
- (b) may revise the plan to take account of those comments.

**277 Adoption of State plans**

- (1) The Minister must not adopt a plan as a recovery plan or a threat abatement plan under this Subdivision unless:
  - (a) the Minister is satisfied that an appropriate level of consultation has been undertaken in making the plan; and
  - (b) the plan meets the requirements of section 270 or 271, as the case requires.
- (2) Before adopting a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the plan.

## **278 Publication, review and variation of plans**

- (1) As soon as practicable after the Minister makes or adopts a recovery plan or a threat abatement plan under this Subdivision, the Minister must:
  - (a) make copies of the plan available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory; and
  - (b) give notice of the making or adopting of each such plan; and
  - (c) publish the notice:
    - (i) in the *Gazette*; and
    - (ii) in a daily newspaper that circulates generally in each State, and self-governing Territory; and
    - (iii) in any other way required by the regulations (if any).
- (2) The notice must:
  - (a) state that the Minister has made or adopted the plan; and
  - (b) specify the day on which the plan comes into force; and
  - (c) specify the places where copies of the plan may be purchased.

## **279 Variation of plans by the Minister**

- (1) The Minister may, at any time, review a recovery plan or threat abatement plan that has been made or adopted under this Subdivision and consider whether a variation of it is necessary.
- (2) Each plan must be reviewed by the Minister at intervals of not longer than 5 years.
- (3) If the Minister considers that a variation of a plan is necessary, the Minister may, subject to subsections (4), (5), (6) and (7), vary the plan.
- (4) The Minister must not vary a plan, unless the plan, as so varied, continues to meet the requirements of section 270 or 271, as the case requires.
- (5) Before varying a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.

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- (6) If the Minister has made a plan jointly with, or adopted a plan that has been made by, a State or self-governing Territory, or an agency of a State or self-governing Territory, the Minister must seek the co-operation of that State or Territory, or that agency, with a view to varying the plan.
- (7) Sections 275, 276 and 278 apply to the variation of a plan in the same way that those sections apply to the making of a recovery plan or threat abatement plan.

**280 Variation by a State or Territory of joint plans and plans adopted by the Minister**

- (1) If a State or self-governing Territory varies a plan that:
  - (a) the Minister has made jointly with the State or self-governing Territory, or an agency of the State or Territory; or
  - (b) has been adopted by the Minister as a recovery plan or a threat abatement plan;the variation is of no effect for the purposes of this Act unless it is approved by the Minister.
- (2) Before approving a variation, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.
- (3) The Minister must not approve a variation unless satisfied that:
  - (a) an appropriate level of consultation was undertaken in varying the plan; and
  - (b) the plan, as so varied, continues to meet the requirements of section 270 or 271, as the case requires.
- (4) If the Minister approves a variation of a plan, the plan has effect as so varied on and after the date of the approval, or such later date as the Minister determines in writing.
- (5) Section 278 applies to the variation of a plan in the same way that it applies to the making of a recovery plan or threat abatement plan.

**281 Commonwealth assistance**

- (1) The Commonwealth may give to a State or self-governing Territory, or to an agency of a State or a self-governing Territory,
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financial assistance, and any other assistance, to make or implement a recovery plan or a threat abatement plan.

- (2) The Commonwealth may give to a person (other than a State or a self-governing Territory, or an agency of a State or Territory) financial assistance, and any other assistance, to implement a recovery plan or a threat abatement plan.
- (3) The giving of assistance may be made subject to such conditions as the Minister thinks fit. The Minister is to have regard to the advice of the Scientific Committee under section 282 before determining those conditions.

### **282 Scientific Committee to advise on assistance**

- (1) The Scientific Committee is to advise the Minister on the conditions (if any) to which the giving of assistance under section 281 should be subject.
- (2) In giving advice about assistance for making or implementing a recovery plan, the Scientific Committee must take into account the following matters:
  - (a) the degree of threat to the survival in nature of the species or ecological community in question;
  - (b) the potential for the species or community to recover;
  - (c) the genetic distinctiveness of the species or community;
  - (d) the importance of the species or community to the ecosystem;
  - (e) the value to humanity of the species or community;
  - (f) the efficient and effective use of the resources allocated to the conservation of species and ecological communities.
- (3) In giving advice about assistance for making or implementing threat abatement plan, the Scientific Committee must take into account the following matters:
  - (a) the degree of threat that the key threatening process in question poses to the survival in nature of species and ecological communities;
  - (b) the potential of species and ecological communities so threatened to recover;
  - (c) the efficient and effective use of the resources allocated to the conservation of species and ecological communities.

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**283 Plans may cover more than one species etc.**

- (1) A recovery plan made or adopted under this Subdivision may deal with one or more listed threatened species and/or one or more listed ecological communities.
- (2) A threat abatement plan made or adopted under this Subdivision may deal with one or more key threatening processes.

**283A Revoking a threat abatement plan**

- (1) The Minister may, by written instrument, revoke a threat abatement plan for a key threatening process if the Minister decides under section 270A not to have a threat abatement plan for the process.
- (2) The Minister must publish in accordance with the regulations (if any):
  - (a) the instrument revoking the threat abatement plan; and
  - (b) the Minister's reasons for revoking the plan.

**284 Reports on preparation and implementation of plans**

The Secretary must include in each annual report a report on the making and adoption under this Subdivision of each recovery plan and threat abatement plan during the year to which the report relates.

**Subdivision B—Wildlife conservation plans**

**285 Wildlife conservation plans**

- (1) Subject to this section, the Minister may make, by instrument in writing, and implement a wildlife conservation plan for the purposes of the protection, conservation and management of the following:
  - (a) a listed migratory species that occurs in Australia or an external Territory;
  - (b) a listed marine species that occurs in Australia or an external Territory;
  - (c) a species of cetacean that occurs in the Australian Whale Sanctuary;

- (d) a conservation dependent species.
- (2) The Minister must not make a wildlife conservation plan for a species that is a listed threatened species (except a conservation dependent species).
- (3) Subject to section 292, the Minister may, by instrument in writing, adopt a plan that has been made by a State or a self-governing Territory, or by an agency of a State or self-governing Territory, as a wildlife conservation plan. The Minister may adopt a plan with such modifications as are specified in the instrument.
- (4) A plan, as modified and adopted under subsection (2), has effect as if the plan had been made by the Minister under subsection (1).
- (5) The Minister must seek the co-operation of the States and self-governing Territories in which:
- (a) a listed migratory species occurs; or
  - (b) a listed marine species occurs; or
  - (c) a species of cetacean occurs; or
  - (d) a conservation dependent species occurs;
- with a view to making and implementing jointly with those States and Territories, or agencies of those States or Territories, a joint wildlife conservation plan unless the species occurs only in a Commonwealth area.
- (6) Before making a wildlife conservation plan under subsection (1) or (5), the Minister must:
- (a) consider the advice of the Scientific Committee given under section 289; and
  - (b) consult about the plan in accordance with sections 290 and 291.
- (7) A wildlife conservation plan comes into force on the day on which it is made or adopted, or on such later day as the Minister specifies in writing.

### **286 Acting in accordance with wildlife conservation plans**

A Commonwealth agency must take all reasonable steps to act in accordance with a wildlife conservation plan.

**287 Content of wildlife conservation plans**

- (1) A wildlife conservation plan must provide for the research and management actions necessary to support survival of the migratory species, marine species, species of cetacean or conservation dependent species concerned.
- (2) In particular, a wildlife conservation plan must:
  - (a) state the objectives to be achieved; and
  - (b) state criteria against which achievement of the objectives is to be measured; and
  - (c) specify the actions needed to achieve the objectives; and
  - (d) identify the habitats of the species concerned and the actions needed to protect those habitats; and
  - (e) identify:
    - (i) interests that will be affected by the plan's implementation; and
    - (ii) organisations or persons who will be involved in evaluating the performance of the plan; and
  - (f) specify any major benefits to migratory species, marine species, species of cetacean or conservation dependent species (other than those to which the plan relates) that will be affected by the plan's implementation; and
  - (g) meet prescribed criteria (if any) and contain provisions of a prescribed kind (if any).
- (3) In making a wildlife conservation plan, regard must be had to:
  - (a) the objects of this Act; and
  - (b) the most efficient and effective use of the resources that are allocated for the conservation of migratory species, marine species, species of cetacean and conservation dependent species; and
  - (c) minimising any significant adverse social and economic impacts, consistently with the principles of ecologically sustainable development; and
  - (d) meeting Australia's obligations under international agreements between Australia and one or more countries relevant to the migratory species, marine species, species of cetacean or conservation dependent species to which the plan relates; and

- (e) the role and interests of indigenous people in the conservation of Australia's biodiversity.

### **288 Eradication of non-native species**

If:

- (a) the actions specified under section 287 in a wildlife conservation plan include the eradication of a non-native species; and
- (b) the species is threatened in a country in which its native habitat occurs;

the wildlife conservation plan must require the Commonwealth to offer to provide stock of the species to that country before the eradication proceeds.

### **289 Scientific Committee to advise on scheduling of plans**

- (1) The Minister may seek advice from the Scientific Committee on the need for wildlife conservation plans and the order in which they should be made.
- (1A) The Scientific Committee may advise the Minister on its own initiative to make a wildlife conservation plan for a specified species described in subsection 285(1).
- (2) In giving advice under subsection (1) or (1A), the Scientific Committee must take into account the resources available for making plans.
- (3) Before making a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the plan.

### **290 Consultation on plans**

- (1) Before making a wildlife conservation plan under subsection 285(1) or (5), the Minister must:
  - (a) take reasonable steps to ensure that copies of the proposed plan are available for purchase, for a reasonable price, at prescribed places in each State and self-governing Territory; and
  - (b) give a copy of it, together with a notice of a kind referred to in subsection (2), to the Scientific Committee; and

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- (c) cause the notice to be published:
  - (i) in the *Gazette*; and
  - (ii) in a daily newspaper that circulates generally in each State, and self-governing Territory; and
  - (iii) in any other way required by the regulations (if any).
- (2) The notice must:
  - (a) specify the places where copies of the proposed plan may be purchased; and
  - (b) invite persons to make written comments about the proposed plan; and
  - (c) specify:
    - (i) an address for lodgment of comments; and
    - (ii) a day by which comments must be made.
- (3) The day specified must not be a day occurring within 3 months after the notice is published in the *Gazette*.

**291 Consideration of comments**

The Minister:

- (a) must, in accordance with the regulations (if any), consider all comments on a proposed wildlife conservation plan made in response to an invitation under section 290; and
- (b) may revise the plan to take account of those comments.

**292 Adoption of State plans**

- (1) The Minister must not adopt a plan as a wildlife conservation plan under subsection 285(3) unless:
  - (a) the Minister is satisfied that an appropriate level of consultation has been undertaken in making the plan; and
  - (b) the plan meets the requirements of section 287.
- (2) Before adopting a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the plan.

**293 Publication, review and variation of plans**

- (1) As soon as practicable after the Minister makes or adopts a wildlife conservation plan under section 285, the Minister must:
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- (a) make copies of the plan available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory; and
  - (b) give notice of the making or adoption of each such plan; and
  - (c) publish the notice:
    - (i) in the *Gazette*; and
    - (ii) in a daily newspaper that circulates generally in each State, and self-governing Territory; and
    - (iii) in any other way required by the regulations (if any).
- (2) The notice must:
- (a) state that the Minister has made or adopted the plan; and
  - (b) specify the day on which the plan comes into force; and
  - (c) specify the places where copies of the plan may be purchased.

#### **294 Variation of plans by the Minister**

- (1) The Minister may, at any time, review a wildlife conservation plan that has been made or adopted under section 285 and consider whether a variation of it is necessary.
- (2) Each plan must be reviewed by the Minister at intervals of not longer than 5 years.
- (3) If the Minister considers that a variation of a plan is necessary, the Minister may, subject to subsections (4), (5), (6) and (7) vary the plan.
- (4) The Minister must not vary a plan, unless the plan, as so varied, continues to meet the requirements of section 287.
- (5) Before varying a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.
- (6) If the Minister has made a plan jointly with, or adopted a plan that has been made by, a State or self-governing Territory, or an agency of a State or self-governing Territory, the Minister must seek the co-operation of that State or Territory, or that agency, with a view to varying the plan.

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- (7) Sections 290, 291 and 293 apply to the variation of a plan in the same way that those sections apply to the making of a wildlife conservation plan.

**295 Variation by a State or Territory of joint plans and plans adopted by the Minister**

- (1) If a State or self-governing Territory varies a plan that:
- (a) the Minister has made jointly with the State or self-governing Territory, or an agency of the State or Territory; or
  - (b) has been adopted by the Minister as a wildlife conservation plan;
- the variation is of no effect for the purposes of this Act unless it is approved by the Minister.
- (2) Before approving a variation, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.
- (3) The Minister must not approve a variation under subsection (1) unless satisfied:
- (a) an appropriate level of consultation was undertaken in varying the plan; and
  - (b) the plan, as so varied, continues to meet the requirements of section 287.
- (4) If the Minister approves a variation of a plan, the plan has effect as so varied on and after the date of the approval, or such later date as the Minister determines in writing.
- (5) Section 293 applies to the variation of a plan in the same way that it applies to the making of a wildlife conservation plan.

**296 Commonwealth assistance**

- (1) The Commonwealth may give to a State or self-governing Territory, or to an agency of a State or a self-governing Territory, financial assistance, and any other assistance, to make a wildlife conservation plan.
- (2) The Commonwealth may give to a person (other than a State or a self-governing Territory, or an agency of a State or Territory)
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financial assistance, and any other assistance, to implement a wildlife conservation plan.

- (3) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

**297 Plans may cover more than one species etc.**

A wildlife conservation plan made or adopted under this Subdivision may deal with all or any of the following:

- (a) one or more listed migratory species;
- (b) one or more listed marine species;
- (c) one or more species of cetacean;
- (d) one or more conservation dependent species.

**298 Reports on preparation and implementation of plans**

The Secretary must include in each annual report a report on the making and adoption under section 285 of each wildlife conservation plan during the year to which the report relates.

**Subdivision C—Miscellaneous**

**299 Wildlife conservation plans cease to have effect**

If:

- (a) a wildlife conservation plan is in force for all or any of the following:
  - (i) a listed migratory species;
  - (ii) a listed marine species;
  - (iii) a species of cetacean; and
- (b) the species becomes a listed threatened species (except a conservation dependent species);

the wildlife conservation plan ceases to have effect in relation to the species on and from the day on which a recovery plan takes effect for the species.

**300 Document may contain more than one plan**

- (1) All or any of the plans made under this Division may be included in the same document.

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- (2) All or any of the plans adopted under this Division may be included in the same instrument of adoption.

**300A State and Territory laws not affected**

Sections 269A, 270A, 270B, 273 and 285 do not exclude or limit the concurrent operation of a law of a State or self-governing Territory.

## **Division 6—Access to biological resources**

### **301 Control of access to biological resources**

- (1) The regulations may provide for the control of access to biological resources in Commonwealth areas.
- (2) Without limiting subsection (1), the regulations may contain provisions about all or any of the following:
  - (a) the equitable sharing of the benefits arising from the use of biological resources in Commonwealth areas;
  - (b) the facilitation of access to such resources;
  - (c) the right to deny access to such resources;
  - (d) the granting of access to such resources and the terms and conditions of such access.

## **Division 6A—Control of non-native species**

### **301A Regulations for control of non-native species**

The regulations may:

- (a) provide for the establishment and maintenance of a list of species, other than native species, whose members:
  - (i) do or may threaten biodiversity in the Australian jurisdiction; or
  - (ii) would be likely to threaten biodiversity in the Australian jurisdiction if they were brought into the Australian jurisdiction; and
- (b) regulate or prohibit the bringing into the Australian jurisdiction of members of a species included in the list mentioned in paragraph (a); and
- (c) regulate or prohibit trade in members of a species included in the list mentioned in paragraph (a):
  - (i) between Australia and another country; or
  - (ii) between 2 States; or
  - (iii) between 2 Territories; or
  - (iv) between a State and a Territory; or
  - (v) by a constitutional corporation; and
- (d) regulate and prohibit actions:
  - (i) involving or affecting members of a species included in the list mentioned in paragraph (a); and
  - (ii) whose regulation or prohibition is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries; and
- (e) provide for the making and implementation of plans to reduce, eliminate or prevent the impacts of members of species included in the list mentioned in paragraph (a) on biodiversity in the Australian jurisdiction.

## **Division 7—Aid for conservation of species in foreign countries**

### **302 Aid for conservation of species in foreign countries**

On behalf of the Commonwealth, the Minister may give financial assistance to the governments of foreign countries and organisations in foreign countries to help the recovery and conservation, in those countries, of species covered by international agreements to which Australia is a party.

## **Division 8—Miscellaneous**

### **303 Regulations**

- (1) The regulations may make provision for the conservation of biodiversity in Commonwealth areas.
- (2) In particular, the regulations may prohibit or regulate actions affecting a member of a native species in a Commonwealth area. This does not limit subsection (1).

### **303A Exemptions from this Part**

- (1) A person proposing to take an action that would contravene a provision of this Part apart from this section may apply in writing to the Minister for an exemption from the provision.
- (2) The Minister must decide within 20 business days of receiving the application whether or not to grant the exemption.
- (3) The Minister may, by written notice, exempt a specified person from the application of a specified provision of this Part in relation to a specified action.
- (4) The Minister may do so only if he or she is satisfied that it is in the national interest that the provision not apply in relation to the person or the action.
- (5) In determining the national interest, the Minister may consider Australia's defence or security or a national emergency. This does not limit the matters the Minister may consider.
- (6) A provision specified in the notice does not apply in relation to the specified person or action on or after the day specified in the notice. The Minister must not specify a day earlier than the day the notice is made.
- (7) Within 10 business days after making the notice, the Minister must:
  - (a) publish a copy of the notice and his or her reasons for granting the exemption in accordance with the regulations;
  - and

(b) give a copy of the notice to the person specified in the notice.

## **Part 13A—International movement of wildlife specimens**

### **Division 1—Introduction**

#### **303BA Objects of Part**

- (1) The objects of this Part are as follows:
- (a) to ensure that Australia complies with its obligations under CITES and the Biodiversity Convention;
  - (b) to protect wildlife that may be adversely affected by trade;
  - (c) to promote the conservation of biodiversity in Australia and other countries;
  - (d) to ensure that any commercial utilisation of Australian native wildlife for the purposes of export is managed in an ecologically sustainable way;
  - (e) to promote the humane treatment of wildlife;
  - (f) to ensure ethical conduct during any research associated with the utilisation of wildlife;
  - (h) to ensure that the precautionary principle is taken into account in making decisions relating to the utilisation of wildlife.

Note: CITES means the Convention on International Trade in Endangered Species—see section 528.

- (2) In order to achieve its objects, this Part includes special provisions to conserve the biodiversity of Australian native wildlife.

#### **303BAA Certain indigenous rights not affected**

To avoid doubt, nothing in this Part prevents an indigenous person from continuing in accordance with law the traditional use of an area for:

- (a) hunting (except for the purposes of sale); or
- (b) food gathering (except for the purposes of sale); or
- (c) ceremonial or religious purposes.



### 303BB Simplified outline

The following is a simplified outline of this Part:

- This Part sets up a system for regulating the international movement of wildlife specimens.
- A *CITES specimen* is a specimen of a species included in Appendix I, II or III to the Convention on International Trade in Endangered Species (CITES).
- It is an offence to export or import a *CITES specimen* unless:
  - (a) the exporter or importer holds a permit; or
  - (b) an exemption applies.
- A *regulated native specimen* is a specimen of a native species subject to export control under this Part.
- It is an offence to export a *regulated native specimen* unless:
  - (a) the exporter holds a permit; or
  - (b) an exemption applies.
- A *regulated live specimen* is a live specimen of a species subject to import control under this Part.
- It is an offence to import a *regulated live specimen* unless the importer holds a permit.
- It is an offence to possess a specimen that was imported in contravention of this Part.

### 303BC Definitions

In this Part, unless the contrary intention appears:

*eligible listed threatened species* means a listed threatened species other than a species in the conservation dependent category.

*engage in conduct* means:

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- (a) do an act; or
- (b) omit to perform an act.

**export** means:

- (a) export from Australia or from an external Territory; or
- (b) export from the sea;

but does not include:

- (c) export from Australia to an external Territory; or
- (d) export from an external Territory to Australia; or
- (e) export from an external Territory to another external Territory.

**export from the sea**, in relation to a specimen, means take in a Commonwealth marine area and then take out of that area to another country without bringing into Australia or into an external Territory.

**import** means:

- (a) import into Australia or into an external Territory; or
- (b) import by way of introduction from the sea;

but does not include:

- (c) import into Australia from an external Territory; or
- (d) import into an external Territory from Australia; or
- (e) import into an external Territory from another external Territory.

**import by way of introduction from the sea**, in relation to a specimen, means take in the marine environment not under the jurisdiction of any country and then bring into Australia or into an external Territory without having been imported into any other country.

**marine environment** means the sea, and includes:

- (a) the air space above the sea; and
- (b) the seabed and subsoil beneath the sea.

**recipient** means:

- (a) in relation to a specimen that is exported—the person in the country to which the specimen is exported who is to have the care and custody of the specimen after the export; and

- (b) in relation to a specimen that is imported into Australia or into an external Territory—the person in Australia or that Territory, as the case may be, who is to have the care and custody of the specimen after the import.

**relevant CITES authority**, in relation to a country, means:

- (a) if the country is a party to CITES—a Management Authority of that country; or
- (b) if the country is not a party to CITES—a competent authority of that country within the meaning of Article X of CITES.

**sender**, in relation to a specimen that is imported into Australia or an external Territory, means the person in the country from which the specimen is imported who exports it from that country to Australia or to that Territory, as the case may be.

**take** includes:

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

**trade** means trade within the ordinary meaning of that expression.

Note: See also section 528.

## **Division 2—CITES species**

### **Subdivision A—CITES species and CITES specimens**

#### **303CA Listing of CITES species**

- (1) The Minister must, by instrument published in the *Gazette*, establish a list of CITES species for the purposes of this Act.
- (2) The Minister must ensure that the list is established on the commencement of this section.  

Note: See section 4 of the *Acts Interpretation Act 1901*.
- (3) The list must include all species from time to time included in any of Appendices I, II and III to CITES. The list must not include any other species.
- (4) For each species included in the list, there is to be a notation:
  - (a) describing the specimens belonging to that species that are included in a particular Appendix to CITES; and
  - (b) identifying the Appendix in which the species is included; and
  - (c) identifying the date on which the provisions of CITES first applied to the specimens.
- (5) A description mentioned in paragraph (4)(a):
  - (a) may cover all specimens that belong to the species; or
  - (b) may cover specified kinds of specimens that belong to the species; or
  - (c) may state that the inclusion of a specimen in a particular Appendix to CITES is subject to restrictions or conditions.
- (6) A restriction or condition mentioned in paragraph (5)(c) may:
  - (a) impose a quantitative limit in relation to the export or import of a specimen; or
  - (b) relate to the imposition of a quota in relation to the export or import of specimens; or
  - (c) relate to a particular population of a species; or
  - (d) reflect any other restriction or condition set out in the relevant Appendix to CITES.

- (7) Subsection (6) does not limit paragraph (5)(c).
- (8) A notation in the list is to be consistent with CITES.
- (9) The Minister may, by instrument published in the *Gazette*:
  - (a) correct an inaccuracy or update the name of a species; or
  - (b) amend the list, as necessary, so that it includes all species required to be included in the list under subsection (3); or
  - (c) amend the list, as necessary, so that the notations in the list are consistent with CITES.
- (10) A copy of an instrument under subsection (1) or (9) is to be made available for inspection on the Internet.
- (11) For the purposes of this section, it is to be assumed that the definition of *specimen* in CITES includes a reference to a thing that is a specimen for the purposes of this Act.

Note: See also section 303CB.

### **303CB Stricter domestic measures**

- (1) The Minister may, by instrument published in the *Gazette*, declare that the list referred to in section 303CA has effect as if it were modified as set out in the declaration.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The Minister must not make a declaration under subsection (1) unless:
  - (a) the modification has the effect of treating a specified specimen that is included in Appendix II to CITES as if the specimen were included in Appendix I to CITES; or
  - (b) the modification has the effect of broadening the range of specimens included in a specified Appendix to CITES in relation to a specified species; or
  - (c) the modification has the effect of decreasing a quantitative limit in relation to the export or import of a specimen; or
  - (d) the modification has the effect of treating a specified specimen that is not included in Appendix I, II or III to CITES as if the specimen were included in Appendix I to CITES; or

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- (e) the modification has the effect of treating a specified specimen that is not included in Appendix I, II or III to CITES as if the specimen were included in Appendix II to CITES.
- (3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) A copy of an instrument under subsection (1) is to be made available for inspection on the Internet.
- (5) A reference in this Act to the *list referred to in section 303CA* is a reference to that list as modified under this section.

**Subdivision B—Offences and permit system**

**303CC Exports of CITES specimens**

- (1) A person is guilty of an offence if:
  - (a) the person exports a specimen; and
  - (b) the specimen is a CITES specimen.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

*Authorised export—permit*

- (2) Subsection (1) does not apply if the specimen is exported in accordance with a permit that was issued under section 303CG, 303GB or 303GC and is in force.

*Authorised export—CITES exemptions*

- (3) Subsection (1) does not apply if the export of the specimen is an export that, in accordance with a determination made by the Minister under the regulations, is taken to be part of a registered, non-commercial exchange of scientific specimens between scientific organisations.
- (4) Subsection (1) does not apply if the Minister issues a certificate under subsection (5) in relation to the specimen.

- (5) If the Minister is satisfied that a specimen was acquired before the provisions of CITES applied to the specimen, the Minister may issue a certificate to that effect.
- (6) Subsection (1) does not apply if the export of the specimen is an export that, under the regulations, is taken to be an export of a personal or household effect.

Note 1: See paragraph 3 of Article VII of CITES.

Note 2: The defendant bears an evidential burden in relation to the matters in subsections (2), (3), (4) and (6) (see subsection 13.3(3) of the *Criminal Code*).

### **303CD Imports of CITES specimens**

- (1) A person is guilty of an offence if:
- (a) the person imports a specimen; and
  - (b) the specimen is a CITES specimen.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

#### *Authorised import—permit*

- (2) Subsection (1) does not apply if the specimen is imported in accordance with a permit that was issued under section 303CG, 303GB or 303GC and is in force.

#### *Authorised import—CITES exemptions*

- (3) Subsection (1) does not apply if the import of the specimen is an import that, under the regulations, is taken to be an import of a personal or household effect.

Note: See paragraph 3 of Article VII of CITES.

- (4) Subsection (1) does not apply if:
- (a) the specimen is a CITES II specimen; and
  - (b) the specimen is not a live specimen; and
  - (c) the specimen belongs to a species that is not specified in the regulations; and
  - (d) in a case where a quantitative limit is applicable to the specimen under a notation in the list referred to in

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section 303CA—the quantity of the specimen does not exceed that limit; and

- (e) the specimen is within the personal baggage of a person entering Australia or an external Territory; and
  - (f) the specimen is not intended for sale or for any other commercial purpose; and
  - (g) both:
    - (i) the country from which the specimen is proposed to be imported has a relevant CITES authority; and
    - (ii) permission to export the specimen from that country has been given by a relevant CITES authority of that country.
- (5) Subsection (1) does not apply if the import of the specimen is an import that, in accordance with a determination made by the Minister under the regulations, is taken to be part of a registered, non-commercial exchange of scientific specimens between scientific organisations.
- (6) Subsection (1) does not apply if:
- (a) the country from which the specimen is proposed to be imported has a relevant CITES authority; and
  - (b) a relevant CITES authority of that country has issued a certificate under paragraph 2 of Article VII of CITES in respect of the specimen.

Note 1: Paragraph 2 of Article VII of CITES deals with a specimen that was acquired before the provisions of CITES applied to the specimen.

Note 2: The defendant bears an evidential burden in relation to the matters in subsections (2), (3), (4), (5) and (6) (see subsection 13.3(3) of the *Criminal Code*).

**303CE Applications for permits**

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 303CG.
- (2) The application must be accompanied by the fee (if any) prescribed by the regulations.



### **303CF Further information**

- (1) The Minister may, within 40 business days after the application is made, request the applicant to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.
- (2) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.

### **303CG Minister may issue permits**

- (1) The Minister may, on application made by a person under section 303CE, issue a permit to the person. This subsection has effect subject to subsection (3).
- (2) A permit authorises its holder to take the action or actions specified in the permit without breaching section 303CC, 303CD, 303DD or 303EK.
- (3) The Minister must not issue a permit unless the Minister is satisfied that:
  - (a) the action or actions specified in the permit will not be detrimental to, or contribute to trade which is detrimental to:
    - (i) the survival of any taxon to which the specimen belongs; or
    - (ii) the recovery in nature of any taxon to which the specimen belongs; or
    - (iii) any relevant ecosystem (for example, detriment to habitat or biodiversity); and
  - (b) the specimen was not obtained in contravention of, and the action or actions specified in the permit would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory; and
  - (c) if the specimen is a live specimen that belongs to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimen have been, or are likely to be, complied with; and
  - (d) if any restriction or condition is applicable to the specimen under a notation in the list referred to in section 303CA—that

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restriction or condition has been, or is likely to be, complied with; and

- (e) if the permit authorises the export of a CITES specimen:
  - (i) the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA); or
  - (ii) the relevant conditions set out in the table in section 303CH have been met; and
- (f) if the permit authorises the import of a CITES specimen:
  - (i) the proposed import would be an eligible non-commercial purpose import (within the meaning of section 303FB); or
  - (ii) the relevant conditions set out in the table in section 303CH have been met; and
- (g) if:
  - (i) the permit authorises the import of a CITES II specimen; and
  - (ii) the proposed import would be an eligible non-commercial purpose import (within the meaning of section 303FB);

the country from which the specimen is proposed to be imported has a relevant CITES authority and permission to export the specimen from that country has been given by a relevant CITES authority of that country; and
- (h) if the permit authorises the export of a CITES specimen that is a regulated native specimen—the conditions set out in subsection 303DG(4) have been met; and
- (i) if the permit authorises the import of a CITES specimen that is a regulated live specimen—the conditions set out in subsection 303EN(3) have been met.

- (4) Subsection (3) does not apply in relation to a permit to export from Australia or an external Territory a specimen (other than a live animal) that has been imported into Australia or that Territory, as the case may be.
- (5) The Minister must not issue a permit to export a specimen (other than a live animal) that has been imported into Australia or an external Territory, unless the Minister is satisfied that:
  - (a) the specimen was lawfully imported (section 303GY); and

- (b) if the specimen is a CITES I specimen:
- (i) the country to which the specimen is proposed to be exported has a relevant CITES authority; and
  - (ii) permission to import that specimen into that country has been given by a relevant CITES authority of that country.

(6) This section has effect subject to section 303GA.

Note: Section 303GA deals with controlled actions, and actions for which a non-Part 13A permit is required.

### **303CH Specific conditions relating to the export or import of CITES specimens for commercial purposes**

The following table sets out the conditions mentioned in paragraphs 303CG(3)(e) and (f):

<b>Specific conditions</b>			
<b>Item</b>	<b>Category of specimen</b>	<b>Action</b>	<b>Specific conditions</b>
1	CITES I	Import	(a) the proposed import would be an import from an approved CITES-registered captive breeding program in accordance with section 303FK; or (b) the specimen is, or is derived from, a plant that was artificially propagated (section 527C).
2	CITES I	Export	(a) the specimen is not a live native mammal, a live native amphibian, a live native reptile or a live native bird; and (b) the country to which the specimen is proposed to be exported has a relevant CITES authority, and permission to import that specimen into that country has been given by a relevant CITES authority of that country; and (c) the proposed export would be an export from: <ul style="list-style-type: none"> <li>(i) an approved CITES-registered captive breeding program in accordance with section 303FK; or</li> <li>(ii) an approved artificial propagation program in accordance with section 303FL.</li> </ul>

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<b>Specific conditions</b>			
<b>Item</b>	<b>Category of specimen</b>	<b>Action</b>	<b>Specific conditions</b>
3	CITES II	Import	<p>(a) the country from which the specimen is proposed to be imported has a relevant CITES authority and permission to export the specimen from that country has been given by a relevant CITES authority of that country; and</p> <p>(b) any of the following subparagraphs applies:</p> <ul style="list-style-type: none"> <li>(i) the proposed import of the specimen would be an import from an approved commercial import program in accordance with section 303FU;</li> <li>(ii) the specimen is, or is derived from, an animal that was bred in captivity (section 527B);</li> <li>(iii) the specimen is, or is derived from, a plant that was artificially propagated (section 527C).</li> </ul>
4	CITES II	Export	<p>(a) the specimen is not a live native mammal, a live native amphibian, a live native reptile or a live native bird; and</p> <p>(b) the proposed export of the specimen would be:</p> <ul style="list-style-type: none"> <li>(i) an export from an approved captive breeding program in accordance with section 303FK; or</li> <li>(ii) an export from an approved artificial propagation program in accordance with section 303FL; or</li> <li>(iii) an export in accordance with an approved wildlife trade operation (section 303FN); or</li> <li>(iv) an export in accordance with an approved wildlife trade management plan (section 303FO).</li> </ul>
5	CITES III	Import	The country from which the specimen is proposed to be imported has a relevant CITES authority, and permission to export the specimen from that country has been given by a relevant CITES authority of that country.

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**Specific conditions**

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<b>Item</b>	<b>Category of specimen</b>	<b>Action</b>	<b>Specific conditions</b>
6	CITES III	Export	(a) the specimen is not a live native mammal, a live native amphibian, a live native reptile or a live native bird; and  (b) the proposed export of the specimen would be: (i) an export from an approved captive breeding program in accordance with section 303FK; or (ii) an export from an approved artificial propagation program in accordance with section 303FL; or (iii) an export in accordance with an approved wildlife trade operation (section 303FN); or (iv) an export in accordance with an approved wildlife trade management plan (section 303FO).

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**303CI Time limit for making permit decision**

If an application for a permit is made under section 303CE, the Minister must either issue, or refuse to issue, the permit within 40 business days after whichever is the latest of the following days:

- (a) the day on which the application is made;
- (b) if a request for further information in relation to the application is made under section 303CF—the day on which the applicant complies with the request;
- (c) if section 303GA applies to the application—the day that is applicable under subsection 303GA(2).

**303CJ Duration of permits**

A permit under section 303CG:

- (a) comes into force on the date on which it is issued; and
- (b) unless it is sooner cancelled, remains in force for:
  - (i) a period of 6 months beginning on the date on which it is issued; or
  - (ii) if a shorter period is specified in the permit—that shorter period.

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**303CK Register of applications and decisions**

- (1) As soon as practicable after the commencement of this section, the Minister must cause to be established a register that sets out:
  - (a) prescribed particulars of applications made under section 303CE after the establishment of the register; and
  - (b) prescribed particulars of decisions made by the Minister under section 303CG after the establishment of the register.
- (2) The register may be maintained by electronic means.
- (3) The register is to be made available for inspection on the Internet.

**Subdivision C—Application of CITES**

**303CL Application of CITES—Management Authority and Scientific Authority**

For the purposes of the application of CITES to Australia:

- (a) the Minister is the Management Authority; and
- (b) the Secretary is the Scientific Authority.

**303CM Interpretation of CITES provisions**

- (1) Except so far as the contrary intention appears, an expression that:
  - (a) is used in the CITES provisions without definition; and
  - (b) is used in CITES (whether or not it is defined in, or a particular meaning is assigned to it by, CITES);has, in the CITES provisions, the same meaning as it has in CITES.
- (2) For the purposes of subsection (1), the *CITES provisions* consist of:
  - (a) this Division; and
  - (b) any other provision of this Act in so far as that other provision relates to, or to permits under, this Division.

**303CN Resolutions of the Conference of the Parties to CITES**

- (1) In making a decision under this Part in relation to a CITES specimen, the Minister may have regard to a relevant resolution of the Conference of the Parties under Article XI of CITES.

- (2) Subsection (1) applies to a resolution, whether made before or after the commencement of this section.

## **Division 3—Exports of regulated native specimens**

### **Subdivision A—Regulated native specimens**

#### **303DA Regulated native specimens**

For the purposes of this Act, a *regulated native specimen* is a specimen that:

- (a) is, or is derived from, a native animal or a native plant; and
- (b) is not included in the list referred to in section 303DB.

#### **303DB Listing of exempt native specimens**

- (1) The Minister must, by instrument published in the *Gazette*, establish a list of exempt native specimens.
- (2) For each specimen included in the list, there is to be a notation that states whether the inclusion of the specimen in the list is subject to restrictions or conditions and, if so, the nature of those restrictions or conditions.
- (3) A restriction or condition mentioned in subsection (2) may:
  - (a) consist of a quantitative limit in relation to the export of the specimen; or
  - (b) relate to the circumstances of the export of the specimen; or
  - (c) relate to the source of the specimen; or
  - (d) relate to the circumstances in which the specimen was taken or, if the specimen is derived from another specimen that was taken, the circumstances in which the other specimen was taken; or
  - (e) relate to an expiry date for the inclusion of the specimen on the list.
- (4) Subsection (3) does not limit subsection (2).
- (5) The list, as first established, must:
  - (a) contain the specimens referred to in Part I of Schedule 4 to the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, as in force immediately before the commencement of this section; and



- (b) reflect the restrictions and conditions that are applicable to the inclusion of those specimens in that Part of that Schedule.
- (6) The list must not include a specimen that belongs to an eligible listed threatened species unless:
  - (a) the Minister is satisfied that the export of the specimen will not:
    - (i) adversely affect the conservation status of the species concerned; and
    - (ii) be inconsistent with any recovery plan or wildlife conservation plan for that species; and
  - (b) the inclusion of the specimen on the list is subject to a restriction or condition to the effect that:
    - (i) the specimen must be, or be derived from, a plant that was artificially propagated (section 527C); and
    - (ii) the specimen was propagated in an operation that has derived its stock in a way that did not breach a law of the Commonwealth, a State or a Territory.
- (7) A copy of an instrument under subsection (1) is to be made available for inspection on the Internet.

### **303DC Minister may amend list**

- (1) The Minister may, by instrument published in the *Gazette*, amend the list referred to in section 303DB by:
  - (a) including items in the list; or
  - (b) deleting items from the list; or
  - (c) imposing a condition or restriction to which the inclusion of a specimen in the list is subject; or
  - (d) varying or revoking a condition or restriction to which the inclusion of a specimen in the list is subject; or
  - (e) correcting an inaccuracy or updating the name of a species.
- (1A) In deciding whether to amend the list referred to in section 303DB to include a specimen derived from a commercial fishery, the Minister must rely primarily on the outcomes of any assessment in relation to the fishery carried out for the purposes of Division 1 or 2 of Part 10.

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- (1B) Subsection (1A) does not apply to an amendment mentioned in paragraph (1)(e).
- (1C) Subsection (1A) does not limit the matters that may be taken into account in deciding whether to amend the list referred to in section 303DB to include a specimen derived from a commercial fishery.
- (1D) In this section:
- fishery* has the same meaning as in section 303FN.
- (2) For the purposes of paragraph (1)(e), *correcting an inaccuracy* includes ensuring that the list complies with subsection 303DB(5).
- (3) Before amending the list referred to in section 303DB as mentioned in paragraph (1)(a), (b), (c) or (d) of this section, the Minister:
- (a) must consult such other Minister or Ministers as the Minister considers appropriate; and
  - (b) must consult such other Minister or Ministers of each State and self-governing Territory as the Minister considers appropriate; and
  - (c) may consult such other persons and organisations as the Minister considers appropriate.
- (4) An instrument under subsection (1) (other than an instrument mentioned in paragraph (1)(e)) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) A copy of an instrument under subsection (1) is to be made available for inspection on the Internet.

**Subdivision B—Offence and permit system**

**303DD Exports of regulated native specimens**

- (1) A person is guilty of an offence if:
- (a) the person exports a specimen; and
  - (b) the specimen is a regulated native specimen.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

*Exemption—permit*

- (2) Subsection (1) does not apply if the specimen is exported in accordance with a permit that was issued under section 303CG, 303DG, 303GB or 303GC and is in force.

*Exemption—accredited wildlife trade management plan*

- (3) Subsection (1) does not apply if:
- (a) the export of the specimen would be an export in accordance with an accredited wildlife trade management plan (section 303FP); and
  - (b) the specimen is not a live native mammal, a live native reptile, a live native amphibian or a live native bird; and
  - (ba) either:
    - (i) the specimen is not a live terrestrial invertebrate, or a live freshwater fish, prescribed by the regulations for the purposes of this subparagraph; or
    - (ii) the export is an export from an approved aquaculture program in accordance with section 303FM; and
  - (c) the specimen is not a CITES specimen; and
  - (d) the specimen does not belong to an eligible listed threatened species.

*Exemption—exchange of scientific specimens*

- (4) Subsection (1) does not apply if the export of the specimen is an export that, in accordance with a determination made by the Minister under the regulations, is taken to be part of a registered, non-commercial exchange of scientific specimens between scientific organisations.

Note: The defendant bears an evidential burden in relation to the matters in subsections (2), (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

### **303DE Applications for permits**

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 303DG.
- (2) The application must be accompanied by the fee (if any) prescribed by the regulations.

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**303DF Further information**

- (1) The Minister may, within 40 business days after the application is made, request the applicant to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.
- (2) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.

**303DG Minister may issue permits**

- (1) The Minister may, on application made by a person under section 303DE, issue a permit to the person. This subsection has effect subject to subsections (3), (3A) and (4).
- (2) A permit authorises its holder to take the action or actions specified in the permit without breaching section 303DD.
- (3) The Minister must not issue a permit authorising the export of a live native mammal, a live native reptile, a live native amphibian or a live native bird unless the Minister is satisfied that the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA).
- (3A) The Minister must not issue a permit authorising the export of a live terrestrial invertebrate, or a live freshwater fish, prescribed by the regulations for the purposes of paragraph 303DD(3)(ba) unless the Minister is satisfied that:
  - (a) the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA); or
  - (b) the proposed export would be an export from an approved aquaculture program in accordance with section 303FM.
- (4) The Minister must not issue a permit unless the Minister is satisfied that:
  - (a) the export of the specimen will not be detrimental to, or contribute to trade which is detrimental to:
    - (i) the survival of any taxon to which the specimen belongs; or
    - (ii) any relevant ecosystem (for example, detriment to habitat or biodiversity); and

- (b) if the specimen is a live specimen that belongs to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimen have been, or are likely to be, complied with; and
  - (c) the specimen was not obtained in contravention of, and the export would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory; and
  - (d) if the specimen belongs to an eligible listed threatened species—the export of the specimen is covered by subsection (7) or (8), and the export would not be inconsistent with any recovery plan for that species; and
  - (e) if the specimen does not belong to an eligible listed threatened species:
    - (i) the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA); or
    - (ii) the proposed export would be an eligible commercial purpose export (within the meaning of section 303FJ).
- (5) Subsection (4) does not apply in relation to a permit to export from Australia or an external Territory a specimen (other than a live animal) that has been imported into Australia or that Territory, as the case may be.
- (6) The Minister must not issue a permit to export from Australia or an external Territory a specimen (other than a live animal) that has been imported into Australia or that Territory, as the case may be, unless the Minister is satisfied that the specimen was lawfully imported (section 303GY).

*Eligible listed threatened species*

- (7) This subsection covers the export of a specimen if:
- (a) the export of the specimen would be an export from an approved captive breeding program in accordance with section 303FK; or
  - (b) the export of the specimen would be an export from an approved artificial propagation program in accordance with section 303FL; or
  - (c) the export of the specimen would be an export from an approved aquaculture program in accordance with section 303FM;

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and the export of the specimen will not adversely affect the conservation status of the species concerned.

Note: See also subsection (3).

- (8) This subsection covers the export of a specimen if:
- (a) the export of the specimen would be an export for the purposes of research in accordance with section 303FC; or
  - (b) the export of the specimen would be an export for the purposes of education in accordance with section 303FD; or
  - (c) the export of the specimen would be an export for the purposes of exhibition in accordance with section 303FE; or
  - (d) the export of the specimen would be an export for the purposes of conservation breeding or propagation in accordance with section 303FF.

*Section has effect subject to section 303GA*

- (9) This section has effect subject to section 303GA.

Note: Section 303GA deals with controlled actions, and actions for which a non-Part 13A permit is required.

**303DH Time limit for making permit decision**

If an application for a permit is made under section 303DE, the Minister must either issue, or refuse to issue, the permit within 40 business days after whichever is the latest of the following days:

- (a) the day on which the application is made;
- (b) if a request for further information in relation to the application is made under section 303DF—the day on which the applicant complies with the request;
- (c) if section 303GA applies to the application—the day that is applicable under subsection 303GA(2).

**303DI Duration of permits**

A permit under section 303DG:

- (a) comes into force on the date on which it is issued; and
- (b) unless it is sooner cancelled, remains in force for:
  - (i) a period of 3 years beginning on the date on which it is issued; or

- (ii) if a shorter period is specified in the permit—that shorter period.

**303DJ Register of applications and decisions**

- (1) As soon as practicable after the commencement of this section, the Minister must cause to be established a register that sets out:
  - (a) prescribed particulars of applications made under section 303DE after the establishment of the register; and
  - (b) prescribed particulars of decisions made by the Minister under section 303DG after the establishment of the register.
- (2) The register may be maintained by electronic means.
- (3) The register is to be made available for inspection on the Internet.

## **Division 4—Imports of regulated live specimens**

### **Subdivision A—Regulated live specimens**

#### **303EA Regulated live specimens**

For the purposes of this Act, a *regulated live specimen* is a specimen that:

- (a) is a live animal or a live plant; and
- (b) is not included in Part 1 of the list referred to in section 303EB.

#### **303EB Listing of specimens suitable for live import**

- (1) The Minister must, by instrument published in the *Gazette*, establish a list of specimens that are taken to be suitable for live import.
- (2) The list is to be divided into 2 Parts, as follows:
  - (a) Part 1 is to be a list of unregulated specimens;
  - (b) Part 2 is to be a list of allowable regulated specimens.
- (3) The list may only contain specimens that are live animals or live plants.
- (4) Part 1 of the list, as first established, must contain only the specimens referred to in Part I of Schedule 5 or Part I of Schedule 6 to the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, as in force immediately before the commencement of this section.
- (5) Part 1 of the list must not contain a CITES specimen.
- (6) Part 1 of the list is taken to include a live plant the introduction of which into Australia is in accordance with the *Quarantine Act 1908*.
- (7) For each specimen included in Part 2 of the list, there is to be a notation that states whether the inclusion of the specimen in that part of the list is subject to restrictions or conditions and, if so, the nature of those restrictions or conditions.



- (8) A restriction or condition referred to in subsection (7) may:
  - (a) consist of a quantitative limit in relation to the import of the specimen; or
  - (b) relate to the circumstances of the import of the specimen; or
  - (c) relate to the source of the specimen; or
  - (d) relate to the circumstances in which the specimen was taken.
- (9) Subsection (8) does not limit subsection (7).
- (10) Part 2 of the list, as first established, must contain only specimens that were, at any time before the commencement of this section, the subject of an import permit granted under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*.
- (11) For the purposes of subsection (10), a specimen is taken to have been the subject of an import permit if, and only if, the specimen was identified in the permit at the species or sub-species level.
- (12) A copy of an instrument under subsection (1) is to be made available for inspection on the Internet.

### **303EC Minister may amend list**

- (1) The Minister may, by instrument published in the *Gazette*, amend the list referred to in section 303EB by:
  - (a) including items in a particular part of the list; or
  - (b) deleting items from a particular part of the list; or
  - (c) correcting an inaccuracy or updating the name of a species; or
  - (d) imposing a restriction or condition to which the inclusion of a specimen in Part 2 of the list is subject; or
  - (e) varying or revoking a restriction or condition to which the inclusion of a specimen in Part 2 of the list is subject.
- (2) For the purposes of paragraph (1)(c), ***correcting an inaccuracy*** includes ensuring that the list complies with subsections 303EB(4) and (10).
- (3) Before amending the list referred to in section 303EB as mentioned in paragraph (1)(a), (b), (d) or (e) of this section, the Minister:
  - (a) must consult such other Minister or Ministers as the Minister considers appropriate; and

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- (b) must consult such other Minister or Ministers of each State and self-governing Territory as the Minister considers appropriate; and
  - (c) may consult such other persons and organisations as the Minister considers appropriate.
- (4) An instrument under subsection (1) (other than an instrument mentioned in paragraph (1)(c)) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) The Minister must not amend the list referred to in section 303EB by including an item in the list, unless:
  - (a) the amendment is made following consideration of a relevant report under section 303ED or 303EE; or
  - (b) the amendment is made following consideration of a relevant review under section 303EJ.
- (6) A copy of an instrument under subsection (1) is to be made available for inspection on the Internet.

**Subdivision B—Assessments relating to the amendment of the list of specimens suitable for import**

**303ED Amendment of list on the Minister’s own initiative**

- (1) The Minister may formulate a proposal for the list referred to in section 303EB to be amended by including an item.
- (2) The Minister must cause to be conducted an assessment of the potential impacts on the environment of the proposed amendment.
- (3) The Minister must cause to be prepared a report on those impacts. The report must be prepared in accordance with section 303EF.
- (4) A report under subsection (3) is to be given to the Minister.

**303EE Application for amendment of list**

- (1) A person may, in accordance with the regulations, apply to the Minister for the list referred to in section 303EB to be amended by including an item.
- (2) The Minister must not consider the application unless:

- (a) an assessment is made of the potential impacts on the environment of the proposed amendment; and
  - (b) a report on those impacts is given to the Minister.
- The report must be prepared in accordance with section 303EF.

### **303EF Requirement for assessments**

An assessment under subsection 303ED(2) or 303EE(2) must provide for:

- (a) the preparation of draft terms of reference for a report on the relevant impacts; and
- (b) the publication of the draft terms of reference for public comment for a period of at least 10 business days that is specified by the Minister; and
- (c) the finalisation of the terms of reference, to the Minister's satisfaction, taking into account the comments (if any) received on the draft terms of reference; and
- (d) the preparation of a draft of a report on the relevant impacts; and
- (e) the publication of the draft report for public comment for a period of at least 20 business days that is specified by the Minister; and
- (f) the finalisation of the report, taking into account the comments (if any) received after publication of the draft report; and
- (g) any other matter prescribed by the regulations.

### **303EG Timing of decision about proposed amendment**

- (1) If the Minister receives a report under section 303ED or 303EE in relation to a proposed amendment, the Minister must decide whether or not to make the proposed amendment within:
  - (a) 30 business days; or
  - (b) if the Minister, by writing, specifies a longer period—that longer period;after the first business day after the day on which the report was received.

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*Notice of extension of time*

- (2) If the Minister specifies a longer period for the purposes of subsection (1), he or she must:
  - (a) if section 303EE applies—give a copy of the specification to the applicant; and
  - (b) publish the specification in accordance with the regulations.

**303EH Requesting further information**

- (1) If:
  - (a) section 303EE applies; and
  - (b) the Minister believes on reasonable grounds that he or she does not have enough information to make an informed decision whether or not to make the proposed amendment;the Minister may request the applicant to give the Minister, within the period specified in the request, information relevant to making the decision.
- (2) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.

**303EI Notice of refusal of proposed amendment**

If section 303EE applies and the Minister refuses to make the proposed amendment, the Minister must give the applicant notice of the refusal.

**303EJ Reviews**

If, following consideration of a relevant report under section 303ED or 303EE, the Minister has made a decision to include, or refusing to include, an item in the list referred to in section 303EB, the Minister may review that decision at any time during the period of 5 years after the decision was made.

**Subdivision C—Offence and permit system**

**303EK Imports of regulated live specimens**

- (1) A person is guilty of an offence if:
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- (a) the person imports a specimen; and
- (b) the specimen is a regulated live specimen.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

*Exemption—permit*

- (2) Subsection (1) does not apply if:
  - (a) the specimen is included in Part 2 of the list referred to in section 303EB; and
  - (b) the specimen is imported in accordance with a permit that was issued under section 303CG, 303EN, 303GB or 303GC and is in force.

*Exemption—testing permit*

- (3) Subsection (1) does not apply if the specimen is imported in accordance with a permit that was issued under section 303GD and is in force.

Note: The defendant bears an evidential burden in relation to the matters in subsections (2) and (3) (see subsection 13.3(3) of the *Criminal Code*).

**303EL Applications for permits**

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 303EN.
- (2) The application must be accompanied by the fee (if any) prescribed by the regulations.

**303EM Further information**

- (1) The Minister may, within 40 business days after the application is made, request the applicant to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.
- (2) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.

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**303EN Minister may issue permits**

- (1) The Minister may, on application made by a person under section 303EL, issue a permit to the person. This subsection has effect subject to subsection (3).
- (2) A permit authorises its holder to take the action or actions specified in the permit without breaching section 303EK.
- (3) The Minister must not issue a permit unless the Minister is satisfied that:
  - (a) the proposed import would not be:
    - (i) likely to threaten the conservation status of a species or ecological community; or
    - (ii) likely to threaten biodiversity; and
  - (b) the specimen is included in Part 2 of the list referred to in section 303EB; and
  - (c) if any restriction or condition is applicable to the specimen under a notation in Part 2 of the list referred to in section 303EB—that restriction or condition has been, or is likely to be, complied with; and
  - (d) the specimen was not obtained in contravention of, and the import would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory; and
  - (e) if the specimen belongs to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimen have been, or are likely to be, complied with.
- (4) This section has effect subject to section 303GA.

Note: Section 303GA deals with controlled actions, and actions for which a non-Part 13A permit is required.

**303EO Time limit for making permit decision**

If an application for a permit is made under section 303EL, the Minister must either issue, or refuse to issue, the permit within 40 business days after whichever is the latest of the following days:

- (a) the day on which the application is made;
- (b) if a request for further information in relation to the application is made under section 303EM—the day on which the applicant complies with the request;

- (c) if section 303GA applies to the application—the day that is applicable under subsection 303GA(2).

### **303EP Duration of permits**

A permit under section 303EN:

- (a) comes into force on the date on which it is issued; and
- (b) unless it is sooner cancelled, remains in force for:
  - (i) a period of 3 years beginning on the date on which it is issued; or
  - (ii) if a shorter period is specified in the permit—that shorter period.

### **303EQ Register of applications and decisions**

- (1) As soon as practicable after the commencement of this section, the Minister must cause to be established a register that sets out:
  - (a) prescribed particulars of applications made under section 303EL after the establishment of the register; and
  - (b) prescribed particulars of decisions made by the Minister under section 303EN after the establishment of the register.
- (2) The register may be maintained by electronic means.
- (3) The register is to be made available for inspection on the Internet.

### **Subdivision D—Marking of certain specimens for the purposes of identification**

#### **303ER Object**

The object of this Subdivision is:

- (a) to comply with Australia's obligations under:
    - (i) the Biodiversity Convention; and
    - (ii) CITES; and
  - (b) otherwise to further the protection and conservation of the wild fauna and flora of Australia and of other countries;
- by requiring the marking of certain live specimens for the purposes of identification.

Note: See Article 8 of the Biodiversity Convention.

Section 303ES

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**303ES Specimens to which Subdivision applies**

This Subdivision applies to a regulated live specimen if:

- (a) the specimen has been imported in accordance with:
  - (i) a permit under this Division; or
  - (ii) a permit or authority under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*; or
- (b) the specimen is the progeny of a specimen referred to in paragraph (a).

**303ET Extended meaning of *marking***

A reference in this Subdivision to the *marking* of a specimen includes a reference to the following:

- (a) in the case of a live plant:
  - (i) the marking or labelling of a container in which the plant is kept or in which the plant is growing; and
  - (ii) the placement of a label or tag on the plant;
- (b) in the case of a live animal:
  - (i) the implantation of a scannable device in the animal; and
  - (ii) the placement of a band on any part of the animal; and
  - (iii) the placement (whether by piercing or otherwise) of a tag or ring on any part of the animal; and
  - (iv) the marking or labelling of a container within which the animal is kept.

**303EU Secretary may make determinations about marking of specimens**

*Determinations*

- (1) The Secretary may make a written determination about the marking of specified kinds of specimens for the purposes of identification.

*Matters that may be covered by determination*

- (2) Without limiting subsection (1), a determination by the Secretary under that subsection may:
  - (a) require specimens to be marked; and



- (b) deal with the manner in which specimens are to be marked; and
- (c) deal with the times at which marking is to occur; and
- (d) deal with the removal or destruction of marks; and
- (e) deal with the replacement or modification of marks; and
- (f) require that marking be carried out by persons approved in writing by the Secretary under that determination; and
- (g) deal with the circumstances in which marks may be, or are required to be, rendered useless; and
- (h) in the case of a mark that consists of a label, tag, band or device:
  - (i) set out specifications relating to the label, tag, band or device; and
  - (ii) require that any destruction or removal of the label, tag, band or device be carried out by a person approved in writing by the Secretary under that determination.

*Marking of animals not to involve undue pain etc.*

- (3) In the case of a live animal, a determination under subsection (1) must not require marking that involves:
  - (a) undue pain or distress to the animal; or
  - (b) undue risk of the death of the animal.

*Marking of plants not to involve undue risk of death*

- (4) In the case of a live plant, a determination under subsection (1) must not require marking that involves undue risk of the death of the plant.

*Disallowable instrument*

- (5) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **303EV Offences**

*Owner to ensure specimens marked etc.*

- (1) If a determination under section 303EU applies to a specimen, the owner of the specimen must comply with the determination.

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*Person not to remove or interfere with mark etc.*

- (2) A person contravenes this subsection if:
- (a) a specimen is marked in accordance with a determination under section 303EU; and
  - (b) the person engages in conduct; and
  - (c) the conduct causes the removal of the mark or interference with the mark, or renders the mark unusable.

*Offence*

- (3) A person who contravenes subsection (1) or (2) is guilty of an offence punishable on conviction by a fine not exceeding 120 penalty units.
- (4) Subsection (2) does not apply if the person engages in the conduct in accordance with a determination under section 303EU.

Note: The defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

- (5) In subsections (1) and (2), strict liability applies to the circumstance that a determination was made under section 303EU.

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

**303EW This Subdivision does not limit conditions of permits**

This Subdivision does not limit section 303GE (which deals with conditions of permits).

## **Division 5—Concepts relating to permit criteria**

### **Subdivision A—Non-commercial purpose exports and imports**

#### **303FA Eligible non-commercial purpose exports**

For the purposes of this Part, the export of a specimen is an *eligible non-commercial purpose export* if, and only if:

- (a) the export of the specimen would be an export for the purposes of research in accordance with section 303FC; or
- (b) the export of the specimen would be an export for the purposes of education in accordance with section 303FD; or
- (c) the export of the specimen would be an export for the purposes of exhibition in accordance with section 303FE; or
- (d) the export of the specimen would be an export for the purposes of conservation breeding or propagation in accordance with section 303FF; or
- (e) the export of the specimen would be an export of a household pet in accordance with section 303FG; or
- (f) the export of the specimen would be an export of a personal item in accordance with section 303FH; or
- (g) the export of a specimen would be an export for the purposes of a travelling exhibition in accordance with section 303FI.

#### **303FB Eligible non-commercial purpose imports**

For the purposes of this Part, the import of a specimen is an *eligible non-commercial purpose import* if, and only if:

- (a) the import of the specimen would be an import for the purposes of research in accordance with section 303FC; or
- (b) the import of the specimen would be an import for the purposes of education in accordance with section 303FD; or
- (c) the import of the specimen would be an import for the purposes of exhibition in accordance with section 303FE; or
- (d) the import of the specimen would be an import for the purposes of conservation breeding or propagation in accordance with section 303FF; or
- (e) the import of the specimen would be an import of a household pet in accordance with section 303FG; or

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- (f) the import of the specimen would be an import of a personal item in accordance with section 303FH; or
- (g) the import of a specimen would be an import for the purposes of a travelling exhibition in accordance with section 303FI.

**303FC Export or import for the purposes of research**

- (1) The export of a specimen is an export for the purposes of research in accordance with this section if:
  - (a) the specimen will be used for the purpose of scientific research; and
  - (b) the objects of the research are covered by any or all of the following subparagraphs:
    - (i) the acquisition of a better understanding, and/or increased knowledge, of a taxon to which the specimen belongs;
    - (ii) the conservation of biodiversity;
    - (iii) the maintenance and/or improvement of human health; and
  - (c) the export is not primarily for commercial purposes; and
  - (d) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (2) The import of a specimen is an import for the purposes of research in accordance with this section if:
  - (a) the specimen will be used for the purpose of scientific research; and
  - (b) the objects of the research are covered by any or all of the following subparagraphs:
    - (i) the acquisition of a better understanding, and/or increased knowledge, of a taxon to which the specimen belongs;
    - (ii) the conservation of biodiversity;
    - (iii) the maintenance and/or improvement of human health; and
  - (c) the import is not primarily for commercial purposes; and
  - (d) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

**303FD Export or import for the purposes of education**

- (1) The export of a specimen is an export for the purposes of education in accordance with this section if:
  - (a) the specimen will be used for the purpose of education or training; and
  - (b) the export is not primarily for commercial purposes; and
  - (c) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (2) The import of a specimen is an import for the purposes of education in accordance with this section if:
  - (a) the specimen will be used for the purpose of education or training; and
  - (b) the import is not primarily for commercial purposes; and
  - (c) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

**303FE Export or import for the purposes of exhibition**

- (1) The export of a specimen is an export for the purposes of exhibition in accordance with this section if:
  - (a) the specimen will be used for the purpose of an exhibition; and
  - (b) the export is not primarily for commercial purposes; and
  - (c) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (2) The import of a specimen is an import for the purposes of exhibition in accordance with this section if:
  - (a) the specimen will be used for the purpose of an exhibition; and
  - (b) the import is not primarily for commercial purposes; and
  - (c) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (3) In this section:

*exhibition* includes a zoo or menagerie.

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**303FF Export or import for conservation breeding or propagation**

- (1) The export of a specimen is an export for the purposes of conservation breeding or propagation in accordance with this section if:
  - (a) the specimen is a live animal or a live plant; and
  - (b) the specimen is for use in a program the object of which is the establishment and/or maintenance of a breeding population; and
  - (c) the program is a program that, under the regulations, is taken to be an approved co-operative conservation program; and
  - (d) the export is not primarily for commercial purposes; and
  - (e) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (2) The import of a specimen is an import for the purposes of conservation breeding or propagation in accordance with this section if:
  - (a) the specimen is a live animal or a live plant; and
  - (b) the specimen is for use in a program the object of which is the establishment and/or maintenance of a breeding population; and
  - (c) the program is a program that, under the regulations, is taken to be an approved co-operative conservation program; and
  - (d) the import is not primarily for commercial purposes; and
  - (e) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

**303FG Export or import of household pets**

*Export of live native animals*

- (1) The export of a live native animal (other than a CITES specimen) is an export of a household pet in accordance with this section if:
  - (a) the animal is included in the list referred to in subsection (4); and
  - (b) the export is not primarily for commercial purposes; and
  - (c) such other conditions as are specified in the regulations have been, or are likely to be, satisfied.

*Export of live CITES specimens*

- (2) The export of a CITES specimen is an export of a household pet in accordance with this section if:
- (a) the specimen is a live animal; and
  - (b) if the animal is a native animal—the animal is included in the list referred to in subsection (4); and
  - (c) the export is not primarily for commercial purposes; and
  - (d) such other conditions as are specified in the regulations have been, or are likely to be, satisfied.

*Import of live animals*

- (3) The import of a live animal is an import of a household pet in accordance with this section if:
- (a) the conditions specified in the regulations have been, or are likely to be, satisfied; and
  - (b) the import is not primarily for commercial purposes; and
  - (c) the animal is included in Part 2 of the list referred to in section 303EB.

*Listing of native household pet animals*

- (4) The Minister must, by instrument published in the *Gazette*, establish a list of native household pet animals.
- (5) The list, as first established, must contain the animals referred to in Schedule 7 to the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, as in force immediately before the commencement of this section.
- (6) The Minister may, by instrument in the *Gazette*, amend the list referred to in subsection (4) by:
- (a) including items in the list; or
  - (b) deleting items from the list; or
  - (c) correcting an inaccuracy or updating the name of a species.
- (7) An instrument under subsection (6) (other than an instrument mentioned in paragraph (6)(c)) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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**303FH Export or import of personal items**

- (1) The export of a specimen is an export of a personal item in accordance with this section if:
  - (a) the specimen is not a live specimen; and
  - (b) the export is not primarily for commercial purposes; and
  - (c) the conditions specified in the regulations have been, or are likely to be, satisfied.
- (2) The import of a specimen is an import of a personal item in accordance with this section if:
  - (a) the specimen is not a live specimen; and
  - (b) the import is not primarily for commercial purposes; and
  - (c) the conditions specified in the regulations have been, or are likely to be, satisfied.

**303FI Export or import for the purposes of a travelling exhibition**

- (1) The export of a specimen is an export for the purposes of a travelling exhibition in accordance with this section if:
  - (a) the export is not primarily for commercial purposes; and
  - (b) the conditions specified in the regulations have been, or are likely to be, satisfied.
- (2) The import of a specimen is an import for the purposes of a travelling exhibition in accordance with this section if:
  - (a) the import is not primarily for commercial purposes; and
  - (b) the conditions specified in the regulations have been, or are likely to be, satisfied.

**Subdivision B—Commercial purpose exports and imports**

**303FJ Eligible commercial purpose exports**

For the purposes of this Part, the export of a specimen is an *eligible commercial purpose export* if, and only if:

- (a) the export of the specimen would be an export from an approved captive breeding program in accordance with section 303FK; or



- (b) the export of the specimen would be an export from an approved artificial propagation program in accordance with section 303FL; or
- (c) the export of the specimen would be an export from an approved aquaculture program in accordance with section 303FM; or
- (d) the export of the specimen would be an export in accordance with an approved wildlife trade operation (section 303FN); or
- (e) the export of the specimen would be an export in accordance with an approved wildlife trade management plan (section 303FO).

Note: See also subsection 303DD(3), which deals with accredited wildlife trade management plans.

### **303FK Export or import from an approved captive breeding program**

- (1) The export of a specimen is an export from an approved captive breeding program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved captive breeding program.
- (2) The export of a specimen is an export from an approved CITES-registered captive breeding program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved CITES-registered captive breeding program.
- (3) The import of a specimen is an import from an approved CITES-registered captive breeding program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved CITES-registered captive breeding program.

### **303FL Export from an approved artificial propagation program**

The export of a specimen is an export from an approved artificial propagation program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved artificial propagation program.

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**303FM Export from an approved aquaculture program**

The export of a specimen is an export from an approved aquaculture program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved aquaculture program.

**303FN Approved wildlife trade operation**

- (1) The export of a specimen is an export in accordance with an approved wildlife trade operation if the specimen is, or is derived from, a specimen that was taken in accordance with a wildlife trade operation declared by a declaration in force under subsection (2) to be an approved wildlife trade operation.
- (2) The Minister may, by instrument published in the *Gazette*, declare that a specified wildlife trade operation is an ***approved wildlife trade operation*** for the purposes of this section.
- (3) The Minister must not declare an operation under subsection (2) unless the Minister is satisfied that:
  - (a) the operation is consistent with the objects of this Part; and
  - (b) the operation will not be detrimental to:
    - (i) the survival of a taxon to which the operation relates; or
    - (ii) the conservation status of a taxon to which the operation relates; and
  - (ba) the operation will not be likely to threaten any relevant ecosystem including (but not limited to) any habitat or biodiversity; and
  - (c) if the operation relates to the taking of live specimens that belong to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimens are likely to be complied with; and
  - (d) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (4) In deciding whether to declare an operation under subsection (2), the Minister must have regard to:
  - (a) the significance of the impact of the operation on an ecosystem (for example, an impact on habitat or biodiversity); and

- (b) the effectiveness of the management arrangements for the operation (including monitoring procedures).
- (5) In deciding whether to declare an operation under subsection (2), the Minister must have regard to:
- (a) whether legislation relating to the protection, conservation or management of the specimens to which the operation relates is in force in the State or Territory concerned; and
  - (b) whether the legislation applies throughout the State or Territory concerned; and
  - (c) whether, in the opinion of the Minister, the legislation is effective.
- (6) A declaration under subsection (2) ceases to be in force at the beginning of the third anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 3 years is specified in the declaration in accordance with subsection 303FT(4).
- (7) If a declaration ceases to be in force, this Act does not prevent the Minister from making a fresh declaration under subsection (2).
- (8) A fresh declaration may be made during the 90-day period before the time when the current declaration ceases to be in force.
- (9) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.
- (10) For the purposes of this section, an operation is a **wildlife trade operation** if, and only if, the operation is an operation for the taking of specimens and:
- (a) the operation is an operation that, under the regulations, is taken to be a market-testing operation; or
  - (b) the operation is an operation that, under the regulations, is taken to be a small-scale operation; or
  - (c) the operation is an operation that, under the regulations, is taken to be a developmental operation; or
  - (d) the operation is a commercial fishery; or
  - (e) the operation is an operation that, under the regulations, is taken to be a provisional operation; or
  - (f) the operation is an operation of a kind specified in the regulations.

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- (10A) In deciding whether to declare that a commercial fishery is an approved wildlife trade operation for the purposes of this section, the Minister must rely primarily on the outcomes of any assessment in relation to the fishery carried out for the purposes of Division 1 or 2 of Part 10.
- (10B) Subsection (10A) does not limit the matters that may be taken into account in deciding whether to declare that a fishery is an approved wildlife trade operation for the purposes of this section.
- (11) In this section:
- fish* includes all species of bony fish, sharks, rays, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles.
- fishery* means a class of activities by way of fishing, including activities identified by reference to all or any of the following:
- (a) a species or type of fish;
  - (b) a description of fish by reference to sex or any other characteristic;
  - (c) an area of waters or of seabed;
  - (d) a method of fishing;
  - (e) a class of vessels;
  - (f) a class of persons;
  - (g) a purpose of activities.

**303FO Approved wildlife trade management plan**

- (1) The export of a specimen is an export in accordance with an approved wildlife trade management plan if the specimen is, or is derived from, a specimen that was taken in accordance with a plan declared by a declaration in force under subsection (2) to be an approved wildlife trade management plan.
- (2) The Minister may, by instrument published in the *Gazette*, declare that a specified plan is an ***approved wildlife trade management plan*** for the purposes of this section.
- (3) The Minister must not declare a plan under subsection (2) unless the Minister is satisfied that:
  - (a) the plan is consistent with the objects of this Part; and

- (b) there has been an assessment of the environmental impact of the activities covered by the plan, including (but not limited to) an assessment of:
  - (i) the status of the species to which the plan relates in the wild; and
  - (ii) the extent of the habitat of the species to which the plan relates; and
  - (iii) the threats to the species to which the plan relates; and
  - (iv) the impacts of the activities covered by the plan on the habitat or relevant ecosystems; and
- (c) the plan includes management controls directed towards ensuring that the impacts of the activities covered by the plan on:
  - (i) a taxon to which the plan relates; and
  - (ii) any taxa that may be affected by activities covered by the plan; and
  - (iii) any relevant ecosystem (for example, impacts on habitat or biodiversity);are ecologically sustainable; and
- (d) the activities covered by the plan will not be detrimental to:
  - (i) the survival of a taxon to which the plan relates; or
  - (ii) the conservation status of a taxon to which the plan relates; or
  - (iii) any relevant ecosystem (for example, detriment to habitat or biodiversity); and
- (e) the plan includes measures:
  - (i) to mitigate and/or minimise the environmental impact of the activities covered by the plan; and
  - (ii) to monitor the environmental impact of the activities covered by the plan; and
  - (iii) to respond to changes in the environmental impact of the activities covered by the plan; and
- (f) if the plan relates to the taking of live specimens that belong to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimens are likely to be complied with; and
- (g) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

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- (4) In deciding whether to declare a plan under subsection (2), the Minister must have regard to:
  - (a) whether legislation relating to the protection, conservation or management of the specimens to which the plan relates is in force in the State or Territory concerned; and
  - (b) whether the legislation applies throughout the State or Territory concerned; and
  - (c) whether, in the opinion of the Minister, the legislation is effective.
- (5) A declaration under subsection (2) ceases to be in force at the beginning of the fifth anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 5 years is specified in the declaration in accordance with subsection 303FT(4).
- (6) If a declaration ceases to be in force, this Act does not prevent the Minister from making a fresh declaration under subsection (2).
- (7) A fresh declaration may be made during the 90-day period before the time when the current declaration ceases to be in force.
- (8) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.

**303FP Accredited wildlife trade management plan**

- (1) The export of a specimen is an export in accordance with an accredited wildlife trade management plan if the specimen is, or is derived from, a specimen that was taken in accordance with a plan declared by a declaration in force under subsection (2) to be an accredited wildlife trade management plan.
- (2) The Minister may, by instrument published in the *Gazette*, declare that a specified plan is an ***accredited wildlife trade management plan*** for the purposes of this section.
- (3) The Minister must not declare a plan under subsection (2) unless the Minister is satisfied that:
  - (a) the plan is in force under a law of the Commonwealth or of a State or Territory; and
  - (b) the conditions set out in subsection 303FO(3) have been met in relation to the plan; and

- (c) the plan imposes limits in relation to the taking of specimens; and
  - (d) the compliance and enforcement measures relating to the plan are likely to be effective in preventing specimens taken in breach of the plan from being traded or exported; and
  - (e) the plan provides for the monitoring of:
    - (i) the taking of specimens under the plan; and
    - (ii) the export of specimens taken under the plan; and
    - (iii) the status of the species to which the plan relates in the wild; and
    - (iv) the impacts of the activities under the plan on the habitat of the species to which the plan relates; and
  - (f) the plan provides for statistical reports about specimens taken under the plan to be given to the Minister on a regular basis; and
  - (g) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (4) A declaration under subsection (2) ceases to be in force at the beginning of the fifth anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 5 years is specified in the declaration in accordance with subsection 303FT(4).
- (5) If a declaration ceases to be in force, this Act does not prevent the Minister from making a fresh declaration under subsection (2).
- (6) A fresh declaration may be made during the 90-day period before the time when the current declaration ceases to be in force.
- (7) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.
- (8) The Minister must publish on the Internet copies of reports given as mentioned in paragraph (3)(f).
- (9) The Minister is not required to comply with subsection (8) to the extent to which compliance could reasonably be expected to:
- (a) prejudice substantially the commercial interests of a person; or
  - (b) be detrimental to:
    - (i) the survival of a taxon to which the plan relates; or

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- (ii) the conservation status of a taxon to which the plan relates.

**303FQ Consultation with State and Territory agencies**

Before making a declaration under section 303FO or 303FP, the Minister must consult a relevant agency of each State and self-governing Territory affected by the declaration.

**303FR Public consultation**

- (1) Before making a declaration under section 303FN, 303FO or 303FP, the Minister must cause to be published on the Internet a notice:
  - (a) setting out the proposal to make the declaration; and
  - (b) setting out sufficient information to enable persons and organisations to consider adequately the merits of the proposal; and
  - (c) inviting persons and organisations to give the Minister, within the period specified in the notice, written comments about the proposal.
- (2) A period specified in a notice under subsection (1) must not be shorter than 20 business days after the date on which the notice was published on the Internet.
- (3) In making a decision about whether to make a declaration under section 303FN, 303FO or 303FP, the Minister must consider any comments about the proposal to make the declaration that were given in response to an invitation under subsection (1).

**303FRA Assessments**

- (1) The regulations may prescribe an assessment process that is to be used for the purposes of sections 303FN, 303FO and 303FP to assess the potential impacts on the environment of:
  - (a) a wildlife trade operation; or
  - (b) the activities covered by a plan;where the operation is, or the activities are, likely to have a significant impact on the environment.



- (2) If regulations made for the purposes of subsection (1) apply to a wildlife trade operation or to a plan, the Minister must not declare:
- (a) the operation under subsection 303FN(2); or
  - (b) the plan under subsection 303FO(2) or 303FP(2);
- unless the assessment process prescribed by those regulations has been followed in relation to the assessment of the operation or plan, as the case may be.
- (3) Without limiting subsection (1), regulations made for the purposes of that subsection may make provision for:
- (a) the application of Part 8 (except sections 82, 83 and 84) and the other provisions of this Act (so far as they relate to that Part) in relation to the assessment process, subject to such modifications as are specified in the regulations; and
  - (b) exemptions from the assessment process.
- (4) In this section:
- modifications* includes additions, omissions and substitutions.
- wildlife trade operation* has the same meaning as in subsection 303FN(10), but does not include an operation mentioned in paragraph 303FN(10)(d).

### **303FS Register of declarations**

- (1) The Minister must cause to be maintained a register that sets out declarations made under section 303FN, 303FO or 303FP.
- (2) The register may be maintained by electronic means.
- (3) The register is to be made available for inspection on the Internet.

### **303FT Additional provisions relating to declarations**

- (1) This section applies to a declaration under section 303FN, 303FO or 303FP.
- (2) A declaration may be made:
  - (a) on the Minister's own initiative; or
  - (b) on written application being made to the Minister.

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- (3) The Minister may make a declaration about a plan or operation even though he or she considers that the plan or operation should be the subject of the declaration only to the extent that the plan or operation relates to a particular class of specimens. In such a case:
- (a) the instrument of declaration is to specify that class of specimens; and
  - (b) the plan or operation is covered by the declaration only to the extent that the plan or operation relates to that class of specimens.
- (4) The Minister may make a declaration about a plan or operation even though he or she considers that the plan or operation should be the subject of the declaration only:
- (a) during a particular period; or
  - (b) while certain circumstances exist; or
  - (c) while a certain condition is complied with.
- In such a case, the instrument of declaration is to specify the period, circumstances or condition.
- (5) If a declaration specifies a particular period as mentioned in subsection (4), the declaration ceases to be in force at the end of that period.
- (6) If a declaration specifies circumstances as mentioned in subsection (4), the Minister must, by instrument published in the *Gazette*, revoke the declaration if he or she is satisfied that those circumstances have ceased to exist.
- (7) The Minister may, by instrument published in the *Gazette*, vary a declaration by:
- (a) specifying one or more conditions (or further conditions) to which the declaration is subject; or
  - (b) revoking or varying a condition:
    - (i) specified in the instrument of declaration; or
    - (ii) specified under paragraph (a).
- (8) A condition may relate to reporting or monitoring.
- (9) The Minister must, by instrument published in the *Gazette*, revoke a declaration if he or she is satisfied that a condition of the declaration has been contravened.

- (10) The Minister may, by instrument published in the *Gazette*, revoke a declaration at any time.
- (11) A copy of an instrument under section 303FN, 303FO or 303FP or this section is to be made available for inspection on the Internet.

**303FU Approved commercial import program**

The import of a specimen is an import from an approved commercial import program in accordance with this section if the specimen is sourced from a program that, under the regulations, is taken to be an approved commercial import program.

## **Division 6—Miscellaneous**

### **303GA Permit decision—controlled action, and action for which a non-Part 13A permit is required**

- (1) This section applies if:
  - (a) an application is made under section 303CE, 303DE or 303EL for a permit (the *first permit*) to authorise the taking of an action (the *proposed action*); and
  - (b) the Minister considers that:
    - (i) the proposed action may be or is a controlled action; or
    - (ii) the proposed action is related to an action (the *related action*) that may be or is a controlled action; or
    - (iii) the proposed action is an action for which a non-Part 13A permit is required; or
    - (iv) the proposed action is related to an action (the *related action*) that is an action for which a non-Part 13A permit is required.

#### *Deferral of decision*

- (2) The Minister must neither issue, nor refuse to issue, the first permit before whichever is the latest of the following days:
  - (a) if subparagraph (1)(b)(i) applies—the day on which the Minister makes a decision under section 75 about whether the proposed action is a controlled action;
  - (b) if subparagraph (1)(b)(i) applies and the Minister makes a decision under section 75 that the proposed action is a controlled action—the day on which the Minister makes a decision under section 133 approving, or refusing to approve, the taking of the controlled action;
  - (c) if subparagraph (1)(b)(ii) applies—the day on which the Minister makes a decision under section 75 about whether the related action is a controlled action;
  - (d) if subparagraph (1)(b)(ii) applies and the Minister makes a decision under section 75 that the related action is a controlled action—the day on which the Minister makes a decision under section 133 approving, or refusing to approve, the taking of the controlled action;

- (e) if subparagraph (1)(b)(iii) applies—the day on which a decision is made to issue, or to refuse to issue, the non-Part 13A permit referred to in that subparagraph;
- (f) if subparagraph (1)(b)(iv) applies—the day on which a decision is made to issue, or to refuse to issue, the non-Part 13A permit referred to in that subparagraph.

*Refusal of permit*

- (3) The Minister must not issue the first permit if:
  - (a) subparagraph (1)(b)(i) applies; and
  - (b) the Minister makes a decision under section 75 that the proposed action is a controlled action; and
  - (c) the Minister makes a decision under section 133 refusing to approve the taking of the controlled action.
- (4) The Minister must not issue the first permit if:
  - (a) subparagraph (1)(b)(ii) applies; and
  - (b) the Minister makes a decision under section 75 that the related action is a controlled action; and
  - (c) the Minister makes a decision under section 133 refusing to approve the taking of the controlled action.
- (5) The Minister must not issue the first permit if:
  - (a) subparagraph (1)(b)(iii) applies; and
  - (b) a decision is made to refuse to issue the non-Part 13A permit referred to in that subparagraph.
- (6) The Minister must not issue the first permit if:
  - (a) subparagraph (1)(b)(iv) applies; and
  - (b) a decision is made to refuse to issue the non-Part 13A permit referred to in that subparagraph.

*Action for which a non-Part 13A permit is required*

- (7) For the purposes of this section, an action that a person proposes to take is ***an action for which a non-Part 13A permit is required*** if the taking of the action by the person without a non-Part 13A permit would be prohibited by this Act or the regulations if it were assumed that this Part had not been enacted.

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- (8) For the purposes of this section, a ***non-Part 13A permit*** is a permit issued under this Act (other than this Part) or the regulations.

*Related action*

- (9) For the purposes of this section, if a specimen was taken, the action of exporting or importing the specimen is related to:
- (a) that taking; and
  - (b) any action that affected the specimen after that taking and before that export or import.
- (10) For the purposes of this section, if a specimen is derived from a specimen that was taken, the action of exporting or importing the first-mentioned specimen is related to:
- (a) that taking; and
  - (b) any action that affected the first-mentioned specimen, or either of those specimens, after that taking and before that export or import.

**303GB Exceptional circumstances permit**

- (1) If:
- (a) the Minister is considering an application by a person for a permit to be issued under section 303CG, 303DG or 303EN in relation to a specimen; and
  - (b) under this Part, the Minister is precluded from issuing that permit unless the Minister is satisfied in relation to a matter; and
  - (c) even though the Minister is not satisfied in relation to that matter, the Minister is satisfied that:
    - (i) the export or import of the specimen, as the case may be, would not be contrary to the objects of this Part; and
    - (ii) exceptional circumstances exist that justify the proposed export or import of the specimen; and
    - (iii) the export or import of the specimen, as the case may be, would not adversely affect biodiversity;
- the Minister may issue a permit to the person.
- (1A) The Minister must not issue a permit under this section unless the grant of that permit would not be contrary to CITES.

- (2) A permit under this section authorises the holder of the permit to take the action or actions specified in the permit without breaching section 303CC, 303CD, 303DD or 303EK.

*Duration of permit*

- (3) A permit under this section that relates to a CITES specimen:
- (a) comes into force on the date on which it is issued; and
  - (b) unless it is sooner cancelled, remains in force for:
    - (i) a period of 6 months beginning on the date on which it is issued; or
    - (ii) if a shorter period is specified in the permit—that shorter period.
- (4) A permit under this section that relates to a specimen other than a CITES specimen:
- (a) comes into force on the date on which it is issued; and
  - (b) unless it is sooner cancelled, remains in force for:
    - (i) a period of 12 months beginning on the date on which it is issued; or
    - (ii) if a shorter period is specified in the permit—that shorter period.

*Further information*

- (5) The Minister may, within 40 business days after an application is made as mentioned in subsection (1), request the applicant to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.
- (6) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.

*Public consultation*

- (7) Before issuing a permit under this section, the Minister must cause to be published on the Internet a notice:
- (a) setting out the proposal to issue the permit; and

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- (b) setting out sufficient information to enable persons and organisations to consider adequately the merits of the proposal; and
  - (c) inviting persons and organisations to give the Minister, within the period specified in the notice, written comments about the proposal.
- (8) A period specified in a notice under subsection (7) must not be shorter than 5 business days after the date on which the notice was published on the Internet.
- (9) In making a decision under subsection (1) about whether to issue a permit, the Minister must consider any comments about the proposal to issue the permit that were given in response to an invitation under subsection (7).

**303GC Permit authorising the Secretary to export or import specimens**

- (1) The Secretary may apply to the Minister for a permit to be issued under subsection (2).
- (2) The Minister may, on application made by the Secretary under subsection (1), issue a permit to the Secretary. This subsection has effect subject to subsections (4) and (5).
- (3) A permit under subsection (2) authorises the Secretary to take the action or actions specified in the permit without breaching section 303CC, 303CD, 303DD or 303EK.
- (4) The Minister must not issue a permit under this section to export a specimen unless the Minister is satisfied that:
  - (a) both:
    - (i) the recipient of the specimen will be a relevant CITES authority of a country; and
    - (ii) the specimen will be used by that relevant CITES authority for the purpose of the identification of a specimen and/or for the purpose of education or training; or



- (b) both:
  - (i) the specimen has been seized under this Act; and
  - (ii) the specimen will be used to facilitate investigations in or outside Australia in relation to trade relating to wildlife.
- (5) The Minister must not issue a permit under this section to import a specimen unless the Minister is satisfied that:
  - (a) the specimen will be used by the Secretary for the purposes of the identification of a specimen; or
  - (b) both:
    - (i) the sender of the specimen will be a relevant CITES authority of a country; and
    - (ii) the specimen will be used for the purpose of the identification of a specimen and/or for the purpose of education or training; or
  - (c) the specimen was exported from Australia in contravention of:
    - (i) this Part; or
    - (ii) the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*; or
  - (d) the specimen will be used to facilitate investigations in or outside Australia in relation to trade relating to wildlife.
- (6) A permit under this section:
  - (a) comes into force on the date on which it is issued; and
  - (b) unless it is sooner cancelled, remains in force for:
    - (i) a period of 12 months beginning on the date on which it is issued; or
    - (ii) if a shorter period is specified in the permit—that shorter period.

### **303GD Testing permit—section 303EE assessments**

#### *Applications for permits*

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under subsection (5).
- (2) The application must be accompanied by the fee (if any) prescribed by the regulations.

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*Further information*

- (3) The Minister may, within 40 business days after the application is made, request the person to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.
- (4) The Minister may refuse to consider the application until the person gives the Minister the information in accordance with the request.

*Minister may issue permits*

- (5) The Minister may, on application made by a person under subsection (1), issue a permit to the person. This subsection has effect subject to subsections (7) and (8).
- (6) A permit authorises its holder to take the action or actions specified in the permit without breaching section 303EK.
- (7) The Minister must not issue a permit to a person unless the Minister is satisfied that:
  - (a) the person has made an application to the Minister under section 303EE for the list referred to in section 303EB to be amended by including an item; and
  - (b) if the proposed amendment were made, the specimen would be covered by the item; and
  - (c) the specimen is not a CITES specimen; and
  - (d) an assessment is to be made under section 303EE of the potential impacts on the environment of the proposed amendment, and the terms of reference for a report on the assessment have been finalised; and
  - (e) the person proposes to conduct tests on the specimen in Australia in order to obtain information for the assessment; and
  - (f) the information is required for the assessment; and
  - (g) it is not reasonably practicable for the person to obtain the information without conducting the tests in Australia; and
  - (h) the tests will be conducted in a controlled environment.

- (8) The Minister must not issue a permit under this section unless the permit is subject to one or more conditions about holding the specimen in quarantine.

*Duration of permit*

- (9) A permit under this section:
- (a) comes into force on the date on which it is issued; and
  - (b) unless it is sooner cancelled, remains in force for:
    - (i) a period of 6 months beginning on the date on which it is issued; or
    - (ii) if a shorter period is specified in the permit—that shorter period.

*Investigations*

- (10) A reference in this section to *tests on the specimen* includes a reference to investigations relating to the specimen.

**303GE Conditions of permits**

- (1) This section applies to a permit issued under this Part.
- (2) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (3).
- (3) The Minister may, in accordance with the regulations:
  - (a) vary or revoke a condition of a permit; or
  - (b) impose further conditions of a permit.
- (4) The Minister's powers under subsection (3) may be exercised:
  - (a) on the Minister's own initiative; or
  - (b) on the application of the holder of the permit concerned.
- (5) If a permit authorises its holder to take a particular action, a condition of the permit may require the holder to do, or not do, an act or thing before, at or after the time when the action takes place.
- (6) If a person is given an authority under section 303GG by the holder of a permit, subsection (5) applies to the person in a corresponding way to the way in which it applies to the holder of the permit.

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- (7) Subsections (4), (5) and (6) are to be disregarded in determining the meaning of a provision of this Act (other than a provision of this Part) that relates to conditions of permits issued otherwise than under this Part.

**303GF Contravening conditions of a permit**

- (1) This section applies to a permit issued under this Part.
- (2) A person is guilty of an offence if:
- (a) the person is:
    - (i) the holder of a permit; or
    - (ii) a person to whom an authority under section 303GG has been given by the holder of a permit; and
  - (b) the person engages in conduct; and
  - (c) the conduct results in a contravention of a condition of the permit.

Penalty: 300 penalty units.

- (3) The holder of a permit is guilty of an offence if:
- (a) the person is:
    - (i) the holder of a permit; or
    - (ii) a person to whom an authority under section 303GG has been given by the holder of a permit; and
  - (b) the person engages in conduct; and
  - (c) the conduct results in a contravention of a condition of the permit; and
  - (d) the condition relates to:
    - (i) the sale or other disposal of a live animal or a live plant; or
    - (ii) the sale or other disposal of the progeny of a live animal or a live plant; or
    - (iii) the release from captivity of a live animal; or
    - (iv) the release from captivity of the progeny of a live animal; or
    - (v) the escape of a live plant.

Penalty: 600 penalty units.

- (4) For the purposes of subsection (3), a person is taken to have released an animal from captivity if:
- (a) that animal has escaped from captivity; and
  - (b) either:
    - (i) the person allowed the animal to escape; or
    - (ii) the person failed to take all reasonable measures to prevent the animal from escaping.
- (4A) For the purposes of subsection (3), a person is taken to have allowed a plant to escape if:
- (a) the plant has grown or propagated in the wild; and
  - (b) either:
    - (i) the person allowed the plant to escape; or
    - (ii) the person failed to take all reasonable measures to prevent the plant from growing or propagating in the wild.
- (5) In subsections (2) and (3), strict liability applies to the circumstance that the person was given an authority under section 303GG.

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

### **303GG Authorities under permits**

- (1) This section applies to a permit issued under this Part.
- (2) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.
- (3) Subject to subsection (4), the holder of a permit may give a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.
- (4) The holder of a permit must not give an authority unless:
  - (a) the permit contains a condition permitting the holder to do so; and
  - (b) the authority is given in accordance with any requirements set out in the condition.

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- (5) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (6) The giving of an authority does not prevent the taking of any action by the holder of the permit.
- (7) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

**303GH Transfer of permits**

- (1) This section applies to a permit issued under this Part.
- (2) On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.
- (3) In deciding whether to transfer the permit to another person, the Minister must consider whether the transferee is a suitable person to hold the permit, having regard to the matters set out in the regulations.

**303GI Suspension or cancellation of permits**

- (1) This section applies to a permit issued under this Part.
- (2) The Minister may, in accordance with the regulations:
  - (a) suspend a permit for a specified period; or
  - (b) cancel a permit.

**303GJ Review of decisions**

- (1) An application may be made to the Tribunal for review of a decision:
  - (a) to issue or refuse a permit; or
  - (b) to specify, vary or revoke a condition of a permit; or
  - (c) to impose a further condition of a permit; or
  - (d) to transfer or refuse to transfer a permit; or
  - (e) to suspend or cancel a permit; or
  - (f) to issue or refuse a certificate under subsection 303CC(5); or

- (g) of the Secretary under a determination in force under section 303EU; or
  - (h) to make or refuse a declaration under section 303FN, 303FO or 303FP; or
  - (i) to vary or revoke a declaration under section 303FN, 303FO or 303FP.
- (3) In this section:

***permit*** means a permit under this Part.

***Tribunal*** means:

- (a) before the commencement of Parts 4 to 10 of the *Administrative Review Tribunal Act 2001*—the Administrative Appeals Tribunal; and
- (b) after the commencement of Parts 4 to 10 of the *Administrative Review Tribunal Act 2001*—the Administrative Review Tribunal.

### **303GK Permit to be produced**

#### *Export permit*

- (1) For the purposes of this Part, if the holder of a permit to export a specimen exports that specimen, he or she is not to be taken to have exported that specimen in accordance with that permit unless, before exporting the specimen, he or she:
  - (a) produced the permit, or caused the permit to be produced, to an authorised officer doing duty in relation to the export of the specimen; or
  - (b) received written notice from the Secretary authorising the export of the specimen without the production of the permit.
- (2) The Secretary must not give the notice referred to in paragraph (1)(b) unless he or she:
  - (a) is satisfied that the production of the permit is impracticable; and
  - (b) endorses a copy of the permit to show that the notice is being given; and
  - (c) makes that copy available to an authorised officer doing duty in relation to the export of the specimen.

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*Import permit*

- (3) For the purposes of this Part, if the holder of a permit to import a specimen imports that specimen, he or she is not to be taken to have imported that specimen in accordance with that permit unless, before or within a reasonable time after importing the specimen, he or she produced the permit, or caused the permit to be produced, to an authorised officer doing duty in relation to the import of the specimen.

*Authorities under section 303GG*

- (4) If a person is given an authority under section 303GG by the holder of a permit, this section applies to the person in a corresponding way to the way in which it applies to the holder of the permit.

**303GL Pre-CITES certificate to be produced**

*Export certificate*

- (1) If a person exports a specimen and wishes to rely on a certificate issued under subsection 303CC(5), he or she is not entitled to rely on that certificate unless, before exporting the specimen, he or she:
- (a) produced the certificate, or caused the certificate to be produced, to an authorised officer doing duty in relation to the export of the specimen; or
  - (b) received written notice from the Secretary authorising the export of the specimen without the production of the certificate.
- (2) The Secretary must not give the notice referred to in paragraph (1)(b) unless he or she:
- (a) is satisfied that the production of the certificate is impracticable; and
  - (b) endorses a copy of the certificate to show that the notice is being given; and
  - (c) makes that copy available to an authorised officer doing duty in relation to the export of the specimen.

*Import certificate*

- (3) If a person imports a specimen and wishes to rely on a certificate referred to in paragraph 303CD(6)(b), he or she is not entitled to
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rely on the certificate unless, before or within a reasonable time after importing the specimen, he or she produced the certificate, or caused the certificate to be produced, to an authorised officer doing duty in relation to the import of the specimen.

### **303GM Fees**

- (1) This section applies to a permit under this Part.
- (2) Such fees (if any) as are prescribed are payable in respect of the following:
  - (a) the issue or the transfer of a permit;
  - (b) the variation or revocation of a condition of a permit;
  - (c) the imposition of a further condition of a permit.

### **303GN Possession of illegally imported specimens**

#### *Object*

- (1) The object of this section is:
  - (a) to comply with Australia's obligations under:
    - (i) the Biodiversity Convention; and
    - (ii) CITES; and
  - (b) to otherwise further the objects of this Part;by prohibiting the possession of illegally imported specimens and the progeny of such specimens.

Note: See Article 8 of the Biodiversity Convention.

#### *Possession of CITES specimens and unlisted regulated live specimens*

- (2) A person is guilty of an offence if:
  - (a) the person has in the person's possession, in the Australian jurisdiction, a specimen; and
  - (b) the specimen is:
    - (i) a CITES specimen; or
    - (ii) a regulated live specimen that is not included in the list referred to in section 303EB;and the person is reckless as to that fact; and
  - (c) the specimen does not belong to a native species.

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Penalty: Imprisonment for 5 years or 1,000 penalty units, or both.

- (3) Subsection (2) does not apply if:
- (a) the specimen was lawfully imported; or
  - (b) the specimen was not imported, but all of the specimens of which it is the progeny were lawfully imported.

Note 1: For *lawfully imported*, see section 303GY.

Note 2: The defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (2) does not apply if the specimen was neither imported, nor the progeny of any other specimen that was imported.

Note: The defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) Subsection (2) does not apply if the defendant has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

*Possession of listed regulated live specimens*

- (6) A person is guilty of an offence if:
- (a) the person has in the person's possession, in the Australian jurisdiction, a specimen; and
  - (b) the specimen is a regulated live specimen that is included in Part 2 of the list referred to in section 303EB, and the person is reckless as to that fact; and
  - (c) the specimen does not belong to a native species; and
  - (d) either:
    - (i) the specimen was unlawfully imported; or
    - (ii) the specimen was not imported, but any of the specimens of which it is the progeny was unlawfully imported.

Penalty: Imprisonment for 5 years or 1,000 penalty units, or both.

- (7) Subsection (6) does not apply if the defendant has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

*Unlawfully imported*

- (8) For the purposes of this section, a specimen is ***unlawfully imported*** if, and only if, it was imported, but was not lawfully imported (section 303GY).

**303GO Regulations relating to welfare**

- (1) This section applies to regulations made for the purposes of paragraph 303CG(3)(c), 303DG(4)(b), 303EN(3)(e), 303FN(3)(c) or 303FO(3)(f).
- (2) The conditions specified in those regulations in relation to a live animal may:
- (a) deal with the welfare of the animal:
    - (i) when the animal is taken; or
    - (ii) when the animal is being held after it has been taken; or
    - (iii) when the animal is being prepared or shipped; or
    - (iv) when the animal is under the control of the proposed recipient; and
  - (b) may deal with eliminating or minimising the risk of:
    - (i) injury to the animal; or
    - (ii) adverse effects on the health of the animal; or
    - (iii) cruel treatment of the animal.
- (3) The conditions specified in those regulations in relation to a live plant may:
- (a) deal with the welfare of the plant:
    - (i) when the plant is taken; or
    - (ii) when the plant is being held after it has been taken; or
    - (iii) when the plant is being prepared or shipped; or
    - (iv) when the plant is under the control of the proposed recipient; and
  - (b) may deal with eliminating or minimising the risk of:
    - (i) injury to the plant; or
    - (ii) adverse effects on the health of the plant.
- (4) Subsections (2) and (3) do not limit paragraph 303CG(3)(c), 303DG(4)(b), 303EN(3)(e), 303FN(3)(c) or 303FO(3)(f).

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**303GP Cruelty—export or import of animals**

- (1) A person is guilty of an offence if:
- (a) the person exports or imports a live animal in a manner that subjects the animal to cruel treatment; and
  - (b) the person knows that, or is reckless as to whether, the export or import subjects the animal to cruel treatment; and
  - (c) the animal is a CITES specimen; and
  - (d) the person contravenes section 303CC or 303CD in relation to the export or import of the animal.

Penalty: Imprisonment for 2 years.

- (2) A person is guilty of an offence if:
- (a) the person exports a live animal in a manner that subjects the animal to cruel treatment; and
  - (b) the person knows that, or is reckless as to whether, the export subjects the animal to cruel treatment; and
  - (c) the animal is a regulated native specimen; and
  - (d) the person contravenes section 303DD in relation to the export of the animal.

Penalty: Imprisonment for 2 years.

- (3) A person is guilty of an offence if:
- (a) the person imports a live animal in a manner that subjects the animal to cruel treatment; and
  - (b) the person knows that, or is reckless as to whether, the import subjects the animal to cruel treatment; and
  - (c) the animal is a regulated live specimen; and
  - (d) the person contravenes section 303EK in relation to the import of the animal.

Penalty: Imprisonment for 2 years.

- (4) This section does not limit section 303GE.

**303GQ Imports of specimens contrary to the laws of a foreign country**

- (1) A person must not intentionally import a specimen if the person knows that:

- (a) the specimen was exported from a foreign country; and
- (b) at the time the specimen was exported, the export of the specimen was prohibited by a law of the foreign country that corresponds to this Part.

Penalty: Imprisonment for 5 years.

- (2) A prosecution must not be instituted for an offence against this section unless a relevant CITES authority of the foreign country has requested:
  - (a) the investigation of the offence; or
  - (b) assistance in relation to a class of offences in which the offence is included.

### **303GR Evidence**

- (1) In any proceedings for an offence against this Part:
  - (a) any record kept in accordance with the regulations or another law of the Commonwealth or a law of a State or Territory is admissible as prima facie evidence of the facts stated in the record; and
  - (b) a copy of an entry in such a record, being a copy certified by the person by whom the record is kept to be a true copy of the entry, is admissible as prima facie evidence of the facts stated in the entry; and
  - (c) a document purporting to be a record kept in accordance with the regulations or another law of the Commonwealth, or a law of a State or Territory, or purporting to be such a certified copy as is referred to in paragraph (b), is taken, unless the contrary is established, to be such a record or certified copy, as the case may be.
- (2) If, in any proceedings for an offence against this Part, a record referred to in paragraph (1)(a) is tendered as prima facie evidence of a fact stated in the record, the person alleged to have committed the offence may require the person who kept that record to be called as a witness for the prosecution in the proceedings.

### **303GS Evidence of examiner**

- (1) The Minister may, by writing, appoint appropriately qualified persons to be examiners for the purposes of this Part.

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- (2) Subject to subsection (4), a certificate signed by an examiner appointed under subsection (1) setting out, in relation to a substance, matter, specimen or thing, one or more of the following:
- (a) that he or she is appointed as the examiner under subsection (1);
  - (b) when and from whom the substance, matter, specimen or thing was received;
  - (c) what labels or other means of identification accompanied the substance, matter, specimen or thing when it was received;
  - (d) what container held the substance, matter, specimen or thing when it was received;
  - (e) a description, including the weight, of the substance, matter, specimen or thing when it was received;
  - (f) the name of any method used to analyse the substance, matter, specimen or thing or any portion of it;
  - (g) the results of any such analysis;
  - (h) how the substance, matter, specimen or thing was dealt with after handling by the examiner, including details of:
    - (i) the quantity of the substance, matter, specimen or thing retained after analysis; and
    - (ii) names of any persons to whom any of the substance, matter, specimen or thing was given after analysis; and
    - (iii) measures taken to secure any retained quantity of the substance, matter, specimen or thing after analysis;
- is admissible in any proceeding for an offence against this Part as prima facie evidence of the matters in the certificate and the correctness of the results of the analysis.
- (3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) is taken to be such a certificate unless the contrary is established.
- (4) A certificate is not to be admitted in evidence in accordance with subsection (2) in proceedings for an offence against this Part unless:
- (a) the person charged with the offence; or
  - (b) a solicitor who has appeared for the person in those proceedings;
- has, at least 14 days before the certificate is sought to be admitted, been given a copy of the certificate together with reasonable notice

of the intention to produce the certificate as evidence in the proceedings.

- (5) Subject to subsection (6), if, under subsection (2), a certificate is admitted in evidence in proceedings for an offence against this Part, the person charged with the offence may require the person giving the certificate to be called as a witness for the prosecution and cross-examined as if he or she had given evidence of the matters stated in the certificate.
- (6) Subsection (5) does not entitle the person charged to require the person giving a certificate to be called as a witness for the prosecution unless:
  - (a) the prosecutor has been given at least 4 days notice of the person's intention to require the examiner to be so called; or
  - (b) the court, by order, allows the person charged to require the person giving the certificate to be so called.
- (7) Any evidence given in support, or in rebuttal, of a matter stated in a certificate given under subsection (2) must be considered on its merits and the credibility and probative value of such evidence must be neither increased nor diminished by reason of this section.

### **303GT Protection of witness**

- (1) A witness for the prosecution in any proceedings for an offence against this Part is not to be compelled to disclose:
  - (a) the fact that the witness received any information; or
  - (b) the nature of any information received by the witness; or
  - (c) the name of the person who gave the witness any information.
- (2) An authorised officer who is a witness in any proceedings for an offence against this Part is not to be compelled to produce any report:
  - (a) that was made or received by the authorised officer in confidence in his or her capacity as an authorised officer; or
  - (b) that contains information received by the authorised officer in confidence.

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- (3) Subsections (1) and (2) are to be disregarded in determining the compellability of witnesses in proceedings for an offence against a provision of this Act other than this Part.

**303GU Forms and declarations—persons arriving in Australia or an external Territory**

The regulations may provide for forms to be completed, or declarations to be made, in relation to specimens by persons arriving in Australia or an external Territory.

**303GV Saving of other laws**

- (1) This Part is in addition to the following laws:
- (a) the *Customs Act 1901*;
  - (b) the *Quarantine Act 1908*;
  - (c) any other law of the Commonwealth or of an external Territory, whether passed or made before or after the commencement of this Part.
- (2) The holder of a permit under this Part authorising the export or import of a specimen is not, by reason only of being the holder of the permit, exempt from compliance with any law referred to in paragraph (1)(a), (b) or (c) that applies in relation to that specimen.
- (3) Without limiting subsection (1), this Part, and regulations made for the purposes of this Part, do not authorise or permit the doing of any act in contravention of the *Quarantine Act 1908* or of a law of an external Territory relating to quarantine.

**303GW Part not to apply to certain specimens**

*Transshipment*

- (1) For the purposes of this Part, if a specimen is brought into Australia from a country:
- (a) for the purpose of transshipment to another country; or
  - (b) as part of an aircraft's stores or ship's stores;
- that specimen:
- (c) is taken not to have been imported into Australia; and
  - (d) when it leaves Australia, is taken not to be exported from Australia.



- (2) For the purposes of this Part, if a specimen is brought into an external Territory:
- (a) for the purpose of transshipment to another country; or
  - (b) as part of an aircraft's stores or ship's stores;
- that specimen:
- (c) is taken not to have been imported into that Territory; and
  - (d) when it leaves that Territory, is taken not to be exported from that Territory.
- (3) For the purposes of subsection (1), a specimen is to be taken to be brought into Australia for the purpose of transshipment to another country if, and only if:
- (a) the specimen is brought into Australia in the course of being transported to an identified person in the other country; and
  - (b) any delay in its leaving Australia will be due solely to the arrangements for its transport; and
  - (c) it will be under the control of the Customs all the time that it is in Australia.
- (4) For the purposes of subsection (2), a specimen is taken to be brought into an external Territory for the purpose of transshipment to another country if, and only if:
- (a) the specimen is brought into that Territory in the course of being transported to an identified person in the other country; and
  - (b) any delay in its leaving that Territory will be due solely to the arrangements for its transport; and
  - (c) it will be under the control of an authorised officer all the time that it is in that Territory.

*Emergency*

- (5) For the purposes of this Part, if:
- (a) the Minister, the Director of Animal and Plant Quarantine, a prescribed person or a prescribed organisation is satisfied that, in order to meet an emergency involving danger to the life or health of a human or an animal, it is necessary or desirable that a specimen that could be used in treating that person or animal should be sent out of, or brought into, Australia or an external Territory; and

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(b) that specimen is sent out of, or brought into, Australia or that Territory, as the case requires, to meet that emergency; that specimen is taken not to have been exported or imported, as the case may be.

*Quarantine*

- (6) Subject to subsections (1), (2) and (5), if, in accordance with the *Quarantine Act 1908* or a law of an external Territory relating to quarantine, a person exercising powers under that Act or law imports a specimen that is subject to quarantine, then, for the purposes of this Part, that specimen is taken to have been imported by:
- (a) if a person holds a permit to import that specimen—the holder of that permit; or
  - (b) in any other case—a person whose identity is not known; but this subsection does not affect the commission of any offence committed before the importation of that specimen.

*Definitions*

- (7) In this section:

*aircraft's stores* and *ship's stores* have the same meanings respectively as they have in Part VII of the *Customs Act 1901*.

**303GX Part not to apply to certain specimens used by traditional inhabitants**

- (1) In this section:

*area in the vicinity of the Protected Zone* means an area in respect of which a notice is in force under subsection (2).

*Australian place* means a place in Australia that is in the Protected Zone or in an area in the vicinity of the Protected Zone.

*Papua New Guinea place* means a place in Papua New Guinea that is in the Protected Zone or in an area in the vicinity of the Protected Zone.

*prescribed specimen* means a specimen of a kind specified in a notice in force under subsection (3).

**Protected Zone** means the zone established under Article 10 of the Torres Strait Treaty, being the area bounded by the line described in Annex 9 to that treaty.

**Torres Strait Treaty** means the Treaty between Australia and the Independent State of Papua New Guinea that was signed at Sydney on 18 December 1978.

**traditional activities** has the same meaning as in the Torres Strait Treaty.

**traditional inhabitants** has the same meaning as in the *Torres Strait Fisheries Act 1984*.

- (2) The Minister may, by notice published in the *Gazette*, declare an area adjacent to the Protected Zone to be an area in the vicinity of the Protected Zone for the purposes of this section.
- (3) The Minister may, by notice published in the *Gazette*, declare that a specimen of a kind specified in the notice is a prescribed specimen for the purposes of this section.
- (4) For the purposes of this Part, if a prescribed specimen that is owned by, or is under the control of, a traditional inhabitant and that has been used, is being used or is intended to be used by him or her in connection with the performance of traditional activities in the Protected Zone or in an area in the vicinity of the Protected Zone, is:
  - (a) brought to an Australian place from a Papua New Guinea place; or
  - (b) taken from an Australian place to a Papua New Guinea place;then, subject to subsection (5), that specimen:
  - (c) in the case where the specimen is brought into Australia as mentioned in paragraph (a)—is taken not to have been imported into Australia; and
  - (d) in the case where the specimen is taken from Australia as mentioned in paragraph (b)—is taken not to have been exported from Australia.
- (5) If:
  - (a) a prescribed specimen that has been brought into Australia is, under subsection (4), taken not to have been imported into Australia; and

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- (b) that prescribed specimen is brought to a place in Australia that is not in the Protected Zone or in an area in the vicinity of the Protected Zone;

the prescribed specimen is taken to have been imported into Australia upon being brought to the place referred to in paragraph (b).

**303GY When a specimen is *lawfully imported***

For the purposes of this Part, a specimen is *lawfully imported* if, and only if, it was imported and:

- (a) in a case where the specimen was imported after the commencement of this Part—it was not imported in contravention of this Part; or
- (b) in a case where the specimen was imported when the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* was in force—it was not imported in contravention of that Act; or
- (c) in a case where the specimen was imported before the commencement of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*—it was not imported in contravention of:
  - (i) the Customs (Endangered Species) Regulations; or
  - (ii) the Customs (Prohibited Imports) Regulations.

## **Part 14—Conservation agreements**

### **304 Object of this Part**

The object of this Part is to provide for:

- (a) conservation agreements between the Commonwealth and persons related to the protection and conservation of the following:
  - (i) biodiversity;
  - (ii) the world heritage values of declared World Heritage properties;
  - (iii) the National Heritage values of National Heritage places;
  - (iv) the Commonwealth Heritage values of Commonwealth Heritage places; and
- (b) the effect of conservation agreements; and
- (c) the publication of conservation agreements.

Conservation agreements are agreements whose primary object is to enhance the conservation of biodiversity, those heritage values or both of those things. They may relate to private or public land, or to marine areas.

### **305 Minister may enter into conservation agreements**

- (1) The Minister may, on behalf of the Commonwealth, enter into an agreement (a *conservation agreement*) with a person for the protection and conservation of all or any of the following:
  - (a) biodiversity in the Australian jurisdiction;
  - (b) the world heritage values of a declared World Heritage property in the Australian jurisdiction;
  - (c) the National Heritage values of a National Heritage place (whether inside or outside the Australian jurisdiction);
  - (d) the Commonwealth Heritage values of a Commonwealth Heritage place (whether inside or outside the Australian jurisdiction).
- (1A) The protection and conservation of the matters in subsection (1) include all or any of the following:

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- (a) the protection, conservation and management of any listed species or ecological communities, or their habitats;
- (b) the management of things in a way necessary for the protection and conservation of:
  - (i) the world heritage values of a declared World Heritage property; or
  - (ii) the National Heritage values of a National Heritage place; or
  - (iii) the Commonwealth Heritage values of a Commonwealth Heritage place;
- (c) the abatement of processes, and the mitigation or avoidance of actions, that might adversely affect:
  - (i) biodiversity; or
  - (ii) the world heritage values of a declared World Heritage property; or
  - (iii) the National Heritage values of a National Heritage place; or
  - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place.

Note: When the Minister is considering entering into a conservation agreement, the Minister must take into account any responsibilities of other Commonwealth Ministers that may be affected by the agreement.

- (2) However, the Minister must not enter into a conservation agreement unless satisfied that:
  - (a) in the case of a proposed agreement wholly or partly for the protection and conservation of biodiversity—the agreement:
    - (i) will result in a net benefit to the conservation of biodiversity; and
    - (ii) is not inconsistent with a recovery plan, threat abatement plan or wildlife conservation plan; and
  - (b) in the case of a proposed agreement wholly or partly for the protection and conservation of heritage values—the agreement:
    - (i) will result in a net benefit to the conservation of those heritage values; and
    - (ii) is not inconsistent with at least one of the Australian World Heritage management principles, the National

Heritage management principles and the  
Commonwealth Heritage management principles.

- (3) For the purposes of subsection (2), in deciding whether a proposed agreement will result in a net benefit to the conservation of biodiversity or heritage values, the Minister must have regard to the matters (if any) prescribed by the regulations.
- (4) A conservation agreement must not cover all or part of a Commonwealth reserve.
- (5) Under subsection (1), the Minister may enter into a conservation agreement covering land with one of the following persons who has a usage right relating to the land:
  - (a) an indigenous person;
  - (b) a body corporate wholly owned by indigenous persons;
  - (c) a body corporate established by or under an Act for the purposes of holding for the benefit of indigenous persons land vested in it by or under that Act;
  - (d) the trustee of a trust that holds land for the benefit of indigenous persons.This does not limit subsection (1).
- (6) The Minister must take account of the following when entering into a conservation agreement that is wholly or partly for the protection and conservation of biodiversity as described in subsection (5):
  - (a) paragraph (j) of Article 8 of the Biodiversity Convention;
  - (b) paragraph (c) of Article 10 of the Biodiversity Convention;
  - (c) paragraph 4 of Article 18 of the Biodiversity Convention;
  - (d) objective 1.8.2 of the National Strategy for the Conservation of Australia's Biological Diversity, published by the Commonwealth in 1996.

### **306 Content of conservation agreements**

- (1) Without limiting section 305, a conservation agreement may provide, for example, for all or any of the following:
  - (a) activities that promote the protection and conservation of all or any of the following:
    - (i) biodiversity;

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- (ii) the world heritage values of a declared World Heritage property;
    - (iii) the National Heritage values of a National Heritage place;
    - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place;
  - (b) controlling or prohibiting, in any place covered by the agreement, actions or processes that might adversely affect:
    - (i) the species, ecological communities, habitats or potential habitats covered by the agreement; or
    - (ii) the world heritage values of a declared World Heritage property; or
    - (iii) the National Heritage values of a National Heritage place; or
    - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place;
  - (c) requiring a person bound by the agreement not to obstruct access by a person authorised under the agreement to places covered by the agreement for the purpose of monitoring compliance with the agreement;
  - (d) requiring a person bound by the agreement to give such an authorised person information requested by the authorised person that is in the first-mentioned person's control and is relevant to compliance with the agreement;
  - (e) requiring the Commonwealth to provide financial, technical or other assistance to a person bound by the agreement;
  - (g) the commencement and duration of the agreement.
- (2) Without limiting section 305 or subsection (1) of this section, a conservation agreement entered into with the owner of a place may provide, for example, for all or any of the following:
- (a) requiring the owner to carry out specified activities, or to do specified things, that promote the conservation of all or any of the following:
    - (i) biodiversity;
    - (ii) the world heritage values of a declared World Heritage property;
    - (iii) the National Heritage values of a National Heritage place;



- (iv) the Commonwealth Heritage values of a Commonwealth Heritage place;
- (b) restricting the use of the place, or requiring the owner to refrain from, control or refuse to permit, actions or processes that may adversely affect:
  - (i) the species, ecological communities, habitats or potential habitats covered by the agreement; or
  - (ii) the world heritage values of a declared World Heritage property; or
  - (iii) the National Heritage values of a National Heritage place; or
  - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place;
- (c) requiring the owner to permit access to the place by specified persons;
- (d) requiring the owner to contribute towards costs incurred in implementing the agreement;
- (e) specifying the manner in which any money paid to the owner under the agreement is to be applied by the owner;
- (f) requiring the owner to repay to the Commonwealth any money paid to the owner under the agreement if the owner commits a specified breach of the agreement or in other specified circumstances;
- (g) providing for any other matter relating to the conservation or enhancement of the place, including the preparation and implementation of a plan of management for the place.

### **307 Conservation agreements to be legally binding**

A conservation agreement is legally binding on:

- (a) the Commonwealth; and
- (b) the person or persons with whom the Minister entered into the agreement on behalf of the Commonwealth; and
- (c) anyone else who is a successor to the whole or any part of any interest that a person mentioned in paragraph (b) had, when the agreement was entered into, in any place covered by the agreement.

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**308 Variation and termination of conservation agreements**

- (1) A conservation agreement may be varied by a variation agreement entered into by the Minister, on behalf of the Commonwealth, and the person or persons bound by the conservation agreement under paragraph 307(b) or (c).
- (2) Sections 305 and 306 apply in relation to variation agreements in the same way as they apply in relation to conservation agreements.
- (3) A conservation agreement may be terminated:
  - (a) by agreement between the Minister, on behalf of the Commonwealth, and the person or persons bound by the conservation agreement under paragraph 307(b) or (c); or
  - (b) in such other manner, or in such circumstances (if any), as the agreement specifies.
- (4) If the Minister is satisfied that a conservation agreement is not capable of achieving its purpose, the Minister may, by order published in the *Gazette*, terminate the agreement or vary it in any way the Minister thinks necessary to ensure it becomes capable of achieving its purpose.
- (5) The Minister may make an order under subsection (4) in relation to a conservation agreement without the agreement of the person or persons bound by the conservation agreement under paragraph 307(b) or (c).
- (6) The Minister must cause a copy of an order to be laid before each House of the Parliament within the prescribed period after the publication of the order.
- (7) If a conservation agreement is varied by an order, the person or persons bound by the conservation agreement under paragraph 307(b) or (c) may, by written notice given to the Minister, terminate the agreement.
- (8) If a conservation agreement is terminated or varied by an order, the person or persons bound by the conservation agreement under paragraph 307(b) or (c) are not entitled to any compensation in respect of the termination or variation.

Note: See Parts 17 and 18 for remedies for breach of conservation agreements.

### **309 Publication of conservation agreements**

- (1) As soon as practicable after a conservation agreement has been entered into or varied, other than by an order under subsection 308(4), the Minister must:
  - (a) take reasonable steps to ensure that copies of the agreement or variation are available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory; and
  - (b) cause a notice of the agreement or variation to be published:
    - (i) in the *Gazette*; and
    - (ii) in any other way required by the regulations.
- (2) The notice must:
  - (a) state that the agreement or variation has been entered into or made; and
  - (b) specify the places where copies of the agreement or variation may be purchased.
- (3) Subsection (1) does not apply in relation to a conservation agreement, or a variation of such an agreement, or any part of such an agreement or variation, if the Minister is satisfied that disclosure of the agreement or variation, or the part of the agreement or variation, as the case may be, would result in harm being done to:
  - (a) components of biodiversity; or
  - (b) the world heritage values of a declared World Heritage property; or
  - (c) the National Heritage values of a National Heritage place; or
  - (d) the Commonwealth Heritage values of a Commonwealth Heritage place.
- (4) Subsection (1) does not apply in relation to a conservation agreement, or a variation of such an agreement, or any part of such an agreement or variation, if the Minister is satisfied that disclosure of the agreement or variation, or the part of the agreement or variation, as the case may be, would disclose matters that the Minister is satisfied are commercial-in-confidence.
- (5) The Minister must not be satisfied that matter is commercial-in-confidence unless a person demonstrates to the Minister that:

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- (a) release of information under subsection (1) about the matter would cause competitive detriment to the person; and
- (b) the information is not in the public domain; and
- (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
- (d) the information is not readily discoverable.

**310 List of conservation agreements**

The Minister must:

- (a) maintain an up-to-date list of conservation agreements that are in force; and
- (b) take reasonable steps to ensure that copies of the list are available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory.

**311 Commonwealth, State and Territory laws**

- (1) A provision of a conservation agreement has no effect to the extent (if any) to which it is inconsistent with a law of the Commonwealth, or of a State or Territory.
- (2) For the purposes of subsection (1), a provision of a conservation agreement is not taken to be inconsistent with a law of the Commonwealth, or of a State or Territory, if both the provision and the law are capable of being complied with.

**312 Minister must not give preference**

The Minister must not, in exercising powers on behalf of the Commonwealth under this Part, give preference to one State or any part thereof within the meaning of section 99 of the Constitution.

## **Part 15—Protected areas**

### **Division 1—Managing World Heritage properties**

#### **Subdivision A—Simplified outline of this Division**

##### **313 Simplified outline of this Division**

The following is a simplified outline of this Division:

The Commonwealth may submit a property for inclusion in the World Heritage List only after seeking the agreement of relevant States, self-governing Territories and land-holders.

The Minister must make plans for managing properties on the World Heritage List that are entirely in Commonwealth areas. The Commonwealth and Commonwealth agencies must not contravene such plans.

The Commonwealth must try to prepare and implement management plans for other properties on the World Heritage List, in co-operation with the relevant States and self-governing Territories.

The Commonwealth and Commonwealth agencies have duties relating to World Heritage properties in States and Territories.

The Commonwealth can provide assistance for the protection or conservation of declared World Heritage properties.

Note: Section 12 prohibits an action that has a significant impact on the world heritage values of a declared World Heritage property, unless the person taking the action has the approval of the Minister administering that section or certain other requirements are met.

#### **Subdivision B—Seeking agreement on World Heritage listing**

##### **314 Special provisions relating to World Heritage nominations**

- (1) The Commonwealth may submit to the World Heritage Committee for inclusion in the World Heritage List a property containing an

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area owned or occupied by another person only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the other person on:

- (a) the proposed submission of the property (so far as it relates to the area); and
  - (b) management arrangements for the property (so far as they relate to the area).
- (2) The Commonwealth may submit to the World Heritage Committee for inclusion in the World Heritage List a property in a State or self-governing Territory only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the State or Territory on:
- (a) the proposed submission of the property; and
  - (b) management arrangements for the property.
- (3) A failure to comply with this section does not affect the submission of a property to the World Heritage Committee for inclusion in the World Heritage List or the status of a property as a declared World Heritage property.

**Subdivision C—Notice of submission of property for listing**

**315 Minister must give notice of submission of property for listing etc.**

- (1) The Minister must give notice in the *Gazette* and in the way (if any) prescribed by the regulations of any of the following events as soon as practicable after the event occurs:
  - (a) the Commonwealth submits a property to the World Heritage Committee for inclusion in the World Heritage List;
  - (b) the Commonwealth extends the boundaries of a property submitted to the World Heritage Committee for inclusion in the World Heritage List;
  - (c) the Commonwealth restricts the boundaries of a property submitted to the World Heritage Committee for inclusion in the World Heritage List;
  - (d) the Commonwealth withdraws the submission of a property for inclusion in the World Heritage List;
  - (e) a property submitted by the Commonwealth is included in the World Heritage List;

- (f) all or part of a property is removed from the World Heritage List.
- (2) The notice must specify the area included in, or excluded or deleted from, the submission or World Heritage List as a result of the event.
- (3) A failure to comply with this section does not affect the status of an area as a declared World Heritage property.

### **Subdivision D—Plans for listed World Heritage properties in Commonwealth areas**

#### **316 Making plans**

##### *Minister must make plan*

- (1) The Minister must make a written plan for managing a property that is included in the World Heritage List and is entirely within one or more Commonwealth areas. The Minister must do so as soon as practicable after the property:
  - (a) is included in the World Heritage List; or
  - (b) becomes entirely within one or more Commonwealth areas.

##### *Amending and replacing plan*

- (2) The Minister may make a written plan amending, or revoking and replacing, a plan made under subsection (1) or this subsection.

##### *Requirements for plan*

- (3) A plan must not be inconsistent with:
  - (a) Australia's obligations under the World Heritage Convention; or
  - (b) the Australian World Heritage management principles.

Note: Section 323 explains what Australian World Heritage management principles are.

##### *Ensuring plans reflect current management principles*

- (4) If the Australian World Heritage management principles change so that a plan (the *earlier plan*) is inconsistent with them, the Minister must make another plan:

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- (a) amending the earlier plan so it is not inconsistent with them;  
or
- (b) revoking and replacing the earlier plan.

*Plan may be in same document as another plan*

- (5) To avoid doubt, a plan under this section for a property may be in the same document as:
  - (a) a plan under this section for another property; or
  - (b) a plan that this Act or another law of the Commonwealth requires or permits to be prepared.

*Commonwealth reserves*

- (6) Despite subsections (1) and (2), the Minister may not make a plan for so much of a property as is in a Commonwealth reserve.

Note: A management plan must be prepared under Division 4 for a Commonwealth reserve, taking account of Australia's obligations under the World Heritage Convention.

*Heard Island and McDonald Islands*

- (7) Despite subsections (1) and (2), the Minister may not make a plan for so much of a property as is in the Territory of Heard Island and McDonald Islands and covered by a plan:
  - (a) that is in operation under the *Environment Protection and Management Ordinance 1987* of that Territory; and
  - (b) that the Minister is satisfied is not inconsistent with:
    - (i) Australia's obligations under the World Heritage Convention; or
    - (ii) the Australian World Heritage management principles.

### **317 Notice of plans**

The Minister must give notice of the making of a plan under section 316, in accordance with the regulations.

### **318 Commonwealth compliance with plans**

- (1) The Commonwealth or a Commonwealth agency must not:
  - (a) contravene a plan made under section 316; or



- (b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene such a plan.
- (2) If there is no plan in force under section 316 for a particular property described in subsection (1) of that section, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the property are not inconsistent with the Australian World Heritage management principles.

### **319 Review of plans every 5 years**

- (1) The Minister must cause a review of a plan made under section 316 to be carried out at least once in each period of 5 years after the plan is made.
- (2) The review must consider whether the plan is consistent with the Australian World Heritage management principles in force at the time.

Note: Section 323 explains what Australian World Heritage management principles are.

## **Subdivision E—Managing World Heritage properties in States and self-governing Territories**

### **320 Application**

This Subdivision applies in relation to a property that:

- (a) is:
  - (i) in a State; or
  - (ii) in a self-governing Territory; or
  - (iii) on, over or under the seabed vested in a State by the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by the *Coastal Waters (Northern Territory Title) Act 1980*; and
- (b) is not entirely within one or more Commonwealth areas.

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**321 Co-operating to prepare and implement plans**

- (1) This section applies in relation to a property that is included in the World Heritage List.
- (2) The Commonwealth must use its best endeavours to ensure a plan for managing the property in a way that is not inconsistent with Australia's obligations under the World Heritage Convention or the Australian World Heritage management principles is prepared and implemented in co-operation with the State or Territory.

Note: The Commonwealth and the State or Territory could make a bilateral agreement adopting the plan and providing for its implementation.

**322 Commonwealth responsibilities**

- (1) This section applies in relation to a property that is a declared World Heritage property.
- (2) The Commonwealth and each Commonwealth agency must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the property in a way that is not inconsistent with:
  - (a) the World Heritage Convention; and
  - (b) the Australian World Heritage management principles; and
  - (c) if the property is on the World Heritage List and a plan for managing the property has been prepared as described in section 321—that plan.

**Subdivision F—Australian World Heritage management principles**

**323 Australian World Heritage management principles**

- (1) The regulations must prescribe principles for the management of natural heritage and cultural heritage. The principles prescribed are the *Australian World Heritage management principles*.
- (2) Before the Governor-General makes regulations prescribing principles, the Minister must be satisfied that the principles to be prescribed are consistent with Australia's obligations under the World Heritage Convention.
- (3) In this section:

*cultural heritage* has the meaning given by the World Heritage Convention.

*natural heritage* has the meaning given by the World Heritage Convention.

### **Subdivision G—Assistance for protecting World Heritage properties**

#### **324 Commonwealth assistance for protecting declared World Heritage properties**

- (1) The Commonwealth may give financial or other assistance for the protection or conservation of a declared World Heritage property to:
  - (a) a State or self-governing Territory in which the property occurs; or
  - (b) any other person.
- (2) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

## **Division 1A—Managing National Heritage places**

### **Subdivision A—Preliminary**

#### **324A Simplified outline of this Division**

The following is a simplified outline of this Division:

The Minister may only include a place in the National Heritage List if the Minister is satisfied that the place has one or more National Heritage values.

The Minister must ask the Australian Heritage Council for an assessment of the place's National Heritage values and may invite public comments on the proposed inclusion of the place in the National Heritage List.

The Minister must make plans to protect and manage the National Heritage values of National Heritage places. The Commonwealth and Commonwealth agencies must not contravene those plans.

The Commonwealth must try to prepare and implement plans for managing other National Heritage places, in co-operation with the States and self-governing Territories.

The Commonwealth and Commonwealth agencies have duties relating to National Heritage places in States and Territories.

The Commonwealth can provide assistance for the identification, promotion, protection or conservation of National Heritage places.

Note: Section 15B prohibits an action that has a significant impact on the National Heritage values of a National Heritage place, unless the person taking the action has the approval of the Minister or certain other requirements are met.

### **324B Extension to places etc. outside the Australian jurisdiction**

This Division extends to places, acts and omissions outside the Australian jurisdiction, except so far as the contrary intention appears.

## **Subdivision B—The National Heritage List**

### **324C The National Heritage List**

- (1) The Minister must keep a written record of places and their heritage values in accordance with this Subdivision. The record is called the *National Heritage List*.

Note: Later provisions of this Subdivision explain what places and heritage values are included in the National Heritage List.

- (2) A place may be included in the National Heritage List only if the Minister is satisfied that the place has one or more National Heritage values. A place that is included in the National Heritage List is called a *National Heritage place*.

### **324D Meaning of *National Heritage values***

- (1) A place has a *National Heritage value* if and only if the place meets one of the criteria (the *National Heritage criteria*) prescribed by the regulations for the purposes of this section. The *National Heritage value* of the place is the place's heritage value that causes the place to meet the criterion.
- (2) The *National Heritage values* of a National Heritage place are the National Heritage values of the place included in the National Heritage List for the place.
- (3) The regulations must prescribe criteria for the following:
  - (a) natural heritage values of places;
  - (b) indigenous heritage values of places;
  - (c) historic heritage values of places.The regulations may prescribe criteria for other heritage values of places.
- (4) To avoid doubt, a criterion prescribed by the regulations may relate to one or more of the following:
  - (a) natural heritage values of places;

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- (b) indigenous heritage values of places;
- (c) historic heritage values of places;
- (d) other heritage values of places.

**324E Nominations of places**

- (1) A person may, in accordance with the regulations (if any), nominate to the Minister a place for inclusion in the National Heritage List.
- (2) The Minister must give the Chair of the Australian Heritage Council a written request for the Council to assess under section 324G whether the place meets any of the National Heritage criteria, unless the Minister rejects the nomination under this section.
- (3) If the Minister must give the Chair a request, he or she must give the request within 10 business days after receiving the nomination, unless:
  - (a) the place is wholly or partly outside the Australian jurisdiction; or
  - (b) the Minister includes the place in the National Heritage List under section 324F (emergency listing) within that period.
- (3A) Within 10 business days after giving the request to the Chair of the Australian Heritage Council, the Minister must publish on the Internet a brief description of the nomination.

Note: Section 324Q may affect the amount of detail in the description.
- (4) The Minister may:
  - (a) ask the person who nominated the place to provide additional information about the place within a specified period; and
  - (b) reject the nomination if the information is not provided within that period.The period specified must be reasonable.
- (5) If the Minister asks the person for additional information, the period in subsection (3) stops running on the day the Minister asks for that information until the day after that information is provided.
- (6) The Minister may also reject the nomination if satisfied that it is vexatious, frivolous or not made in good faith.

- (7) If the Minister rejects the nomination under this section, he or she must, as soon as reasonably practicable:
  - (a) advise the person of that fact; and
  - (b) give the person written reasons for the rejection.
- (7A) If the place is wholly or partly in a foreign country, the Minister must inform the following of the fact that the nomination has been made, unless the Minister rejects the nomination under this section:
  - (a) the Minister responsible for foreign affairs;
  - (b) if another Minister has administrative responsibilities relating to the place (if it is wholly in a foreign country) or to a part of the place that is in a foreign country—that other Minister.
- (8) To avoid doubt, a member of the Australian Heritage Council may make a nomination in accordance with this section on behalf of the Council. The Council may undertake research and investigations necessary for the purposes of nominating places to be included in the National Heritage List.
- (9) The Minister may, by publishing a notice in accordance with the regulations, invite nominations of places within a specified theme.

### **324F Emergency listing**

- (1) This section applies (despite subsection 324C(2)) if the Minister believes that:
  - (a) a place wholly in the Australian jurisdiction has or may have one or more National Heritage values; and
  - (b) any of those values is under threat.
- (2) The Minister may, by instrument published in the *Gazette*, include in the National Heritage List the place and the National Heritage values the Minister believes the place has or may have, whether or not the Minister has, under this Subdivision, given the Chair of the Australian Heritage Council a written request for the Council to assess under section 324G whether the place meets any of the National Heritage criteria.
- (3) Within 10 business days after including the place in the National Heritage List under this section, the Minister must give the Chair of the Australian Heritage Council a written request for the Council to assess under section 324G whether the place meets any of the National Heritage criteria.

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- (4) However, subsection (3) does not apply if the Minister has already received from the Australian Heritage Council an assessment under section 324G whether the place meets any of the National Heritage criteria.
- (5) If the Minister includes the place in the National Heritage List under this section, he or she must:
- (a) within 10 business days, publish, on the Internet and in each other way required by the regulations (if any), a copy of the instrument published in the *Gazette*; and
  - (b) take all practicable steps to:
    - (i) identify each person who is an owner or occupier of all or part of the place; and
    - (ii) advise each person identified that the place has been included in the National Heritage List; and
  - (c) within 10 business days, advise each person (if any) who nominated the place or requested the Minister in writing to include the place in the List under this section that the place has been included in the List.
- (6) If a person requests the Minister in writing to include a place in the National Heritage List under this section and the Minister has not done so within 10 business days after receiving the request, the Minister must:
- (a) publish on the Internet notice of those facts; and
  - (b) advise the person that the Minister has not included the place in the List; and
  - (c) give reasons why the Minister has not done so to the person and to anyone who requests them.

This subsection has effect (despite subsection (1)) whether or not the Minister has the belief described in that subsection in relation to the place and its heritage values (if any).

**324G Assessments by the Australian Heritage Council**

- (1) The Minister may give the Chair of the Australian Heritage Council a written request for the Council to assess whether a place meets any of the National Heritage criteria, whether or not the place is the subject of a nomination.



- (2) The Australian Heritage Council must give the Minister a written assessment whether a place meets any of the National Heritage criteria:
- (a) within 12 months after the Minister gives the Chair of the Council (under this section or section 324E) the request for the assessment; or
  - (b) if the place is included in the National Heritage List under section 324F (emergency listing)—within 40 business days after the Minister gives the Chair of the Council (under that section) the request for the assessment.
- (2A) If the Australian Heritage Council does not give the Minister the assessment within the period required by subsection (2) but makes all reasonable efforts to do so, the Minister may, by notice in writing, extend the period by up to 24 months.
- (2B) If the Australian Heritage Council does not give the Minister the assessment within the period as extended under subsection (2A) but makes all reasonable efforts to do so, the Minister may, by notice in writing, further extend the period by up to 24 months.
- (2C) Within 10 business days of extending the period by notice under subsection (2A) or (2B), the Minister must:
- (a) publish on the Internet:
    - (i) a copy of the notice; and
    - (ii) the reasons for the extension; and
  - (b) give a copy of the notice to each person (if any) who nominated the place being covered by the assessment.
- (3) The Australian Heritage Council, on its own initiative, may assess whether a place wholly in the Australian jurisdiction meets any of the National Heritage criteria, whether or not the place is the subject of a nomination. If the Council does so, it may give the assessment to the Minister.

*Requirements relating to assessments generally*

- (3A) Before giving the Minister an assessment under this section whether a place meets any of the National Heritage criteria, the Australian Heritage Council:
- (a) must publish, in accordance with the regulations (if any), a notice:

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- (i) stating that the Council is assessing whether the place meets any of the National Heritage criteria; and
  - (ii) inviting comments in writing, within a specified period that is reasonable having regard to the time by which the Council must give the assessment to the Minister, on whether the place meets any of the National Heritage criteria and whether the place should be included in the National Heritage List; and
- (b) must consider, subject to subsection (5), the comments (if any) the Council receives within the period.

The Council must give the Minister a copy of the comments with the assessment.

- (4) If, in making an assessment, the Australian Heritage Council considers that a place within the Australian jurisdiction might have one or more National Heritage values, the Council must:

- (a) take all practicable steps:
  - (i) to identify each person who is an owner or occupier of all or part of the place; and
  - (ii) if the Council considers the place might have an indigenous heritage value—to identify each indigenous person who has rights or interests in all or part of the place; and
- (b) take all practicable steps to advise each person identified that the Council is assessing whether the place meets any of the National Heritage criteria; and
- (c) give persons advised a reasonable opportunity to comment in writing whether the place should be included in the National Heritage List.

The Council must give the Minister a copy of the comments with the assessment.

Note: For *indigenous heritage value*, see section 528.

- (5) In assessing whether a place meets any of the National Heritage criteria, the Australian Heritage Council must not consider any matter that does not relate to the question whether the place meets the National Heritage criteria.
- (6) If the Minister requests the Australian Heritage Council to assess whether a place meets any of the National Heritage criteria, and the place is wholly or partly in a foreign country and not the subject of

a nomination, the Minister must inform the following of the fact that the Council is making the assessment:

- (a) the Minister responsible for foreign affairs;
- (b) if another Minister has administrative responsibilities relating to the place (if it is wholly in a foreign country) or to a part of the place that is in a foreign country—that other Minister.

### **324H Inviting public comments after assessment**

- (1A) This section applies if and only if, within 20 business days after the day on which the Minister receives from the Australian Heritage Council under section 324G an assessment whether a place meets any of the National Heritage criteria, the Minister decides that this section should apply. This section continues to apply even if the Minister revokes the decision.
- (1) The Minister must publish, in accordance with the regulations (if any), a notice inviting comments on the inclusion or proposed inclusion of the place in the National Heritage List. The notice may specify:
  - (a) that comments should address particular matters relating to the inclusion or proposed inclusion of the place in the List; or
  - (b) that comments are to be given to the Minister in a particular way.
- (2) The notice must be published within 20 business days after the day on which the Minister receives from the Australian Heritage Council an assessment under section 324G whether the place meets any of the National Heritage criteria.
- (3) The notice must state that comments are to be given to the Minister within:
  - (a) 40 business days after the notice is published; or
  - (b) if the place is included in the National Heritage List under section 324F (emergency listing)—20 business days after the notice is published.
- (4) The Minister may ask the Australian Heritage Council or a person with appropriate qualifications or expertise to assess the merits of any comments that are received by the Minister in accordance with the notice.

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- (5) On the first day on which the Minister publishes the notice, the Minister must publish, in accordance with the regulations (if any):
- (a) the assessment given to the Minister under section 324G for the place; and
  - (b) a summary of the documents (if any), copies of which were given to the Minister by the Australian Heritage Council under that section with the assessment; and
  - (c) if the place has not been included in the National Heritage List—one of the following:
    - (i) a statement (the *listing proposal*) that the Minister proposes that the place be included in the National Heritage List;
    - (ii) a statement that the Minister proposes that the place not be included in the National Heritage List;
    - (iii) a statement that the Minister does not have a view whether or not the place should be included in the National Heritage List; and
  - (d) if the Minister publishes the listing proposal—a statement:
    - (i) identifying the National Heritage values that the Minister proposes be included in the National Heritage List for the place; and
    - (ii) explaining why the Minister believes the place has those values.

**324J Decision about inclusion of a place in the National Heritage List**

- (1) After receiving from the Australian Heritage Council an assessment under section 324G whether a place, except one that is or includes a place included in the National Heritage List under section 324F (whether before, on or after receipt of the assessment), meets any of the National Heritage criteria, the Minister must:
- (a) by instrument published in the *Gazette*, include in the National Heritage List the place and its National Heritage values specified in the instrument; or
  - (b) decide not to include the place in the National Heritage List.

Note 1: Section 324F is about emergency listing.

Note 2: The Minister may include a place in the National Heritage List only if the Minister is satisfied that the place has one or more National Heritage values (see subsection 324C(2)).

Note 3: Section 324N deals with how additional National Heritage values may be included in the National Heritage List for a National Heritage place.

- (2) The Minister must comply with subsection (1):
- (a) within 20 business days after the day on which the Minister receives the assessment; or
  - (b) if section 324H applies in relation to the place—within 60 business days after the end of the period mentioned in paragraph 324H(3)(a) for the place.

However, this subsection does not apply if the place is wholly or partly outside the Australian jurisdiction.

- (2A) The Minister must not include in the National Heritage List a place that is wholly or partly in a foreign country unless:
- (a) the Minister is satisfied that the national government of the foreign country has agreed to the inclusion in the List of the place so far as it is in the country; and
  - (b) the Minister has informed:
    - (i) the Minister responsible for foreign affairs; and
    - (ii) if another Minister has administrative responsibilities relating to the place (if it is wholly in a foreign country) or to a part of the place that is in a foreign country—that other Minister;of the proposal to include the place in the List and given the Ministers informed a reasonable opportunity to comment in writing whether the place should be included in the List; and
  - (c) the Minister responsible for foreign affairs has agreed to the inclusion in the List of the place.
- (3) If the Minister includes the place in the National Heritage List, he or she must, within a reasonable time:
- (a) take all practicable steps to:
    - (i) identify each person who is an owner or occupier of all or part of the place in the Australian jurisdiction; and
    - (ii) advise each person identified that the place has been included in the National Heritage List; and

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- (b) if the place was nominated by a person—advise the person that the place has been included in the National Heritage List; and
  - (c) publish a copy of the instrument published in the *Gazette* and the reasons for the decision on the Internet.
- (4) If the Minister decides not to include in the National Heritage List a place (whether the decision is made after publishing a notice under section 324H or not), the Minister must:
- (a) give written reasons for the decision to anyone who asks for them; and
  - (b) if the place was nominated by a person—advise the person within 10 business days of the decision and give the person written reasons for the decision; and
  - (c) within 10 business days publish the decision and the reasons for the decision on the Internet.

*Dealing with an emergency listing*

- (5) After receiving from the Australian Heritage Council an assessment under section 324G whether a place that is or includes a place (the **listed place**) included in the National Heritage List under section 324F (whether before, on or after receipt of the assessment) meets any of the National Heritage criteria, the Minister must, by instrument published in the *Gazette*:
- (a) do one of the following:
    - (i) state that the listed place remains in the National Heritage List with its boundary unaltered;
    - (ii) alter the boundary of the listed place described in the National Heritage List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List);
    - (iii) remove from the National Heritage List the listed place and its National Heritage values; and
  - (b) if the listed place is not removed from the National Heritage List under subparagraph (a)(iii)—do all or any of the following:
    - (i) state that specified National Heritage values included in the List under section 324F for the place remain in the List for the place;

- (ii) include in the List for the place specified National Heritage values of the place that were not included in the List under section 324F for the place;
- (iii) remove from the List for the place specified National Heritage values that were included in the List under section 324F for the place.

(5A) The Minister must comply with subsection (5):

- (a) within 20 business days after the day on which the Minister receives the assessment; or
- (b) if section 324H applies in relation to the place covered by the assessment—within 15 business days after the end of the period mentioned in subsection 324H(3) for the place.

However, this subsection does not apply if the place covered by the assessment is partly outside the Australian jurisdiction.

Note: Subsection (5) cannot apply to a place wholly outside the Australian jurisdiction, because a place wholly outside the Australian jurisdiction must not be included in the National Heritage List under section 324F.

(5B) The Minister must not alter the boundary of the listed place under subparagraph (5)(a)(ii) so as to include within the altered boundary an area in a foreign country unless:

- (a) the Minister is satisfied that the national government of the foreign country has agreed to the inclusion in the List of the place including the area; and
- (b) the Minister has informed:
  - (i) the Minister responsible for foreign affairs; and
  - (ii) if another Minister has administrative responsibilities relating to all or part of the area—that other Minister; of the proposal to alter the boundary in that way and given the Ministers informed a reasonable opportunity to comment in writing whether the boundary should be altered in that way; and
- (c) the Minister responsible for foreign affairs has agreed to the inclusion in the List of the place including the area.

(6) Section 324L does not apply to:

- (a) an alteration (under subparagraph (5)(a)(ii) of this section) of the boundary of a place included in the National Heritage List so as to exclude part of the place (as previously included) from the description of the place in the List

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- (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List); or
- (b) the removal of a place and its National Heritage values under subparagraph (5)(a)(iii) of this section; or
  - (c) the removal of a National Heritage value of a place under subparagraph (5)(b)(iii) of this section.
- (7) If, under subsection (5), the Minister removes from the National Heritage List a place or a National Heritage value of a place, or alters the boundary of a place included in the List, the Minister must:
- (a) within 10 business days, publish on the Internet:
    - (i) a copy of the instrument published in the *Gazette*; and
    - (ii) the reasons for the removal or alteration; and
  - (b) within 10 business days, give written reasons for the removal or alteration to each person identified by the Minister as an owner or occupier of all or part of the place; and
  - (c) give written reasons for the removal or alteration to anyone else who asks the Minister for them; and
  - (d) if the place was included on the List following a nomination of it by a person—within 10 business days of the removal or alteration, advise the person of the removal or alteration and give the person written reasons for it.

*General requirements*

- (8) Before acting under subsection (1) or (5), the Minister must consider:
- (a) the Australian Heritage Council's assessment whether the place meets any of the National Heritage criteria; and
  - (b) the comments (if any), a copy of which was given to the Minister by the Council under section 324G with the assessment; and
  - (c) the comments (if any) received in accordance with the notice (if any) published under section 324H in relation to the place; and
  - (d) the assessment (if any) requested under subsection 324H(4) of the merits of the comments received in accordance with the notice published under section 324H in relation to the place.



- (9) The Minister must publish in accordance with the regulations (if any) a copy or summary of an instrument published in the *Gazette* under this section.

### **324K Listing process not affected by changing boundaries of a place**

- (1) This section is about compliance with a provision of this Subdivision that is before this section and that requires or permits an act to be done in relation to the place identified by express or implied reference to an earlier provision of this Subdivision.
- (2) It is sufficient compliance with the provision if the act is done in relation to a place whose boundary overlaps the boundary of the place identified by reference to the earlier provision.
- (3) This section does not affect the validity of the act so far as that depends on something other than the act being done in relation to the place.

### **324L Removal of places or National Heritage values from the National Heritage List**

- (1) The Minister may remove all or part of a place from the National Heritage List only if the Minister is satisfied that:
- (a) ignoring subsection 324D(2), the place no longer has any National Heritage values or the part no longer contributes to any of the National Heritage values of the place; or
  - (b) it is necessary in the interests of Australia's defence or security to do so.

Note: A place or part of a place may also be removed from the National Heritage List under subsection 324J(5).

- (2) The Minister may remove one or more National Heritage values included in the National Heritage List for a National Heritage place only if the Minister is satisfied that:
- (a) ignoring subsection 324D(2), the place no longer has the National Heritage value or values; or
  - (b) it is necessary in the interests of Australia's defence or security to do so.
- (3) The Minister may remove all or part of a place, or a National Heritage value of a place, only by instrument:

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- (a) published in the *Gazette*; and
- (b) including a statement of the reasons for the removal.

Note: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 324M).

- (4) The instrument must deal with only one of the following kinds of removal:
  - (a) removal (***removal for loss of value***) of a place, part or National Heritage value because of paragraph (1)(a) or (2)(a);
  - (b) removal of a place, part or National Heritage value because of paragraph (1)(b) or (2)(b).

If the instrument purports to deal with both kinds, it has no effect so far as it deals with a removal for loss of value.

- (5) If the instrument deals only with removal for loss of value, the instrument:
  - (a) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*; and
  - (b) takes effect (despite section 48 of that Act) on the first day on which it is no longer liable to be disallowed, or to be taken to have been disallowed, under that section as it applies in relation to the instrument because of section 46A of that Act.
- (6) Within 10 business days of publication of the instrument in the *Gazette*, the Minister must publish, on the Internet and in each other way required by the regulations (if any), a copy of the instrument.

**324M Minister must consider advice of the Australian Heritage Council and public comments**

- (1) Before the Minister removes from the National Heritage List under section 324L all or part of a place or one or more of a place's National Heritage values in a removal for loss of value, the Minister must:
  - (a) give the Chair of the Australian Heritage Council a written request for the Council to give the Minister advice on the proposed removal; and
  - (b) publish, on the Internet, in a daily newspaper circulating in each State and self-governing Territory and in each other way required by the regulations (if any), a notice:

- (i) describing the proposed removal; and
- (ii) inviting anyone to give the Minister comments, within 20 business days, on the proposed removal.

The Minister must publish the notice within 20 business days of giving the request.

- (2) The Australian Heritage Council must give the advice to the Minister within the period specified by the Minister.
- (3) The Minister must consider the advice, if he or she receives it by the end of that period, and the comments (if any) received in accordance with the notice.
- (4) In preparing the advice, the Australian Heritage Council must not consider any matter that does not relate to the National Heritage values of the place concerned.
- (5) The Minister must:
  - (a) decide whether to remove from the National Heritage List the place or part concerned, or the National Heritage value or values of the place concerned; and
  - (b) if the Minister decides to remove the place or part, or the National Heritage value or values of the place—ensure that an instrument removing the place, part or National Heritage value or values is published in the *Gazette* under subsection 324L(3);within 60 business days after the earlier of the advice being received by the Minister and the specified period for giving advice to the Minister ending.
- (6) However, the time limit in subsection (5) does not apply if the place is wholly or partly outside the Australian jurisdiction.

### **324N Specifying one or more additional National Heritage values for a National Heritage place**

- (1) Subsection (2) has effect for the purposes of including in the National Heritage List for a National Heritage place one or more National Heritage values of the place that were not previously included in the List for the place.

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- (2) Sections 324E, 324F, 324G, 324H and 324J apply as if neither of the following had happened before the application of any of those sections because of this section:
- (a) the Minister receiving from the Australian Heritage Council an assessment whether the place meets the National Heritage criteria;
  - (b) the inclusion of the place in the National Heritage List.
- (3) However, this section does not affect the inclusion in the National Heritage List of the place or the National Heritage values that were included in the List for the place before the application of this section. In particular, subsection 324J(5) in its application because of this section does not allow the Minister to:
- (a) remove from the List the place or any of its National Heritage values that were included in the List for the place before the application of section 324F because of this section; or
  - (b) alter the boundary of the place as included in the List before the application of section 324F because of this section so as to exclude from the description of the place in the List part of the place as so included.

**324P National Heritage List must be publicly available**

The Minister must ensure that:

- (a) up-to-date copies of the National Heritage List are available for free to the public on request; and
- (b) an up-to-date copy of the National Heritage List is available on the Internet.

Note: The copies of the National Heritage List made publicly available may not contain certain information kept confidential under section 324Q.

**324Q Certain information may be kept confidential**

- (1) This section applies if the Minister considers that the heritage values of a place could be significantly damaged by the disclosure of some or all of the following information, or by the presence or actions of persons if some or all of the following information were disclosed publicly:
- (a) the place's precise location;
  - (b) the place's heritage values;

- (c) any other information about the place.
- (2) It is sufficient compliance with this Act if only a general description of the place, its location or its National Heritage values is included in:
  - (a) the National Heritage List as made publicly available; or
  - (b) an instrument or other document created for the purposes of this Act.

### **324R Disclosure of Australian Heritage Council's assessments and advice**

- (1) A member of the Australian Heritage Council has a duty not to disclose the following to a person other than the Minister, an employee in the Department whose duties relate to the Council or another member of the Council:
  - (a) an assessment under section 324G whether a place meets any of the National Heritage criteria, any information relating to the assessment or any information about the nomination (if any) that led to the making of the assessment;
  - (b) advice under section 324M concerning a place or any information relating to the advice.
- (2) However:
  - (a) the duty not to disclose a thing described in paragraph (1)(a) in relation to a place does not exist after:
    - (ia) publication under section 324H of the assessment; or
    - (i) publication in the *Gazette* of an instrument under section 324J relating to the place; or
    - (ii) if the Minister is required by section 324J to do something in relation to the place by instrument published in the *Gazette* within a period specified in subsection 324J(2) or (5A) but does not—the end of that period; and
  - (b) the duty not to disclose a thing described in paragraph (1)(b) in relation to a place does not exist after:
    - (i) publication in the *Gazette* of an instrument under section 324L relating to the place; or
    - (ii) if the Minister is required by section 324M to do something in relation to the place by instrument published in the *Gazette* within the period specified in

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subsection 324M(5) but does not—the end of that period.

- (3) After a member of the Australian Heritage Council has ceased under subsection (2) to have a duty not to disclose:
- (a) an assessment under section 324G whether a place meets the National Heritage criteria; or
  - (b) advice under section 324M concerning a place;
- the member must give a copy of the assessment or advice to anyone who asks for it.

- (4) If:
- (a) a member of the Australian Heritage Council proposes to give a person under subsection (3) a copy of an assessment or advice relating to a place; and
  - (b) the member is aware that, under section 324Q, it would be sufficient compliance with this Act if the copy included only a general description of the place, its location or its National Heritage values;
- the member must take reasonable steps to ensure that the copy given to the person does not include a more detailed description than is necessary for sufficient compliance with this Act under that section.

**Subdivision C—Management plans for National Heritage places in Commonwealth areas**

**324S Management plans for National Heritage places in Commonwealth areas**

- (1) The Minister must make a written plan to protect and manage the National Heritage values of each National Heritage place:
- (a) that is entirely within one or more Commonwealth areas; or
  - (b) that is outside the Australian jurisdiction and is entirely owned or controlled by a Commonwealth agency.

The Minister must do so as soon as practicable after the first time the place is:

- (c) included in the National Heritage List; or
- (d) entirely within one or more Commonwealth areas; or
- (e) entirely owned or controlled by a Commonwealth agency.

Note: However, section 324T precludes the Minister from making plans for managing certain places.

- (2) The Minister may, in writing, amend a plan or revoke and replace a plan.
- (3) The Minister must give notice, in accordance with the regulations, if the Minister:
  - (a) makes a plan for a National Heritage place; or
  - (b) amends such a plan; or
  - (c) revokes and replaces such a plan.
- (4) A plan must:
  - (a) address the matters prescribed by the regulations; and
  - (b) not be inconsistent with the National Heritage management principles (see Subdivision E).
- (5) If the National Heritage management principles change so that a plan (the *earlier plan*) is inconsistent with them, the Minister must as soon as practicable make a written instrument:
  - (a) amending the earlier plan to make it consistent with the principles; or
  - (b) revoking and replacing the earlier plan.
- (6) Before making, amending or revoking and replacing a plan, the Minister must:
  - (a) seek in accordance with the regulations, and consider, comments from anyone about the matters to be addressed by the proposed plan or amendment; and
  - (b) seek and consider comments from the Australian Heritage Council about those matters.

### **324T Restriction on ability to make plans**

- (1) Despite section 324S, the Minister must not make a plan for managing so much of a National Heritage place as is in a Commonwealth reserve and covered by another plan under this Act.
- (2) Despite section 324S, the Minister must not make a plan for managing so much of a National Heritage place as is in the Territory of Heard Island and McDonald Islands and covered by a

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plan in operation under the *Environment Protection and Management Ordinance 1987* of that Territory.

**324U Compliance with plans by the Commonwealth and Commonwealth agencies**

- (1) The Commonwealth or a Commonwealth agency must not:
  - (a) contravene a plan made under section 324S; or
  - (b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene such a plan.
- (2) If there is no plan in force under section 324S for a particular National Heritage place described in subsection (1) of that section, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the place are not inconsistent with the National Heritage management principles.

**324V Multiple plans in the same document**

To avoid doubt, a plan for managing a National Heritage place may be in the same document as:

- (a) one or more other plans for managing National Heritage places; or
- (b) one or more other plans that this Act or another law of the Commonwealth requires or permits to be prepared.

**324W Review of plans at least every 5 years**

- (1) At least once in every 5 year period after a plan for managing a National Heritage place is made under section 324S, the Minister must cause a review of the plan to be carried out.
- (2) The review must:
  - (a) assess whether the plan is consistent with the National Heritage management principles in force at the time; and
  - (b) assess whether the plan is effective in protecting and conserving the National Heritage values of the place; and
  - (c) make recommendations for the improved protection of the National Heritage values of the place.



- (3) The person carrying out the review must publish, on the Internet and in a daily newspaper circulating in each State and self-governing Territory, a notice inviting anyone to give the person comments within 20 business days on:
  - (a) whether the plan is consistent with the National Heritage management principles; and
  - (b) the effectiveness of the plan in protecting and conserving the National Heritage values of the place.
- (4) In carrying out the review, the person must consider the comments (if any) received in accordance with the notice.

### **Subdivision D—Management of National Heritage places in States and self-governing Territories**

#### **324X Plans and Commonwealth responsibilities**

- (1) This section applies to a National Heritage place that is not entirely within one or more Commonwealth areas and is:
  - (a) in a State; or
  - (b) in a self-governing Territory; or
  - (c) on, over or under the seabed vested in a State by the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by the *Coastal Waters (Northern Territory Title) Act 1980*.
- (2) The Commonwealth must use its best endeavours to ensure a plan for managing the place, that is not inconsistent with the National Heritage management principles, is prepared and implemented in co-operation with the State or Territory.
- (3) The Commonwealth, and each Commonwealth agency, must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the place in a way that is not inconsistent with:
  - (a) the National Heritage management principles; or
  - (b) the plan for managing the place, if one has been prepared under subsection (2).

## Subdivision E—The National Heritage management principles

### 324Y National Heritage management principles

- (1) The regulations must prescribe principles for managing National Heritage places. The principles prescribed are the *National Heritage management principles*.
- (2) The regulations may prescribe obligations to implement or give effect to the National Heritage management principles if the obligations relate to:
  - (a) a constitutional corporation, the Commonwealth or a Commonwealth agency; or
  - (b) trade or commerce:
    - (i) between Australia and another country; or
    - (ii) between 2 States; or
    - (iii) between a State and Territory; or
    - (iv) between 2 Territories; or
  - (c) all or any of the following:
    - (i) a Commonwealth area;
    - (ii) a Territory;
    - (iii) a place outside the Australian jurisdiction that is owned or controlled by a Commonwealth agency; or
  - (d) the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place; or
  - (e) the National Heritage values of a National Heritage place in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.
- (3) A person must comply with the regulations to the extent that they impose obligations on the person.
- (4) Paragraph (2)(e) applies only to a prescribed obligation that is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention.

## **Subdivision F—Obligations of Commonwealth agencies**

### **324Z Obligation to assist the Minister and the Australian Heritage Council**

- (1) A Commonwealth agency that owns or controls a place that has, or might have, one or more National Heritage values must take all reasonable steps to assist the Minister and the Australian Heritage Council in the identification, assessment and monitoring of the place's National Heritage values.
- (2) A Commonwealth agency that owns or controls all or part of a National Heritage place must take all reasonable steps to assist the Minister to make a plan under section 324S for the place.

### **324ZA Protecting National Heritage values of places sold or leased**

- (1) This section applies if a Commonwealth agency executes a contract for the sale or lease to someone else of a Commonwealth area in the Australian jurisdiction that is or includes all or part of a National Heritage place. It does not matter whether the agency executes the contract for the Commonwealth or on its own behalf.
- (1A) The Commonwealth agency must give the Minister at least 40 business days' notice before executing the contract.
- (2) The Commonwealth agency must ensure that the contract includes a covenant the effect of which is to protect the National Heritage values of the place, unless the agency is satisfied that:
  - (a) having regard to other means of protecting those values, including such a covenant in the contract is unnecessary to protect them or is unreasonable; or
  - (b) including such a covenant in the contract is impracticable.
- (3) The Commonwealth agency must inform the Minister before executing the contract if:
  - (a) such a covenant:
    - (i) would not, or could not be made to, bind the successors in title of the buyer or lessee; or
    - (ii) could be insufficient to ensure the ongoing protection of the National Heritage values of the place; or
  - (b) the agency is satisfied as described in subsection (2).

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The information must include written reasons why paragraph (a) applies or why the agency is satisfied as described in subsection (2).

- (4) If the Minister is informed of a matter in paragraph (3)(a) or that the Commonwealth agency is satisfied that it is unreasonable or impracticable to include such a covenant in the contract, the Minister must:
  - (a) take all reasonable measures to enter into a conservation agreement with the prospective buyer or lessee for the protection and conservation of the National Heritage values of the place; or
  - (b) advise the agency about measures to ensure the ongoing protection of the National Heritage values of the place.
- (5) If the Minister is informed that the Commonwealth agency is satisfied that it is unnecessary to include such a covenant in the contract, the Minister may advise the agency about measures to ensure the ongoing protection of the National Heritage values of the place.
- (6) If the Minister advises the Commonwealth agency under this section about measures to ensure the ongoing protection of the National Heritage values of the place, the agency must take all reasonable steps to ensure that the measures are taken.

**Subdivision G—Assistance for protecting National Heritage places**

**324ZB Commonwealth assistance for protecting National Heritage places**

- (1) The Commonwealth may give financial or other assistance for the identification, promotion, protection or conservation of a National Heritage place to:
  - (a) a State or self-governing Territory in which the place or part of the place is located; or
  - (b) any other person.
- (2) The Commonwealth may give the assistance subject to conditions.

## **Subdivision H—Reviewing and reporting on the National Heritage List**

### **324ZC Reviewing and reporting on the National Heritage List**

- (1) At least once in every 5 year period after the National Heritage List is established, the Minister must ensure that:
  - (a) a review of the National Heritage List is carried out; and
  - (b) a report of that review is tabled in each House of the Parliament.
- (2) The report must include details of:
  - (a) the number of places included in the National Heritage List; and
  - (b) any significant damage or threat to the National Heritage values of those places; and
  - (c) how many plans under Subdivisions C and D for managing National Heritage places have been made, or are being prepared, and how effectively the plans that have been made are operating; and
  - (d) the operation of any conservation agreements under Part 14 that affect National Heritage places; and
  - (e) all nominations, assessments and changes to the National Heritage List under this Division during the period of review; and
  - (f) compliance with this Act in relation to National Heritage places; and
  - (g) any other matters that the Minister considers relevant.

## **Division 2—Managing wetlands of international importance**

### **Subdivision A—Simplified outline of this Division**

#### **325 Simplified outline of this Division**

The following is a simplified outline of this Division:

The Commonwealth may designate a wetland for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention only after seeking the agreement of relevant States, self-governing Territories and land-holders.

The Minister must make plans for managing wetlands listed under the Ramsar Convention that are entirely in Commonwealth areas. The Commonwealth and Commonwealth agencies must not contravene such plans.

The Commonwealth must try to prepare and implement management plans for other wetlands listed under the Ramsar Convention, in co-operation with the relevant States and self-governing Territories.

The Commonwealth and Commonwealth agencies have duties relating to declared Ramsar wetlands in States and Territories.

The Commonwealth can provide assistance for the protection or conservation of declared Ramsar wetlands.

Note: Section 16 prohibits an action that has a significant impact on an internationally important wetland, unless the person taking the action has the approval of the Minister administering that section or certain other requirements are met.

### **Subdivision B—Seeking agreement on Ramsar designation**

#### **326 Commonwealth must seek agreement before designation**

- (1) The Commonwealth may designate for inclusion in the List of Wetlands of International Importance kept under the Ramsar

Convention a wetland containing an area owned or occupied by another person only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the other person on:

- (a) the proposed designation of the wetland (so far as it relates to the area); and
  - (b) management arrangements for the wetland (so far as they relate to the area).
- (2) The Commonwealth may designate a wetland in a State or self-governing Territory for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the State or Territory on:
- (a) the proposed submission of the wetland; and
  - (b) management arrangements for the wetland.
- (3) A failure to comply with this section does not affect the designation of a wetland for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention or the status of a wetland as a declared Ramsar wetland.

### **Subdivision C—Notice of designation of wetland**

#### **327 Minister must give notice of designation of wetland etc.**

- (1) The Minister must give notice in the *Gazette* and in the way (if any) prescribed by the regulations of any of the following events as soon as practicable after the event occurs:
  - (a) the Commonwealth designates a wetland for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention;
  - (b) the Commonwealth extends the boundaries of a wetland it has included in the List;
  - (c) the Commonwealth restricts the boundaries of a wetland it has included in the List;
  - (d) the Commonwealth deletes from the List a wetland it previously included in the List.
- (2) The notice must specify the area included in, or excluded or deleted from, the List as a result of the event.

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- (3) A failure to comply with this section does not affect the status of an area as a declared Ramsar wetland.

**Subdivision D—Plans for listed wetlands in Commonwealth areas**

**328 Making plans**

*Minister must make plan*

- (1) The Minister must make a written plan for managing a wetland that is included in the List of Wetlands of International Importance kept under the Ramsar Convention and is entirely within one or more Commonwealth areas. The Minister must do so as soon as practicable after the wetland:
- (a) is included in the List; or
  - (b) becomes entirely within one or more Commonwealth areas.

*Amending and replacing plan*

- (2) The Minister may make a written plan amending, or revoking and replacing, a plan made under subsection (1) or this subsection.

*Requirements for plan*

- (3) A plan must not be inconsistent with:
- (a) Australia's obligations under the Ramsar Convention; or
  - (b) the Australian Ramsar management principles.

Note: Section 335 explains what Australian Ramsar management principles are.

*Ensuring plans reflect current management principles*

- (4) If the Australian Ramsar management principles change so that a plan (the **earlier plan**) is inconsistent with them, the Minister must make another plan:
- (a) amending the earlier plan so it is not inconsistent with them; or
  - (b) revoking and replacing the earlier plan.



*Plan may be in same document as another plan*

- (5) To avoid doubt, a plan under this section for a wetland may be in the same document as:
- (a) a plan under this section for another wetland; or
  - (b) a plan that this Act or another law of the Commonwealth requires or permits to be prepared.

*Commonwealth reserves*

- (6) Despite subsections (1) and (2), the Minister may not make a plan for so much of a wetland as is in a Commonwealth reserve.

Note: A management plan must be prepared under Division 4 for a Commonwealth reserve, taking account of Australia's obligations under the Ramsar Convention.

*Heard Island and McDonald Islands*

- (7) Despite subsections (1) and (2), the Minister may not make a plan for so much of a wetland as is in the Territory of Heard Island and McDonald Islands and covered by a plan:
- (a) that is in operation under the *Environment Protection and Management Ordinance 1987* of that Territory; and
  - (b) that the Minister is satisfied is not inconsistent with:
    - (i) Australia's obligations under the Ramsar Convention; or
    - (ii) the Australian Ramsar management principles.

### **329 Notice of plans**

The Minister must give notice of the making of a plan under section 328, in accordance with the regulations.

### **330 Commonwealth compliance with plans**

- (1) The Commonwealth or a Commonwealth agency must not:
- (a) contravene a plan made under section 328; or
  - (b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene such a plan.

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- (2) If there is no plan in force under section 328 for a particular wetland described in subsection (1) of that section, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the wetland are not inconsistent with the Australian Ramsar management principles.

**331 Review of plans every 5 years**

- (1) The Minister must cause a review of a plan made under section 328 to be carried out at least once in each period of 5 years after the plan is made.
- (2) The review must consider whether the plan is consistent with the Australian Ramsar management principles in force at the time.

Note: Section 335 explains what Australian Ramsar management principles are.

**Subdivision E—Management of wetlands in States and self-governing Territories**

**332 Application**

This Subdivision applies in relation to a wetland that:

- (a) is:
  - (i) in a State; or
  - (ii) in a self-governing Territory; or
  - (iii) on, over or under the seabed vested in a State by the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by the *Coastal Waters (Northern Territory Title) Act 1980*; and
- (b) is not entirely within one or more Commonwealth areas.

**333 Co-operating to prepare and implement plans**

- (1) This section applies in relation to a wetland that is included in the List of Wetlands of International Importance kept under the Ramsar Convention.
- (2) The Commonwealth must use its best endeavours to ensure a plan for managing the wetland in a way that is not inconsistent with Australia's obligations under the Ramsar Convention or the

Australian Ramsar management principles is prepared and implemented in co-operation with the State or Territory.

Note: The Commonwealth and the State or Territory could make a bilateral agreement adopting the plan and providing for its implementation.

### **334 Commonwealth responsibilities**

- (1) This section applies in relation to a wetland that is a declared Ramsar wetland.
- (2) The Commonwealth and each Commonwealth agency must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the wetland in a way that is not inconsistent with:
  - (a) the Ramsar Convention; and
  - (b) the Australian Ramsar management principles; and
  - (c) if the wetland is included in the List of Wetlands of International Importance kept under the Ramsar Convention and a plan for managing the property has been prepared as described in section 333—that plan.

### **Subdivision F—Australian Ramsar management principles**

#### **335 Australian Ramsar management principles**

- (1) The regulations must prescribe principles for the management of wetlands included in the List of Wetlands of International Importance kept under the Ramsar Convention. The principles prescribed are the *Australian Ramsar management principles*.
- (2) Before the Governor-General makes regulations prescribing principles, the Minister must be satisfied that the principles to be prescribed are consistent with Australia's obligations under the Ramsar Convention.

### **Subdivision G—Assistance for protecting wetlands**

#### **336 Commonwealth assistance for protecting declared Ramsar wetlands**

- (1) The Commonwealth may give financial or other assistance for the protection or conservation of a declared Ramsar wetland to:

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- (a) a State or self-governing Territory in which the wetland occurs; or
  - (b) any other person.
- (2) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

## **Division 3—Managing Biosphere reserves**

### **337 Definition of *Biosphere reserve***

A *Biosphere reserve* is an area designated for inclusion in the World Network of Biosphere Reserves by the International Co-ordinating Council of the Man and the Biosphere program of the United Nations Educational, Scientific and Cultural Organization.

### **338 Planning for management of Biosphere reserves**

- (1) The Minister may make and implement a written plan for managing a Biosphere reserve, or a part of a Biosphere reserve, entirely within one or more Commonwealth areas. The plan must not be inconsistent with the Australian Biosphere reserve management principles.
- (2) The Commonwealth may co-operate with a State or self-governing Territory to prepare and implement a plan for managing a Biosphere reserve in the State or Territory. The plan must not be inconsistent with the Australian Biosphere reserve management principles.

### **339 Commonwealth activities in Biosphere reserves**

The Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that it exercises its powers and performs its functions in relation to a Biosphere reserve in a way that is not inconsistent with:

- (a) the Australian Biosphere reserve management principles; or
- (b) a plan prepared as described in section 338 for managing the Biosphere reserve.

### **340 Australian Biosphere reserve management principles**

- (1) The regulations must prescribe principles for the management of Biosphere reserves. The principles prescribed are the *Australian Biosphere reserve management principles*.

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- (2) Before the Governor-General makes regulations prescribing principles, the Minister must be satisfied that the principles to be prescribed are consistent with the Statutory Framework of the World Network of Biosphere Reserves established under the Man and the Biosphere program of the United Nations Educational, Scientific and Cultural Organization.

**341 Commonwealth assistance for protecting Biosphere reserves**

- (1) The Commonwealth may give financial or other assistance for the protection or conservation of a Biosphere reserve to:
  - (a) a State or self-governing Territory in which the reserve or part of the reserve occurs; or
  - (b) any other person.
- (2) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

## **Division 3A—Managing Commonwealth Heritage places**

### **Subdivision A—Preliminary**

#### **341A Simplified outline of this Division**

The following is a simplified outline of this Division:

The Minister may only include a place in the Commonwealth Heritage List if the place is in a Commonwealth area, or is owned or leased by the Commonwealth or a Commonwealth agency outside the Australian jurisdiction, and the Minister is satisfied that the place has one or more Commonwealth Heritage values.

The Minister must ask the Australian Heritage Council for an assessment of the place's Commonwealth Heritage values and may invite public comments on the proposed inclusion of the place in the Commonwealth Heritage List.

Commonwealth agencies must make plans to protect and manage the Commonwealth Heritage values of Commonwealth Heritage places. The Commonwealth and Commonwealth agencies must not contravene those plans.

Commonwealth agencies also have other obligations.

The Commonwealth can provide assistance for the identification, promotion, protection or conservation of Commonwealth Heritage places.

#### **341B Extension to places etc. outside the Australian jurisdiction**

This Division extends to places, acts and omissions outside the Australian jurisdiction, except so far as the contrary intention appears.

## **Subdivision B—The Commonwealth Heritage List**

### **341C The Commonwealth Heritage List**

- (1) The Minister must keep a written record of places and their heritage values in accordance with this Subdivision. The record is called the *Commonwealth Heritage List*.

Note: Later provisions of this Subdivision explain what places and heritage values are included in the Commonwealth Heritage List.

- (2) A place may be included in the Commonwealth Heritage List only if the Minister is satisfied that the place:
- (a) either:
- (i) is entirely within a Commonwealth area; or
- (ii) is outside the Australian jurisdiction and is owned or leased by the Commonwealth or a Commonwealth agency; and
- (b) has one or more Commonwealth Heritage values.

A place that is included in the Commonwealth Heritage List is called a *Commonwealth Heritage place*.

### **341D Meaning of *Commonwealth Heritage values***

- (1) A place has a *Commonwealth Heritage value* if and only if the place meets one of the criteria (the *Commonwealth Heritage criteria*) prescribed by the regulations for the purposes of this section. The *Commonwealth Heritage value* of the place is the place's heritage value that causes the place to meet the criterion.
- (2) The *Commonwealth Heritage values* of a Commonwealth Heritage place are the Commonwealth Heritage values of the place included in the Commonwealth Heritage List for the place.
- (3) The regulations must prescribe criteria for the following:
- (a) natural heritage values of places;
- (b) indigenous heritage values of places;
- (c) historic heritage values of places.
- The regulations may prescribe criteria for other heritage values of places.
- (4) To avoid doubt, a criterion prescribed by the regulations may relate to one or more of the following:



- (a) natural heritage values of places;
- (b) indigenous heritage values of places;
- (c) historic heritage values of places;
- (d) other heritage values of places.

### **341E Nominations of places**

- (1) A person may, in accordance with the regulations (if any), nominate to the Minister a place for inclusion in the Commonwealth Heritage List.
- (2) The Minister must give the Chair of the Australian Heritage Council a written request for the Council to assess under section 341G whether the place meets any of the Commonwealth Heritage criteria, unless the Minister rejects the nomination under this section.
- (3) If the Minister must give the Chair a request, he or she must give the request within 10 business days after receiving the nomination, unless:
  - (a) the place is wholly or partly outside the Australian jurisdiction; or
  - (b) the Minister includes the place in the Commonwealth Heritage List under section 341F (emergency listing) within that period.
- (3A) After giving the Chair of the Australian Heritage Council a written request under subsection (2), the Minister must within 10 business days publish a brief description of the nomination on the Internet. In publishing the description, the Minister may have regard to section 341Q.

Note: The description published on the Internet may not contain certain information kept confidential under section 341Q.
- (4) The Minister may:
  - (a) ask the person who nominated the place to provide additional information about the place within a specified period; and
  - (b) reject the nomination if the information is not provided within that period.The period specified must be reasonable.

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- (5) If the Minister asks the person for additional information, the period in subsection (3) stops running on the day the Minister asks for that information until the day after that information is provided.
- (6) The Minister may also reject the nomination if satisfied that it is vexatious, frivolous or not made in good faith.
- (7) If the Minister rejects the nomination under this section, he or she must, as soon as reasonably practicable:
  - (a) advise the person of that fact; and
  - (b) give the person written reasons for the rejection.
- (8) To avoid doubt, a member of the Australian Heritage Council may make a nomination in accordance with this section on behalf of the Council. The Council may undertake research and investigations necessary for the purposes of nominating places to be included in the Commonwealth Heritage List.

**341F Emergency listing**

- (1) This section applies (despite subsection 341C(2)) if the Minister believes that:
  - (a) a place either:
    - (i) is entirely within a Commonwealth area; or
    - (ii) is outside the Australian jurisdiction and is owned or leased by the Commonwealth or a Commonwealth agency; and
  - (b) the place has or may have one or more Commonwealth Heritage values; and
  - (c) any of those values is under threat.
- (2) The Minister may, by instrument published in the *Gazette*, include in the Commonwealth Heritage List the place and the Commonwealth Heritage values the Minister believes the place has or may have, whether or not the Minister has, under this Subdivision, given the Chair of the Australian Heritage Council a written request for the Council to assess under section 341G whether the place meets any of the Commonwealth Heritage criteria.
- (3) Within 10 business days after including the place in the Commonwealth Heritage List under this section, the Minister must

give the Chair of the Australian Heritage Council a written request for the Council to assess under section 341G whether the place meets any of the Commonwealth Heritage criteria.

- (4) However, subsection (3) does not apply if the Minister has already received from the Australian Heritage Council an assessment under section 341G whether the place meets any of the Commonwealth Heritage criteria.
- (5) If the Minister includes the place in the Commonwealth Heritage List under this section, he or she must:
  - (a) within 10 business days, publish, on the Internet and in each other way required by the regulations (if any), a copy or summary of the instrument published in the *Gazette*; and
  - (b) take all practicable steps to:
    - (i) identify each person who is an owner or occupier of all or part of the place; and
    - (ii) advise each person identified that the place has been included in the Commonwealth Heritage List; and
  - (c) within 10 business days, advise each person (if any) who nominated the place or requested the Minister in writing to include the place in the List under this section that the place has been included in the List.
- (6) If a person requests the Minister in writing to include a place in the Commonwealth Heritage List under this section and the Minister has not done so within 10 business days after receiving the request, the Minister must:
  - (a) publish on the Internet notice of those facts; and
  - (b) advise the person that the Minister has not included the place in the List; and
  - (c) give reasons why the Minister has not done so to the person and to anyone who requests them.

This subsection has effect (despite subsection (1)) whether or not the Minister has the belief described in that subsection in relation to the place and its heritage values (if any).

### **341G Assessments by the Australian Heritage Council**

- (1) The Minister may give the Chair of the Australian Heritage Council a written request for the Council to assess whether a place

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meets any of the Commonwealth Heritage criteria, whether or not the place is the subject of a nomination.

- (2) The Australian Heritage Council must give the Minister a written assessment whether a place meets any of the Commonwealth Heritage criteria:
- (a) within 12 months after the Minister gives the Chair of the Council (under this section or section 341E) the request for the assessment; or
  - (b) if the place is included in the Commonwealth Heritage List under section 341F (emergency listing)—within 40 business days after the Minister gives the Chair of the Council (under that section) the request for the assessment.
- (2A) If the Australian Heritage Council does not give the Minister the assessment within the period required by subsection (2) but makes all reasonable efforts to do so, the Minister may, by notice in writing, extend the period by up to 24 months.
- (2B) If the Australian Heritage Council does not give the Minister the assessment within the period as extended under subsection (2A) but makes all reasonable efforts to do so, the Minister may, by notice in writing, further extend the period by up to 24 months.
- (2C) Within 10 business days of extending the period by notice under subsection (2A) or (2B), the Minister must:
- (a) publish on the Internet:
    - (i) a copy of the notice; and
    - (ii) the reasons for the extension; and
  - (b) give a copy of the notice to each person (if any) who nominated the place being covered by the assessment.
- (3) The Australian Heritage Council, on its own initiative, may assess whether a place meets any of the Commonwealth Heritage criteria, whether or not the place is the subject of a nomination. If the Council does so, it may give the assessment to the Minister.

*Requirements relating to assessments generally*

- (3A) Before giving the Minister an assessment under this section whether a place meets any of the Commonwealth Heritage criteria, the Australian Heritage Council:

- (a) must publish, in accordance with the regulations (if any), a notice:
  - (i) stating that the Council is assessing whether the place meets any of the Commonwealth Heritage criteria; and
  - (ii) inviting comments in writing, within a specified period that is reasonable having regard to the time by which the Council must give the assessment to the Minister, on whether the place meets any of the Commonwealth Heritage criteria and whether the place should be included in the Commonwealth Heritage List; and
- (b) must consider, subject to subsection (5), the comments (if any) the Council receives within the period.

The Council must give the Minister a copy of the comments with the assessment.

- (4) If, in making an assessment, the Australian Heritage Council considers that a place within the Australian jurisdiction might have one or more Commonwealth Heritage values, the Council must:
  - (a) take all practicable steps:
    - (i) to identify each person who is an owner or occupier of all or part of the place; and
    - (ii) if the Council considers the place might have an indigenous heritage value—to identify each indigenous person who has rights or interests in all or part of the place; and
  - (b) take all practicable steps to advise each person identified that the Council is assessing whether the place meets any of the Commonwealth Heritage criteria; and
  - (c) give persons advised a reasonable opportunity to comment in writing whether the place should be included in the Commonwealth Heritage List.

The Council must give the Minister a copy of the comments with the assessment.

Note: For *indigenous heritage value*, see section 528.

- (5) In assessing whether a place meets any of the Commonwealth Heritage criteria, the Australian Heritage Council must not consider any matter that does not relate to the question whether the place meets the Commonwealth Heritage criteria.

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**341H Inviting public comments after assessment**

- (1A) This section applies if and only if, within 20 business days after the day on which the Minister receives from the Australian Heritage Council under section 341G an assessment whether a place meets any of the Commonwealth Heritage criteria, the Minister decides that this section should apply. This section continues to apply even if the Minister revokes the decision.
- (1) The Minister must publish, in accordance with the regulations (if any), a notice inviting comments on the inclusion or proposed inclusion of the place in the Commonwealth Heritage List. The notice may specify:
- (a) that comments should address particular matters relating to the inclusion or proposed inclusion of the place in the List; or
  - (b) that comments are to be given to the Minister in a particular way.
- (2) The notice must be published within 20 business days after the day on which the Minister receives from the Australian Heritage Council an assessment under section 341G whether the place meets any of the Commonwealth Heritage criteria.
- (3) The notice must state that comments are to be given to the Minister within:
- (a) 40 business days after the notice is published; or
  - (b) if the place is included in the Commonwealth Heritage List under section 341F (emergency listing)—20 business days after the notice is published.
- (4) The Minister may ask the Australian Heritage Council or a person with appropriate qualifications or expertise to assess the merits of any comments that are received by the Minister in accordance with the notice.
- (5) On the first day on which the Minister publishes the notice, the Minister must publish, in accordance with the regulations (if any):
- (a) the assessment given to the Minister under section 341G for the place; and
  - (b) a summary of the documents (if any), copies of which were given to the Minister by the Australian Heritage Council under that section with the assessment; and

- (c) if the place has not been included in the Commonwealth Heritage List—one of the following:
  - (i) a statement (the *listing proposal*) that the Minister proposes that the place be included in the Commonwealth Heritage List;
  - (ii) a statement that the Minister proposes that the place not be included in the Commonwealth Heritage List;
  - (iii) a statement that the Minister does not have a view whether or not the place should be included in the Commonwealth Heritage List; and
- (d) if the Minister publishes the listing proposal—a statement:
  - (i) identifying the Commonwealth Heritage values that the Minister proposes be included in the Commonwealth Heritage List for the place; and
  - (ii) explaining why the Minister believes the place has those values.

### **341J Decision about inclusion of a place in the Commonwealth Heritage List**

- (1) After receiving from the Australian Heritage Council an assessment under section 341G whether a place, except one that is or includes a place included in the Commonwealth Heritage List under section 341F (whether before, on or after receipt of the assessment), meets any of the Commonwealth Heritage criteria, the Minister must:
  - (a) by instrument published in the *Gazette*, include in the Commonwealth Heritage List the place and its Commonwealth Heritage values specified in the instrument; or
  - (b) decide not to include the place in the Commonwealth Heritage List.

Note 1: Section 341F is about emergency listing.

Note 2: The Minister may include a place in the Commonwealth Heritage List only if the Minister is satisfied that the place:

- (a) is entirely within a Commonwealth area or is both outside the Australian jurisdiction and owned or leased by the Commonwealth or a Commonwealth agency; and
- (b) has one or more Commonwealth Heritage values.

See subsection 341C(2).

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Note 3: Section 341N deals with how additional Commonwealth Heritage values may be included in the Commonwealth Heritage List for a Commonwealth Heritage place.

- (2) The Minister must comply with subsection (1):
- (a) within 20 business days after the day on which the Minister receives the assessment; or
  - (b) if section 341H applies in relation to the place—within 60 business days after the end of the period mentioned in paragraph 341H(3)(a) for the place.
- However, this subsection does not apply if the place is wholly or partly outside the Australian jurisdiction.
- (3) If the Minister includes the place in the Commonwealth Heritage List, he or she must, within a reasonable time:
- (a) take all practicable steps to:
    - (i) identify each person who is an owner or occupier of all or part of the place; and
    - (ii) advise each person identified that the place has been included in the Commonwealth Heritage List; and
  - (b) if the place was nominated by a person—advise the person that the place has been included in the Commonwealth Heritage List; and
  - (c) publish on the Internet:
    - (i) a copy of the instrument published in the *Gazette* including the place and its Commonwealth Heritage values in the List; and
    - (ii) the Minister's reasons for including the place and those values in the List.
- (4) If the Minister decides not to include in the Commonwealth Heritage List a place (whether the decision is made after publishing a notice under section 341H or not), the Minister must:
- (a) give written reasons for the decision to anyone who asks for them; and
  - (b) if the place was nominated by a person—advise the person of the decision within 10 business days and give the person written reasons for the decision; and
  - (c) within 10 business days, publish on the Internet notice of the decision and the reasons for the decision.



*Dealing with an emergency listing*

- (5) After receiving from the Australian Heritage Council an assessment under section 341G whether a place that is or includes a place (the *listed place*) included in the Commonwealth Heritage List under section 341F (whether before, on or after receipt of the assessment) meets any of the Commonwealth Heritage criteria, the Minister must, by instrument published in the *Gazette*:
- (a) do one of the following:
    - (i) state that the listed place remains in the Commonwealth Heritage List with its boundary unaltered;
    - (ii) alter the boundary of the listed place described in the Commonwealth Heritage List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List);
    - (iii) remove from the Commonwealth Heritage List the listed place and its Commonwealth Heritage values; and
  - (b) if the listed place is not removed from the Commonwealth Heritage List under subparagraph (a)(iii)—do all or any of the following:
    - (i) state that specified Commonwealth Heritage values included in the List under section 341F for the place remain in the List for the place;
    - (ii) include in the List for the place specified Commonwealth Heritage values of the place that were not included in the List under section 341F for the place;
    - (iii) remove from the List for the place specified Commonwealth Heritage values that were included in the List under section 341F for the place.
- (5A) The Minister must comply with subsection (5):
- (a) within 20 business days after the day on which the Minister receives the assessment; or
  - (b) if section 341H applies in relation to the place covered by the assessment—within 15 business days after the end of the period mentioned in subsection 341H(3) for the place.
- However, this subsection does not apply if the place covered by the assessment is wholly or partly outside the Australian jurisdiction.
- (6) Section 341L does not apply to:

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- (a) an alteration (under subparagraph (5)(a)(ii) of this section) of the boundary of a place included in the Commonwealth Heritage List so as to exclude part of the place (as previously included) from the description of the place in the List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List); or
  - (b) the removal of a place and its Commonwealth Heritage values under subparagraph (5)(a)(iii) of this section; or
  - (c) the removal of a Commonwealth Heritage value of a place under subparagraph (5)(b)(iii) of this section.
- (7) If, under subsection (5), the Minister removes from the Commonwealth Heritage List a place or a Commonwealth Heritage value of a place, or alters the boundary of a place included in the List, the Minister must:
- (a) within 10 business days, publish on the Internet:
    - (i) a copy of the instrument published in the *Gazette*; and
    - (ii) the reasons for the removal or alteration; and
  - (b) within 10 business days, give written reasons for the removal or alteration to each person identified by the Minister as an owner or occupier of all or part of the place; and
  - (c) give written reasons for the removal or alteration to anyone else who asks the Minister for them; and
  - (d) if the place was included on the List following a nomination of it by a person—within 10 business days of the removal or alteration, advise the person of the removal or alteration and give the person written reasons for it.

*General requirements*

- (8) Before acting under subsection (1) or (5), the Minister must consider:
- (a) the Australian Heritage Council's assessment whether the place meets any of the Commonwealth Heritage criteria; and
  - (b) the comments (if any), a copy of which was given to the Minister by the Council under section 341G with the assessment; and
  - (c) the comments (if any) received in accordance with the notice (if any) published under section 341H in relation to the place; and

- (d) the assessment (if any) requested under subsection 341H(4) of the merits of the comments received in accordance with the notice published under section 341H in relation to the place.
- (9) The Minister must publish in accordance with the regulations (if any) a copy or summary of an instrument published in the *Gazette* under this section.

**341K Listing process not affected by changing boundaries of a place**

- (1) This section is about compliance with a provision of this Subdivision that is before this section and that requires or permits an act to be done in relation to the place identified by express or implied reference to an earlier provision of this Subdivision.
- (2) It is sufficient compliance with the provision if the act is done in relation to a place whose boundary overlaps the boundary of the place identified by reference to the earlier provision.
- (3) This section does not affect the validity of the act so far as that depends on something other than the act being done in relation to the place.

**341L Removal of places or Commonwealth Heritage values from the Commonwealth Heritage List**

- (1) The Minister must remove all or part of a place from the Commonwealth Heritage List as soon as practicable after the Minister becomes aware that:
  - (a) the place or part is no longer in a Commonwealth area; or
  - (b) the place or part is no longer owned or leased by the Commonwealth or a Commonwealth agency, if the place or part is outside the Australian jurisdiction.
- (2) The Minister may remove all or part of a place from the Commonwealth Heritage List only if the Minister is satisfied that:
  - (a) ignoring subsection 341D(2), the place no longer has any Commonwealth Heritage values or the part no longer contributes to any of the Commonwealth Heritage values of the place; or
  - (b) it is necessary in the interests of Australia's defence or security to do so.

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Note: A place or part of a place may also be removed from the Commonwealth Heritage List under subsection 341J(5).

- (3) The Minister may remove one or more Commonwealth Heritage values included in the Commonwealth Heritage List for a Commonwealth Heritage place only if the Minister is satisfied that:
- (a) ignoring subsection 341D(2), the place no longer has the Commonwealth Heritage value or values; or
  - (b) it is necessary in the interests of Australia's defence or security to do so.
- (4) The Minister can remove all or part of a place, or a Commonwealth Heritage value of a place, only by instrument:
- (a) published in the *Gazette*; and
  - (b) including a statement of the reasons for the removal.

Note: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 341M).

- (5) The instrument must deal with only one of the following kinds of removal:
- (a) removal (***removal for loss of value***) of a place, part or Commonwealth Heritage value because of paragraph (2)(a) or (3)(a);
  - (b) removal of a place, part or Commonwealth Heritage value because of subsection (1) or paragraph (2)(b) or (3)(b).

If the instrument purports to deal with both kinds, it has no effect so far as it deals with a removal for loss of value.

- (6) If the instrument deals only with removal for loss of value, the instrument:
- (a) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*; and
  - (b) takes effect (despite section 48 of that Act) on the first day on which it is no longer liable to be disallowed, or to be taken to have been disallowed, under that section as it applies in relation to the instrument because of section 46A of that Act.
- (7) Within 10 business days of publication of the instrument in the *Gazette*, the Minister must publish, on the Internet and in each other way required by the regulations (if any), a copy of the instrument.

**341M Minister must consider advice of the Australian Heritage Council and public comments**

- (1) Before the Minister removes from the Commonwealth Heritage List under section 341L all or part of a place or one or more of a place's Commonwealth Heritage values in a removal for loss of value, the Minister must:
  - (a) give the Chair of the Australian Heritage Council a written request for the Council to give the Minister advice on the proposed removal; and
  - (b) publish, on the Internet, in a daily newspaper circulating in each State and self-governing Territory and in each other way required by the regulations (if any), a notice:
    - (i) describing the proposed removal; and
    - (ii) inviting anyone to give the Minister comments, within 20 business days, on the proposed removal.

The Minister must publish the notice within 20 business days of giving the request.

- (2) The Australian Heritage Council must give the advice to the Minister within the period specified by the Minister.
- (3) The Minister must consider the advice, if he or she receives it by the end of that period, and the comments (if any) received in accordance with the notice.
- (4) In preparing the advice, the Australian Heritage Council must not consider any matter that does not relate to the Commonwealth Heritage values of the place concerned.
- (5) The Minister must:
  - (a) decide whether to remove from the Commonwealth Heritage List the place or part concerned, or the Commonwealth Heritage value or values of the place concerned; and
  - (b) if the Minister decides to remove the place or part, or the Commonwealth Heritage value or values of the place—ensure that an instrument removing the place, part or Commonwealth Heritage value or values is published in the *Gazette* under subsection 341L(4);within 60 business days after the earlier of the advice being received by the Minister and the specified period for giving advice to the Minister ending.

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- (6) However, the time limit in subsection (5) does not apply if the place is wholly or partly outside the Australian jurisdiction.

**341N Specifying one or more additional Commonwealth Heritage values for a Commonwealth Heritage place**

- (1) Subsection (2) has effect for the purposes of including in the Commonwealth Heritage List for a Commonwealth Heritage place one or more Commonwealth Heritage values of the place that were not previously included in the List for the place.
- (2) Sections 341E, 341F, 341G, 341H and 341J apply as if neither of the following had happened before the application of any of those sections because of this section:
- (a) the Minister receiving from the Australian Heritage Council an assessment whether the place meets the Commonwealth Heritage criteria;
  - (b) the inclusion of the place in the Commonwealth Heritage List.
- (3) However, this section does not affect the inclusion in the Commonwealth Heritage List of the place or the Commonwealth Heritage values that were included in the List for the place before the application of this section. In particular, subsection 341J(5) in its application because of this section does not allow the Minister to:
- (a) remove from the List the place or any of its Commonwealth Heritage values that were included in the List for the place before the application of section 341F because of this section; or
  - (b) alter the boundary of the place as included in the List before the application of section 341F because of this section so as to exclude from the description of the place in the List part of the place as so included.

**341P Commonwealth Heritage List must be publicly available**

The Minister must ensure that:

- (a) up-to-date copies of the Commonwealth Heritage List are available for free to the public on request; and
- (b) an up-to-date copy of the Commonwealth Heritage List is available on the Internet.

Note: The copies of the Commonwealth Heritage List made publicly available may not contain certain information kept confidential under section 341Q.

### **341Q Certain information may be kept confidential**

- (1) This section applies if the Minister considers that the heritage values of a place could be significantly damaged by the disclosure of some or all of the following information, or by the presence or actions of persons if some or all of the following information were disclosed publicly:
  - (a) the place's precise location;
  - (b) the place's heritage values;
  - (c) any other information about the place.
- (2) It is sufficient compliance with this Act if only a general description of the place, its location or its Commonwealth Heritage values is included in:
  - (a) the Commonwealth Heritage List as made publicly available;  
or
  - (b) an instrument or other document created for the purposes of this Act.

### **341R Disclosure of Australian Heritage Council's assessments and advice**

- (1) A member of the Australian Heritage Council has a duty not to disclose the following to a person other than the Minister, an employee in the Department whose duties relate to the Council or another member of the Council:
  - (a) an assessment under section 341G whether a place meets any of the Commonwealth Heritage criteria, any information relating to the assessment or any information about the nomination (if any) that led to the making of the assessment;
  - (b) advice under section 341M concerning a place or any information relating to the advice.
- (2) However:
  - (a) the duty not to disclose a thing described in paragraph (1)(a) in relation to a place does not exist after:
    - (ia) publication under section 341H of the assessment; or

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- (i) publication in the *Gazette* of an instrument under section 341J relating to the place; or
    - (ii) if the Minister is required by section 341J to do something in relation to the place by instrument published in the *Gazette* within a period specified in subsection 341J(2) or (5A) but does not—the end of that period; and
  - (b) the duty not to disclose a thing described in paragraph (1)(b) in relation to a place does not exist after:
    - (i) publication in the *Gazette* of an instrument under section 341L relating to the place; or
    - (ii) if the Minister is required by section 341M to do something in relation to the place by instrument published in the *Gazette* within the period specified in subsection 341M(5) but does not—the end of that period.
- (3) After a member of the Australian Heritage Council has ceased under subsection (2) to have a duty not to disclose:
- (a) an assessment under section 341G whether a place meets the Commonwealth Heritage criteria; or
  - (b) advice under section 341M concerning a place;
- the member must give a copy of the assessment or advice to anyone who asks for it.
- (4) If:
- (a) a member of the Australian Heritage Council proposes to give a person under subsection (3) a copy of an assessment or advice relating to a place; and
  - (b) the member is aware that, under section 341Q, it would be sufficient compliance with this Act if the copy included only a general description of the place, its location or its Commonwealth Heritage values;
- the member must take reasonable steps to ensure that the copy given to the person does not include a more detailed description than is necessary for sufficient compliance with this Act under that section.



## **Subdivision C—Management plans for Commonwealth Heritage places**

### **341S Management plans for Commonwealth Heritage places**

- (1) A Commonwealth agency must make a written plan to protect and manage the Commonwealth Heritage values of a Commonwealth Heritage place it owns or controls. The agency must do so within the period mentioned either:
  - (a) at the time the agency starts owning or controlling the place, in the agency's heritage strategy under section 341ZA; or
  - (b) after that time, in the agency's first such strategy.

Note: However, a Commonwealth agency must not make plans for managing certain places (see section 341U).

- (2) The Commonwealth agency may, in writing, amend the plan or revoke and replace the plan.
- (3) A Commonwealth agency must give notice, in accordance with the regulations, if the agency:
  - (a) makes a plan for a Commonwealth Heritage place; or
  - (b) amends such a plan; or
  - (c) revokes and replaces such a plan.

Note: Subdivision E imposes other obligations on Commonwealth agencies.

- (4) A plan must:
  - (a) address the matters prescribed by the regulations; and
  - (b) not be inconsistent with the Commonwealth Heritage management principles (see Subdivision D).
- (5) If the Commonwealth Heritage management principles change so that a plan (the *earlier plan*) is inconsistent with them, the agency concerned must as soon as practicable make a written instrument:
  - (a) amending the earlier plan to make it consistent with the principles; or
  - (b) revoking and replacing the earlier plan.
- (6) Before making, amending or revoking and replacing a plan, the agency concerned must:

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- (a) ask the Minister for advice on the proposed plan or amendment and must take account of any such advice received from the Minister; and
  - (b) seek in accordance with the regulations, and consider, comments from anyone about the matters to be addressed by the proposed plan or amendment.
- (7) The Minister must consult with the Australian Heritage Council in preparing an advice for the purposes of this section.

**341T Endorsing management plans for Commonwealth Heritage places**

- (1) A Commonwealth agency that makes a plan for managing a Commonwealth Heritage place may ask the Minister to endorse the plan. If the Commonwealth agency does so, it must give the Minister a copy of the plan.

Note: An agency that has a plan endorsed under this section is not required to ask for advice under section 341ZD about taking certain actions.

- (1A) The Minister must decide within 60 business days of being given the copy of the plan whether or not to endorse the plan.
- (1B) Within 10 business days of making the decision, the Minister must inform the Commonwealth agency in writing of the decision and publish on the Internet a notice of the decision.
- (2) The Minister:
- (a) may only endorse a plan that the Minister is satisfied provides for the conservation of the Commonwealth Heritage values of the place concerned; and
  - (b) must not endorse a plan that the Minister considers is inconsistent with the Commonwealth Heritage management principles (see Subdivision D).
- (3) The Minister may, at any time, revoke an endorsement of a plan if the Minister considers it appropriate to do so.

**341U Restriction on ability to make plans**

- (1) Despite section 341S, a Commonwealth agency must not make a plan for managing so much of a Commonwealth Heritage place as

is in a Commonwealth reserve and covered by another plan under this Act.

- (2) Despite section 341S, a Commonwealth agency must not make a plan for managing so much of a Commonwealth Heritage place as is in the Territory of Heard Island and McDonald Islands and covered by a plan in operation under the *Environment Protection and Management Ordinance 1987* of that Territory.

### **341V Compliance with plans by the Commonwealth and Commonwealth agencies**

- (1) The Commonwealth or a Commonwealth agency must not:
  - (a) contravene a plan made under section 341S; or
  - (b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene such a plan.
- (2) If there is no plan in force under section 341S for a particular Commonwealth Heritage place, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the place are not inconsistent with the Commonwealth Heritage management principles.

### **341W Multiple plans in the same document**

To avoid doubt, a plan for managing a Commonwealth Heritage place may be in the same document as:

- (a) one or more other plans for managing Commonwealth Heritage places; or
- (b) one or more other plans that this Act or another law of the Commonwealth requires or permits to be prepared.

### **341X Review of plans at least every 5 years**

- (1) At least once in every 5 year period after a plan for managing a Commonwealth Heritage place is made under section 341S, the Commonwealth agency concerned must cause a review of the plan to be carried out.
- (2) The review must:

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- (a) assess whether the plan is consistent with the Commonwealth Heritage management principles in force at the time; and
  - (b) assess whether the plan is effective in protecting and conserving the Commonwealth Heritage values of the place; and
  - (c) make recommendations for the improved protection of the Commonwealth Heritage values of the place.
- (3) The person carrying out the review must publish, on the Internet and in a daily newspaper circulating in each State and self-governing Territory, a notice inviting anyone to give the person comments within 20 business days on:
- (a) whether the plan is consistent with the Commonwealth Heritage management principles; and
  - (b) the effectiveness of the plan in protecting and conserving the Commonwealth Heritage values of the place.
- (4) In carrying out the review, the person must consider the comments (if any) received in accordance with the notice.

**Subdivision D—The Commonwealth Heritage management principles**

**341Y Commonwealth Heritage management principles**

- (1) The regulations must prescribe principles for managing Commonwealth Heritage places. The principles prescribed are the *Commonwealth Heritage management principles*.
- (2) The regulations may prescribe obligations to implement or give effect to the Commonwealth Heritage management principles.
- (3) A person must comply with the regulations to the extent that they impose obligations on the person.

**Subdivision E—Obligations of Commonwealth agencies**

**341Z Obligation to assist the Minister and the Australian Heritage Council**

A Commonwealth agency that owns or controls a place that has, or might have, one or more Commonwealth Heritage values must take

all reasonable steps to assist the Minister and the Australian Heritage Council in the identification, assessment and monitoring of the place's Commonwealth Heritage values.

**341ZA Heritage strategies**

- (1) If a Commonwealth agency owns or controls one or more places, the agency must:
  - (a) prepare a written heritage strategy for managing the places to protect and conserve their Commonwealth Heritage values; and
  - (b) give a copy of the strategy to the Minister;as soon as practicable and in any event within 2 years after the later of:
  - (c) the time the agency first owns or controls a place; and
  - (d) the commencement of this section.

Note: The heritage strategy will apply to every place the agency owns or controls.

- (1A) Before making a heritage strategy, the Commonwealth agency must consult the Australian Heritage Council and take into account any advice the agency receives from the Council.
- (2) The Commonwealth agency may, in writing, amend the heritage strategy or revoke and replace the heritage strategy. The Commonwealth agency must give the Minister a copy of the amended or replacement strategy within 20 business days of the amendment or replacement.
- (3) A heritage strategy must:
  - (a) mention the period within which the Commonwealth agency must make a plan under section 341S; and
  - (b) mention the period within which the Commonwealth agency must do the things mentioned in subsection 341ZB(1); and
  - (c) address the matters prescribed by the regulations (if any); and
  - (d) not be inconsistent with the Commonwealth Heritage management principles.
- (4) The Minister must advise the Commonwealth agency whether or not the agency's heritage strategy (whether original, amended or replacement) is inconsistent with the Commonwealth Heritage management principles.

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- (5) At least once in every 3 year period after a heritage strategy is made, the Commonwealth agency concerned must cause a review of the strategy to be carried out.
- (6) The agency must give the Minister a written report of the review. The report must address the matters prescribed by the regulations (if any).

**341ZB Heritage assessments and registers**

- (1) A Commonwealth agency must do all of the following within the period mentioned in its heritage strategy:
  - (a) conduct a program to identify Commonwealth Heritage values for each place it owns or controls;
  - (b) produce a register that sets out, for each place it owns or controls, the Commonwealth Heritage values (if any) of that place;
  - (c) give the Minister a written report that includes:
    - (i) details of the program; and
    - (ii) a copy of the register.
- (2) The regulations may prescribe all or any of the following:
  - (a) how Commonwealth heritage values may be identified for a place;
  - (b) matters a register must address;
  - (c) matters a report to the Minister must address.
- (3) A Commonwealth agency must keep its register up to date.
- (4) A register may be kept electronically.
- (5) If a report under paragraph (1)(c) indicates that a place owned or controlled by a Commonwealth agency may have one or more Commonwealth Heritage values, information from the report may be used or referred to in a nomination of the place for inclusion in the Commonwealth Heritage List.

**341ZC Minimising adverse impact on heritage values**

A Commonwealth agency must not take an action that has, will have or is likely to have an adverse impact on the National

Heritage values of a National Heritage place or the Commonwealth Heritage values of a Commonwealth Heritage place, unless:

- (a) there is no feasible and prudent alternative to taking the action; and
- (b) all measures that can reasonably be taken to mitigate the impact of the action on those values are taken.

### **341ZD Requirement to ask Minister for advice**

- (1) Before a Commonwealth agency takes an action that has, will have or is likely to have a significant impact on a Commonwealth Heritage place, the agency must ask the Minister for advice about taking the action.
- (2) However, the agency is not required to ask for the advice if:
  - (a) the agency has a plan for managing the place that is endorsed by the Minister under section 341T; and
  - (b) the action is provided for or taken in accordance with the plan.
- (3) Within 30 business days after an agency asks for advice under subsection (1), the Minister must give written advice to the agency. The Minister must consult with the Australian Heritage Council in preparing the advice.
- (4) The Minister may ask an agency to provide additional information about the action or place concerned. If the Minister does so, the period in subsection (3) stops on the day the Minister asks for that information until the day after that information is provided.

### **341ZE Protecting Commonwealth Heritage values of places sold or leased**

- (1) This section applies if a Commonwealth agency executes a contract for the sale or lease to someone else of a Commonwealth area in the Australian jurisdiction that is or includes all or part of a Commonwealth Heritage place. It does not matter whether the agency executes the contract for the Commonwealth or on its own behalf.
- (1A) The Commonwealth agency must give the Minister at least 40 business days' notice before executing the contract.

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- (2) The Commonwealth agency must ensure that the contract includes a covenant the effect of which is to protect the Commonwealth Heritage values of the place, unless the agency is satisfied that:
- (a) having regard to other means of protecting those values, including such a covenant in the contract is unnecessary to protect them or is unreasonable; or
  - (b) including such a covenant in the contract is impracticable.
- (3) The Commonwealth agency must inform the Minister before executing the contract if:
- (a) such a covenant:
    - (i) would not, or could not be made to, bind the successors in title of the buyer or lessee; or
    - (ii) could be insufficient to ensure the ongoing protection of the Commonwealth Heritage values of the place; or
  - (b) the agency is satisfied as described in subsection (2).
- The information must include written reasons why paragraph (a) applies or why the agency is satisfied as described in subsection (2).
- (4) If the Minister is informed of a matter in paragraph (3)(a) or that the Commonwealth agency is satisfied that it is unreasonable or impracticable to include such a covenant in the contract, the Minister must:
- (a) take all reasonable measures to enter into a conservation agreement with the prospective buyer or lessee for the protection and conservation of the Commonwealth Heritage values of the place; or
  - (b) advise the agency about measures to ensure the ongoing protection of the Commonwealth Heritage values of the place.
- (5) If the Minister is informed that the Commonwealth agency is satisfied that it is unnecessary to include such a covenant in the contract, the Minister may advise the agency about measures to ensure the ongoing protection of the Commonwealth Heritage values of the place.
- (6) If the Minister advises the Commonwealth agency under this section about measures to ensure the ongoing protection of the Commonwealth Heritage values of the place, the agency must take all reasonable steps to ensure that the measures are taken.



### **Subdivision F—Advice for authorising actions in Indian Ocean Territories**

#### **341ZF Minister’s advice on authorisation of actions affecting Commonwealth Heritage places**

- (1) This section applies in relation to:
  - (a) an authority established for the government of the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands by or under a law applying in the Territory; and
  - (b) an action that has, will have or is likely to have a significant impact on a Commonwealth Heritage place in the Territory.
- (2) The authority must ask the Minister for advice about the action before the authority decides whether to give an authorisation (however described) under a law applying in the Territory, or under an instrument made under such a law, for a person to take the action.
- (3) The Minister must give the authority written advice about the action within a reasonable time of being asked. The Minister must consult the Australian Heritage Council in preparing the advice.
- (4) The Minister may ask the authority for extra information about the action before giving the advice.

### **Subdivision G—Assistance for protecting Commonwealth Heritage places**

#### **341ZG Commonwealth assistance for protecting Commonwealth Heritage places**

- (1) The Commonwealth may give financial or other assistance for the identification, promotion, protection or conservation of a Commonwealth Heritage place to any person.
- (2) The Commonwealth may give the assistance subject to conditions.

**Subdivision H—Reviewing and reporting on the  
Commonwealth Heritage List**

**341ZH Reviewing and reporting on the Commonwealth Heritage  
List**

- (1) At least once in every 5 year period after the Commonwealth Heritage List is established, the Minister must ensure that:
  - (a) a review of the Commonwealth Heritage List is carried out; and
  - (b) a report of that review is tabled in each House of the Parliament.
- (2) The report must include details of:
  - (a) the number of places included in the Commonwealth Heritage List; and
  - (b) any significant damage or threat to the Commonwealth Heritage values of those places; and
  - (c) how many plans under Subdivision C for managing Commonwealth Heritage places have been made, or are being prepared, and how effectively the plans that have been made are operating; and
  - (d) the operation of any conservation agreements under Part 14 that affect Commonwealth Heritage places; and
  - (e) all nominations, assessments and changes to the Commonwealth Heritage List under this Division during the period of review; and
  - (f) compliance with this Act in relation to Commonwealth Heritage places; and
  - (g) any other matters that the Minister considers relevant.

## **Division 4—Commonwealth reserves**

### **Subdivision A—Simplified outline of this Division**

#### **342 Simplified outline of this Division**

The following is a simplified outline of this Division:

Commonwealth reserves can be declared over areas of land or sea:

- (a) that the Commonwealth owns or leases; or
- (b) that are in a Commonwealth marine area; or
- (c) outside Australia that the Commonwealth has international obligations to protect.

A Proclamation must assign the reserve to a particular category, that affects how the reserve is managed and used.

Some activities can be undertaken in a reserve only if a management plan provides for them. Commonwealth agencies must comply with a management plan. Regulations can be made to control a wide range of activities in reserves.

The Minister may approve a management plan prepared by the Director and any Board for a reserve.

In agreement with indigenous people, the Minister can set up a Board for a reserve including land leased from indigenous people.

### **Subdivision B—Declaring and revoking Commonwealth reserves**

#### **343 Simplified outline of this Subdivision**

The following is a simplified outline of this Subdivision:

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The Governor-General can proclaim Commonwealth reserves over areas of land or sea:

- (a) that the Commonwealth owns; or
- (b) that the Commonwealth or the Director leases; or
- (c) that are in a Commonwealth marine area; or
- (d) outside Australia that the Commonwealth has international obligations to protect.

A Proclamation must assign the reserve to a particular category that affects how the reserve is managed and used.

Proclamations can be made to alter and revoke reserves.

The Director must consult publicly before some Proclamations are made.

### **344 Declaring Commonwealth reserves**

*Declaring a Commonwealth reserve*

- (1) The Governor-General may, by Proclamation, declare as a Commonwealth reserve:
  - (a) an area of land:
    - (i) that is owned by the Commonwealth in a Territory; or
    - (ii) that is owned by the Commonwealth outside a Territory; or
    - or
    - (iii) that is held under lease by the Commonwealth or the Director in a Territory; or
    - (iv) that is held under lease by the Commonwealth or the Director outside a Territory; or
    - (v) outside Australia and in respect of which Australia has obligations relating to biodiversity or heritage under an agreement with one or more other countries that may appropriately be met by declaring the area a Commonwealth reserve; or

- (b) an area of sea:
  - (i) in a Commonwealth marine area; or
  - (ii) outside Australia and in respect of which Australia has obligations relating to biodiversity or heritage under an agreement with one or more other countries that may appropriately be met by declaring the area a Commonwealth reserve; or
- (c) an area of land described in paragraph (a) and sea described in paragraph (b).

Note 1: Section 351 sets out some prerequisites for making Proclamations.

Note 2: A reference to Australia generally includes its coastal sea. See section 15B of the *Acts Interpretation Act 1901*.

*Limits on acquiring land for reservation*

- (2) If land:
  - (a) is in:
    - (i) a State or self-governing Territory (except the Northern Territory); or
    - (ii) the Northern Territory outside both Uluru-Kata Tjuta National Park and the Alligator Rivers Region (as defined by the *Environment Protection (Alligator Rivers Region) Act 1978*); and
  - (b) is dedicated or reserved under a law of the State or Territory for purposes related to nature conservation or the protection of areas of historical, archaeological or geological importance or of areas having special significance in relation to indigenous persons;

the Commonwealth must not acquire the land for the purposes of declaring it a Commonwealth reserve, without the consent of the State or Territory.

*Uluru-Kata Tjuta National Park*

- (3) **Uluru-Kata Tjuta National Park** is the Commonwealth reserve (as it exists from time to time) to which the name Uluru-Kata Tjuta National Park was given by Proclamation continued in force by the *Environmental Reform (Consequential Provisions) Act 1999*.

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**345 Extent of Commonwealth reserve**

- (1) A Commonwealth reserve includes:
- (a) land or seabed to the depth stated in the Proclamation declaring the Commonwealth reserve; and
  - (b) the waters and seabed under any sea in the area declared as a Commonwealth reserve.

- (2) In this Act:

*land* includes subsoil of land and any body of water (whether flowing or not) except the sea.

*seabed* includes:

- (a) the surface of a coral formation; and
- (b) subsoil of seabed (including coral beneath the surface of a coral formation).

**345A Commonwealth usage rights vest in Director**

- (1) When a Commonwealth reserve is declared, a usage right that relates to land or seabed in the reserve and is held by the Commonwealth vests in the Director, by force of this subsection.
- (2) If the Commonwealth acquires a usage right relating to land or seabed in a Commonwealth reserve, the usage right vests in the Director.
- (3) This section does not vest in the Director a usage right in respect of minerals, despite subsections (1) and (2).

**346 Content of Proclamation declaring Commonwealth reserve**

*Content of Proclamation*

- (1) The Proclamation declaring an area to be a Commonwealth reserve must:
- (a) give a name to the reserve; and
  - (b) state the purposes for which the reserve is declared; and
  - (c) state the depth of any land included in the reserve; and
  - (d) state the depth of the seabed that is under any sea included in the reserve; and

- (e) assign the reserve to one of the following categories (the *IUCN categories*):
- (i) strict nature reserve;
  - (ii) wilderness area;
  - (iii) national park;
  - (iv) natural monument;
  - (v) habitat/species management area;
  - (vi) protected landscape/seascape;
  - (vii) managed resource protected area.

*Assigning different zones of a reserve to different IUCN categories*

- (2) A Proclamation may also divide a reserve into zones and assign each zone to an IUCN category.

*Assigning leasehold land to IUCN categories*

- (3) Before the Governor-General makes a Proclamation assigning a Commonwealth reserve or zone including land or seabed held by the Commonwealth or the Director under lease to a particular IUCN category, the Minister must be satisfied that the category to which it is proposed to assign the reserve or zone is consistent with the terms of the lease.

### **347 Assigning Commonwealth reserves and zones to IUCN categories**

*Prerequisite to making Proclamation*

- (1) Before the Governor-General makes a Proclamation assigning a Commonwealth reserve, or a zone within a Commonwealth reserve, to a particular IUCN category, the Minister must be satisfied:
- (a) that the reserve or zone:
    - (i) has the characteristics listed in subsection (2) for the category; and
    - (ii) meets the criteria (if any) prescribed by the regulations for the category; and
  - (b) that the reserve or zone should be managed in accordance with the Australian IUCN reserve management principles for the category.

*Characteristics for IUCN categories*

- (2) The characteristics are as follows:
- (a) for a strict nature reserve—the Commonwealth reserve or zone contains some outstanding or representative ecosystems, geological or physiological features or species;
  - (b) for a wilderness area—the Commonwealth reserve or zone consists of a large area of land, sea or both that:
    - (i) is unmodified, or only slightly modified, by modern or colonial society; and
    - (ii) retains its natural character; and
    - (iii) does not contain permanent or significant habitation;
  - (c) for a national park—the Commonwealth reserve or zone consists of an area of land, sea or both in natural condition;
  - (d) for a natural monument—the Commonwealth reserve or zone contains a specific natural feature, or natural and cultural feature, of outstanding value because of its rarity, representativeness, aesthetic quality or cultural significance;
  - (e) for a habitat/species management area—the Commonwealth reserve or zone contains habitat for one or more species; and
  - (f) for a protected landscape/seascape—the Commonwealth reserve or zone contains an area of land (with or without sea) where the interaction of people and nature over time has given the area a distinct character with significant aesthetic, cultural or ecological value;
  - (g) for a managed resource protected area—the Commonwealth reserve or zone contains natural systems largely unmodified by modern or colonial technology.

**348 Australian IUCN reserve management principles**

- (1) The regulations must prescribe principles for each IUCN category. The principles prescribed for an IUCN category are the ***Australian IUCN reserve management principles*** for the category.
- (2) The principles prescribed for an IUCN category must identify the purpose or purposes for which a Commonwealth reserve, or zone of a Commonwealth reserve, assigned to the category is primarily to be managed.



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**349 Proclamations assigning reserve or zone to wilderness area category may affect management**

A Proclamation assigning a Commonwealth reserve, or a zone of a Commonwealth reserve, to the IUCN category of wilderness area may contain provisions regulating the circumstances in which, and the manner in which, the Director may do one of the following acts if there is not a management plan in operation for the reserve:

- (a) kill, injure, take, trade, keep or move a member of a native species;
- (b) damage heritage;
- (c) carry on an excavation;
- (d) erect a building or other structure;
- (da) carry out works;
- (db) take an action for commercial purposes;
- (e) establish a track;
- (f) use a vehicle, aircraft or vessel;
- (g) inundate land by means of a dam or other works for affecting the flow of water (whether they are inside or outside the reserve or zone);
- (h) extract water by canals or other works for affecting the flow of water (whether they are inside or outside the reserve or zone).

**350 Revocation and alteration of Commonwealth reserves**

- (1) The Governor-General may revoke or amend a Proclamation under this Subdivision by another Proclamation.

Note: Section 351 sets out some prerequisites for making Proclamations.

- (2) Before the Governor-General makes a Proclamation that results in land, sea or seabed ceasing to be included in a Commonwealth reserve, the Minister must be satisfied:
- (a) that the Proclamation, if made, would be in accordance with a resolution passed by each House of Parliament on a motion; and
  - (b) that notice of the motion was given at least 15 sitting days of that House before the motion was moved.
- (3) Subsection (2) does not apply to a Proclamation that results in land, sea or seabed ceasing to be included in one Commonwealth reserve

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or zone and being included in another Commonwealth reserve or zone.

- (4) If the Director ceases to hold land or seabed in a Commonwealth reserve under lease:
- (a) the land or seabed ceases to be part of the reserve by force of this paragraph; and
  - (b) the Governor-General must make a Proclamation revoking or amending the Proclamation that included the land or seabed in a Commonwealth reserve, to reflect the fact that the land or seabed is no longer part of the reserve.
- (5) Subsection (4) does not apply if the Director ceases to hold the land or seabed under a lease because:
- (a) the Commonwealth becomes the owner of the land or seabed; or
  - (b) the Director surrenders the lease in consideration of the grant to the Director of another lease of that land or seabed.
- (6) Except as described in subsection (4), land, sea or seabed in a Commonwealth reserve does not cease to be within the reserve merely because a usage right relating to the land, sea or seabed is transferred, assigned, surrendered, extinguished or changed in any way.
- (7) A **usage right** is an estate or a legal or equitable charge, power, privilege, authority, licence or permit.

Note: Section 22 of the *Acts Interpretation Act 1901* defines *estate*.

### **351 Report before making Proclamation**

*Minister must consider report before Proclamation made*

- (1) Before the Governor-General makes a Proclamation under this Subdivision, the Minister must consider a report prepared by the Director on the matter to be dealt with by the Proclamation.

*Procedure for preparing report*

- (2) In preparing a report, the Director must:
- (a) publish in the *Gazette* and in accordance with the regulations (if any) a notice:

- (i) stating the matter to be dealt with by the Proclamation;  
and
- (ii) inviting the public to comment on the matter to be dealt with by the Proclamation; and
- (iii) specifying the address to which comments may be sent;  
and
- (iv) specifying the day by which any comments must be sent; and
- (b) consider any comments made in response to the invitation;  
and
- (c) include in the report the comments and the Director's views on the comments.

*Content of notice inviting comments*

- (3) A notice stating the matter to be dealt with by a Proclamation to declare a Commonwealth reserve must include a statement of:
  - (a) the proposed name of the reserve; and
  - (b) the proposed boundaries of the reserve and of any zones into which the reserve is to be divided; and
  - (c) the purpose for which the reserve is to be declared; and
  - (d) which IUCN category the reserve (and, if applicable, each zone of the reserve) is to be assigned to; and
  - (e) the purposes for which it is intended to manage and use the reserve.

*Content of notice relating to revocation of Commonwealth reserve*

- (4) A notice stating the matter to be dealt with by a Proclamation to cause any land, sea or seabed to cease to be part of a Commonwealth reserve must state the boundaries of that land, sea or seabed.

*Time for comment*

- (5) The day specified in the notice as the day by which any comments must be sent must be at least 60 days after the last day on which the notice is published in the *Gazette* or in accordance with any regulations.

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*When this section does not apply*

- (6) Subsection (1) does not apply in relation to a Proclamation that:
- (a) declares an area in the Kakadu region to be a Commonwealth reserve; or
  - (b) has the effect of changing the name of a Commonwealth reserve in the Kakadu region; or
  - (c) results in land, sea or seabed ceasing to be included in one Commonwealth reserve and being included in another Commonwealth reserve without changing the IUCN category to which the land, sea or seabed is assigned.

**352 What happens to Director's usage rights when Commonwealth reserve is revoked**

- (1) This section applies in relation to land or seabed that ceases to be included in a Commonwealth reserve because of a Proclamation made under section 350, except a Proclamation that causes the land or seabed:
- (a) to cease to be included in one Commonwealth reserve; and
  - (b) to be included in another Commonwealth reserve.
- (2) A usage right relating to the land or seabed that the Director held vests in the Commonwealth, by force of this subsection.
- (3) However, if the usage right is a lease of indigenous people's land, the usage right ceases to exist, by force of this subsection.
- (4) If the land is in a State or Territory:
- (a) the Director may give the officer of the State or Territory responsible for registering land titles a copy of the Proclamation, certified by the Director; and
  - (b) the officer may make an entry in his or her registers and do anything else needed to reflect the effect of this section.

**Subdivision C—Activities in Commonwealth reserves**

**353 Simplified outline of this Subdivision**

The following is a simplified outline of this Subdivision:

Many works cannot be carried out in a Commonwealth reserve unless permitted by a management plan.

If there is not a management plan in force for a reserve, it must be managed in a way appropriate for the category it has been assigned to by a Proclamation or an earlier management plan.

Regulations can be made to control activities in reserves.

People who have rights relating to an area that is later included in a reserve can continue to exercise those rights in the reserve.

### **354 Activities that may be carried on only under management plan**

- (1) A person must not do one of the following acts in a Commonwealth reserve except in accordance with a management plan in operation for the reserve:
- (a) kill, injure, take, trade, keep or move a member of a native species; or
  - (b) damage heritage; or
  - (c) carry on an excavation; or
  - (d) erect a building or other structure; or
  - (e) carry out works; or
  - (f) take an action for commercial purposes.

Civil penalty:

- (a) for an individual—500 penalty units;
- (b) for a body corporate—5,000 penalty units.

Note: These acts are totally prohibited in wilderness areas (except so far as the Director is concerned). See section 360.

- (2) However, if a management plan is not in operation for a Commonwealth reserve, the Director may do an act described in subsection (1) for:
- (a) preserving or protecting the reserve; or
  - (b) protecting or conserving biodiversity or heritage in the reserve; or
  - (c) controlling authorised scientific research; or
  - (d) protecting persons or property in the reserve; or

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- (e) managing the effects of actions taken under a usage right described in section 359.

Note: The Director may only do these acts in a wilderness area under a management plan or Proclamation. See section 360.

- (3) Subsection (2) does not apply in relation to so much of a Commonwealth reserve as is in the Kakadu region, the Uluru region or the Jervis Bay Territory.

Note: Section 385 sets out what the Director may do in a Commonwealth reserve in the Kakadu region, Uluru region or Jervis Bay Territory when there is not a management plan in operation for the reserve.

- (4) This section has effect despite any other law of the Commonwealth, a State or a Territory, but:

- (a) subsections (1) and (2) are subject to:

- (i) section 359 (about interests and rights existing before a Commonwealth reserve); and  
(ii) section 360 (about wilderness areas); and  
(iii) the *Antarctic Treaty (Environment Protection) Act 1980*; and

- (b) subsection (1) is also subject to section 385 (about activities in Commonwealth reserves in the Kakadu region, Uluru region or Jervis Bay Territory without management plans).

**355 Limits on mining operations in Commonwealth reserves**

- (1) A person must not carry on mining operations in a Commonwealth reserve unless:

- (a) the Governor-General has approved the operations; and  
(b) the person carries them on in accordance with a management plan in operation for the reserve.

Note: Section 387 generally prohibits mining operations in Kakadu National Park.

- (2) The following are *mining operations*:

- (a) operations or activities connected with, or incidental to, the mining or recovery of minerals or the production of material from minerals, including:  
(i) prospecting and exploration for minerals; and  
(ii) milling, refining, treatment and processing of minerals;  
and

- (iii) storage and disposal of minerals and materials produced from minerals;
  - (b) the construction and use of towns, camps, dams, pipelines power lines or other structures for the purposes of operations or activities described in paragraph (a);
  - (c) the performance of any other work for the purposes of operations or activities described in paragraph (a).
- (3) A *mineral* is a naturally occurring substance or mixture of substances.
- (4) Subsection (1) does not prevent the doing of anything for the purposes of building or construction, or the supply of water, in a Commonwealth reserve unless the purposes are connected with, or incidental to, mining operations.
- (5) This section is subject to:
- (a) section 359 (about interests and rights existing before a Commonwealth reserve); and
  - (b) section 387 (about mining operations in Kakadu National Park); and
  - (c) the *Antarctic Treaty (Environment Protection) Act 1980*; but has effect despite any other law of the Commonwealth, a State or a Territory.

### **356 Regulations controlling activities relating to Commonwealth reserves**

- (1) The regulations may:
- (a) regulate or prohibit the pollution of soil, air or water in a manner that is, or is likely to be, harmful to:
    - (i) people, biodiversity or heritage in Commonwealth reserves; or
    - (ii) the natural features of Commonwealth reserves; and
  - (b) regulate or prohibit tourism in Commonwealth reserves; and
  - (c) provide for the protection and preservation of Commonwealth reserves and property and things in Commonwealth reserves; and
  - (d) provide for the protection and conservation of biodiversity in Commonwealth reserves; and

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- (e) regulate or prohibit access to all or part of a Commonwealth reserve by persons or classes of persons; and
- (f) provide for the removal of trespassers from Commonwealth reserves; and
- (g) regulate or prohibit camping in Commonwealth reserves; and
- (h) provide for the safety of persons in Commonwealth reserves; and
- (i) regulate or prohibit the use of fire in Commonwealth reserves; and
- (j) regulate the conduct of persons in Commonwealth reserves; and
- (k) regulate or prohibit the carrying on of any trade or commerce in a Commonwealth reserve; and
- (l) regulate or prohibit the use of vehicles in Commonwealth reserves and provide for signs and road markings for those purposes; and
- (m) provide for:
  - (i) the removal of vehicles, aircraft or vessels from places in Commonwealth reserves where they have been left in contravention of the regulations or have been abandoned; and
  - (ii) the impounding of such vehicles, aircraft or vessels; and
- (n) provide that the person taken for the purposes of the regulations to be the owner of a motor vehicle involved in a contravention of a provision of the regulations relating to the parking or stopping of vehicles in a Commonwealth reserve is, except as provided otherwise, taken to commit an offence against the provision; and
- (o) provide for a person to be taken to be the owner of a motor vehicle for the purposes of regulations made under paragraph (n) (including a person in whose name the motor vehicle is registered under the law of a State or Territory); and
- (p) regulate or prohibit the use of vessels in, and the passage of vessels through, Commonwealth reserves; and
- (q) regulate or prohibit the landing and use of aircraft in, and the flying of aircraft over, Commonwealth reserves; and
- (r) provide for the giving of effect to management plans for Commonwealth reserves; and



- (s) regulate or prohibit the taking of animals or plants into or out of Commonwealth reserves; and
  - (t) provide for the impounding, removal, destruction or disposal of animals found straying in Commonwealth reserves; and
  - (u) regulate or prohibit the taking into Commonwealth reserves, and the use in Commonwealth reserves, of weapons, traps, nets, snares, fishing apparatus and other devices; and
  - (v) regulate or prohibit the laying of baits and the use of explosives and poisons in Commonwealth reserves; and
  - (w) provide for the collection of specimens and the pursuit of research in Commonwealth reserves for scientific purposes; and
  - (x) provide for the issue of licences, permits and authorities relating to activities in Commonwealth reserves, the conditions subject to which they are issued and the charging of fees by the Commonwealth in respect of such licences, permits and authorities; and
  - (y) provide for any matter incidental to or connected with a matter described in another paragraph.
- (2) A provision of the regulations regulating or prohibiting the flying of aircraft over a Commonwealth reserve does not have any effect so far as it is inconsistent with a law of the Commonwealth. For this purpose, a provision is not inconsistent with such a law if it can be complied with without contravention of the law.
- (3) A law of a Territory has effect so far as it is not inconsistent with a provision of the regulations having effect in that Territory. For this purpose, such a law is not inconsistent with the provision so far as it can operate concurrently with the provision.

### **356A Charges for activities in Commonwealth reserves**

Subject to the approval of the Minister, the Director may determine and impose charges for:

- (a) entering or using a Commonwealth reserve or part of a Commonwealth reserve; and
- (b) using services or facilities provided by the Director in or in connection with a Commonwealth reserve; and
- (c) the parking or stopping of vehicles in a Commonwealth reserve; and

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- (d) the mooring or landing of vessels in a Commonwealth reserve; and
- (e) the landing of aircraft in a Commonwealth reserve; and
- (f) the use of vehicles and vessels in a Commonwealth reserve.

**357 Managing Commonwealth reserves while a management plan is not in operation**

- (1) While a management plan is not in operation for a Commonwealth reserve, the Director must exercise the Director's powers and perform the Director's functions in relation to the reserve or to a zone of the reserve so as to manage the reserve in accordance with:
  - (a) the Australian IUCN reserve management principles for the IUCN category to which the reserve or zone has most recently been assigned by:
    - (i) a Proclamation made under Subdivision B; or
    - (ii) a management plan that was in operation for the reserve (but is no longer); and
  - (b) if the Director holds land or seabed included in the reserve under lease—the Director's obligations under the lease.
- (2) While a management plan is not in operation for a Commonwealth reserve, the Commonwealth or a Commonwealth agency must not exercise its powers or perform its functions in relation to the reserve or a zone of the reserve inconsistently with either or both of the following:
  - (a) the Australian IUCN reserve management principles for the IUCN category to which the reserve or zone has most recently been assigned by:
    - (i) a Proclamation made under Subdivision B; or
    - (ii) a management plan that was in operation for the reserve (but is no longer);
  - (b) if the Director holds land or seabed included in the reserve under lease—the Director's obligations under the lease.
- (3) If:
  - (a) a zone of a Commonwealth reserve is assigned to an IUCN category at or after the time the reserve was most recently assigned to an IUCN category; and
  - (b) the IUCN category for the zone is different from the IUCN category for the reserve;

disregard the IUCN category to which the reserve has been assigned for the purposes of the application of this section in relation to the zone.

**358 Restriction on disposal of Director's interests in Commonwealth reserves**

- (1) The Director must not sell or otherwise dispose of a usage right the Director holds in relation to land, sea or seabed in a Commonwealth reserve.
- (2) However, the Director may grant a lease or sub-lease of, or a licence relating to, land or seabed in a Commonwealth reserve, but only in accordance with a management plan in operation for the reserve.
- (3) Despite subsection (1), the Director may surrender a lease of land or seabed within a Commonwealth reserve in consideration of the grant to the Director of a new lease of land or seabed that includes that land or seabed.
- (4) The *Lands Acquisition Act 1989* does not apply to the grant or surrender of a lease or sub-lease under this section.
- (5) This section has effect despite any law of the Commonwealth or of a State or Territory.

**359 Prior usage rights relating to Commonwealth reserves continue to have effect**

- (1) None of the following provisions affect a usage right that was held by a person (other than the Commonwealth or the Director) in relation to land or seabed immediately before the land or seabed was included in a Commonwealth reserve:
  - (a) provisions of this Division that relate to the reserve (whether or not they also relate to another Commonwealth reserve);
  - (b) provisions of the regulations made for the purposes of this Division that relate to the reserve (whether or not they also relate to another Commonwealth reserve);
  - (c) provisions of a management plan for the reserve.

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- (2) None of the provisions described in subsection (1) affect the application of a law of a State or Territory in relation to the usage right.
- (3) The usage right may be renewed or have its term extended only:
  - (a) with the Minister's written consent; and
  - (b) subject to any conditions determined by the Minister.This subsection has effect despite subsections (1) and (2) and any other law of the Commonwealth, a State or a Territory.
- (4) Subsections (1) and (2) apply in relation to a usage right relating to minerals on, in or under land or seabed included in a Commonwealth reserve as if the usage right were a usage right relating to the land or seabed.
- (5) This section applies to a right arising out of a usage right in the same way as it applies to the usage right.
- (6) This section does not apply in relation to:
  - (a) a usage right relating to minerals in Kakadu National Park; or
  - (b) a usage right so far as it relates to mining operations for those minerals.

**359A Traditional use of Commonwealth reserves by indigenous persons**

- (1) This Division and regulations made for the purposes of this Division do not prevent an indigenous person from continuing in accordance with law the traditional use of an area in a Commonwealth reserve for:
  - (a) hunting or food-gathering (except for purposes of sale); or
  - (b) ceremonial and religious purposes.
- (2) However, regulations made for the purposes of this Division do affect an indigenous person's traditional use of an area in a Commonwealth reserve if they:
  - (a) are made for the purpose of conserving biodiversity in the area; and
  - (b) expressly affect the traditional use of the area by indigenous persons.

### **360 Activities in wilderness areas**

- (1) This section applies only to a Commonwealth reserve, or a zone of a Commonwealth reserve, that is assigned by a Proclamation under Subdivision B or a management plan for the reserve to the IUCN category of wilderness area.
- (2) The Commonwealth reserve or zone must be maintained in its natural state.
- (3) A person may use the Commonwealth reserve or zone only for:
  - (a) scientific research authorised by the Director; or
  - (b) a purpose (except recovery of minerals) specified in the provisions of the management plan for the reserve that relate to the zone.
- (4) A person other than the Director must not do any of the following acts in the Commonwealth reserve or zone:
  - (a) kill, injure, take, trade, keep or move a member of a native species;
  - (b) damage heritage;
  - (c) carry on an excavation;
  - (d) erect a building or other structure;
  - (da) carry out works;
  - (db) take an action for commercial purposes;
  - (e) establish a track;
  - (f) use a vehicle, aircraft or vessel;
  - (g) inundate land by means of a dam or other works for affecting the flow of water (whether they are inside or outside the reserve or zone);
  - (h) extract water by canals or other works for affecting the flow of water (whether they are inside or outside the reserve or zone).

Civil penalty:

  - (a) for an individual—500 penalty units;
  - (b) for a body corporate—5,000 penalty units.
- (5) The Director must not do an act described in subsection (4) in the Commonwealth reserve or zone, except for purposes essential to the management of the reserve or zone and in accordance with:

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- (a) the provisions of the management plan in operation for the reserve or zone; or
  - (b) if there is not a management plan in operation for the reserve or zone and a Proclamation assigned the reserve or zone to the IUCN category of wilderness area—the provisions of the Proclamation.
- (6) This section has effect despite any other law of the Commonwealth, a State or a Territory, but is subject to section 359 (about usage rights existing before a Commonwealth reserve) and to the *Antarctic Treaty (Environment Protection) Act 1980*.

**Subdivision D—Complying with management plans for Commonwealth reserves**

**361 Simplified outline of this Subdivision**

The following is a simplified outline of this Subdivision:

The Director must manage a Commonwealth reserve to give effect to a management plan for the reserve. If indigenous people think the Director is not doing this for a reserve including their land, they can take the matter up with the Minister.

Commonwealth agencies must act so as not to contravene a management plan.

**362 Commonwealth and Commonwealth agencies to comply with management plan for Commonwealth reserve**

- (1) The Director must exercise the Director's powers and perform the Director's functions to give effect to a management plan that is in operation for a Commonwealth reserve.
- (2) The Commonwealth or a Commonwealth agency must not perform its functions or exercise its powers in relation to a Commonwealth reserve inconsistently with a management plan that is in operation for the reserve.
- (3) To avoid doubt, if a management plan for a Commonwealth reserve prohibits the exercise of a specified power, or the performance of a specified function, under an Act (including a

power or function under an instrument made under an Act), the power or function must not be exercised in or in relation to the reserve while the plan is in operation.

### **363 Resolving disagreement between land council and Director over implementation of plan**

#### *Minister to resolve disagreement*

- (1) If the Chair or Chairperson of a land council for indigenous people's land in a jointly managed reserve and the Director disagree about whether the Director is exercising the Director's powers and performing the Director's functions consistently with a management plan in operation for the reserve:
  - (a) the Director must inform the Minister; and
  - (b) the Minister must appoint a person the Minister considers to be suitably qualified and in a position to deal with the matter impartially to inquire into the matter; and
  - (c) the person appointed must inquire into the matter and give the Minister a report and recommendations; and
  - (d) the Minister must give the Director any directions the Minister thinks fit; and
  - (e) the Director must comply with any direction.

#### *What is a land council?*

- (2) The **land council** for indigenous people's land in a Commonwealth reserve is:
  - (a) if the land is in the area of an Aboriginal Land Council established by or under the *Aboriginal Land Rights (Northern Territory) Act 1976*—that Aboriginal Land Council; and
  - (b) if the land is in Jervis Bay Territory—the Wreck Bay Aboriginal Community Council established by the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*; and
  - (c) if the land is elsewhere—a body corporate that:
    - (i) is established by or under an Act; and
    - (ii) has functions relating to the indigenous people's land in the reserve; and
    - (iii) consists of indigenous persons who either live in an area to which one or more of the body's functions relate or are registered as traditional owners of indigenous

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people's land in an area to which one or more of the body's functions relate.

*What is indigenous people's land?*

- (3) Land is *indigenous people's land* if:
- (a) a body corporate holds an estate that allows the body to lease the land to the Commonwealth or the Director; and
  - (b) the body corporate was established by or under an Act for the purpose of holding for the benefit of indigenous persons title to land vested in it by or under that Act.

*Who is an indigenous person?*

- (4) A person is an *indigenous person* if he or she is:
- (a) a member of the Aboriginal race of Australia; or
  - (b) a descendant of an indigenous inhabitant of the Torres Strait Islands.

*What is a jointly managed reserve?*

- (5) A Commonwealth reserve is a *jointly managed reserve* if:
- (a) it includes indigenous people's land held under lease by the Director; and
  - (b) a Board is established for the reserve under Subdivision F.

**364 Resolving disagreement between Director and Board over implementation of plan**

- (1) The Director must inform the Minister if the Director believes that:
  - (a) a decision of a Board for a Commonwealth reserve is likely to be substantially detrimental to the good management of the reserve; or
  - (b) a decision of a Board for a Commonwealth reserve is contrary to a management plan in operation for the reserve.
- (2) The Minister must take the steps he or she thinks fit to resolve the matter.
- (3) If the Minister cannot resolve the matter, the Minister must appoint as an arbitrator to inquire into the matter a person whom the



Minister thinks is suitably qualified and in a position to deal with the matter impartially.

- (4) The person appointed must inquire into the matter and give the Minister a report and recommendations.
- (5) After the Minister receives the report and recommendations, he or she must give the Director and the Board:
  - (a) the directions the Minister thinks appropriate; and
  - (b) a statement of reasons for giving the directions; and
  - (c) a copy of the report and recommendations.
- (6) The Director and the Board must comply with any directions given by the Minister.

### **Subdivision E—Approving management plans for Commonwealth reserves**

#### **365 Simplified outline of this Subdivision**

The following is a simplified outline of this Subdivision:

The Minister may approve a management plan for a Commonwealth reserve prepared by the Director and any Board for the reserve. Before the Minister approves a plan, he or she may modify it.

Before the Director gives a plan to the Minister for approval, there are 2 opportunities for the public and others with an interest in the reserve to comment.

The Minister can resolve any disagreements between the Director and a Board for a reserve over preparation of a plan for the reserve.

#### **366 Obligation to prepare management plans for Commonwealth reserves**

*Plans required for Commonwealth reserves without Boards*

- (1) The Director must prepare management plans for each Commonwealth reserve for which there is not a Board to try to ensure that a management plan for the reserve is in operation:

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- (a) as soon as practicable after the reserve is declared; and
- (b) at all times after the first plan for managing the reserve takes effect.

Note: Section 368 specifies steps to be taken in preparing a management plan for a Commonwealth reserve.

*Amending or replacing plans for reserves without Boards*

- (2) The Director may prepare a management plan for a Commonwealth reserve for which there is not a Board:
  - (a) to amend a management plan that is in operation for the reserve; or
  - (b) to revoke and replace a management plan that is in operation for the reserve.

*Plans required for Commonwealth reserves with Boards*

- (3) A Board for a Commonwealth reserve must prepare management plans for the reserve in conjunction with the Director, to try to ensure that a management plan for the reserve is in operation:
  - (a) as soon as practicable after the Board is established; and
  - (b) at all times after a plan for managing the reserve first takes effect after the establishment of the Board.

Note: Section 368 specifies steps to be taken in preparing a management plan for a Commonwealth reserve.

*Amending or replacing plans for reserves with Boards*

- (4) The Board for a Commonwealth reserve may prepare a management plan for the reserve in conjunction with the Director:
  - (a) to amend a management plan that is in operation for the reserve; or
  - (b) to revoke and replace a management plan that is in operation for the reserve.

**367 Content of a management plan for a Commonwealth reserve**

*Mandatory content*

- (1) A management plan for a Commonwealth reserve must provide for the protection and conservation of the reserve. In particular, the plan must:

- (a) assign the reserve to an IUCN category (whether or not a Proclamation has assigned the reserve or a zone of the reserve to that IUCN category); and
- (b) state how the reserve, or each zone of the reserve, is to be managed; and
- (c) state how the natural features of the reserve, or of each zone of the reserve, are to be protected and conserved; and
- (d) if the Director holds land or seabed included in the reserve under lease—be consistent with the Director’s obligations under the lease; and
- (e) specify any limitation or prohibition on the exercise of a power, or performance of a function, under an Act in or in relation to the reserve; and
- (f) specify any mining operation, major excavation or other work that may be carried on in the reserve, and the conditions under which it may be carried on; and
- (g) specify any other operation or activity that may be carried on in the reserve; and
- (h) indicate generally the activities that are to be prohibited or regulated in the reserve, and the means of prohibiting or regulating them; and
- (i) indicate how the plan takes account of Australia’s obligations under each agreement with one or more other countries that is relevant to the reserve (including the World Heritage Convention and the Ramsar Convention, if appropriate); and
- (j) if the reserve includes a National Heritage place:
  - (i) not be inconsistent with the National Heritage management principles; and
  - (ii) address the matters prescribed by regulations made for the purposes of paragraph 324S(4)(a); and
- (k) if the reserve includes a Commonwealth Heritage place:
  - (i) not be inconsistent with the Commonwealth Heritage management principles; and
  - (ii) address the matters prescribed by regulations made for the purposes of paragraph 341S(4)(a).

*Plan may assign different zones to different IUCN categories*

- (2) A management plan for a Commonwealth reserve may divide the reserve into zones and assign each zone to an IUCN category

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(whether or not a Proclamation has assigned the reserve or each zone of the reserve to that IUCN category). The category to which a zone is assigned may differ from the category to which the reserve is assigned.

*Consistency with Australian IUCN reserve management principles*

- (3) The provisions of a management plan for a Commonwealth reserve that relate to the reserve or a particular zone of the reserve must not be inconsistent with the Australian IUCN reserve management principles for the IUCN category to which the reserve or zone is assigned by the plan.

*If zone is in different category from reserve*

- (4) If the management plan for a Commonwealth reserve assigns the reserve to one IUCN category and assigns a zone of the reserve to a different IUCN category, disregard the IUCN category to which the reserve is assigned for the purposes of the application of subsection (3) in relation to the zone.

*Plans for different reserves may appear together*

- (5) A management plan for a Commonwealth reserve may be in the same document as a management plan for another Commonwealth reserve.

*Plans for proposed extension of reserve*

- (6) A management plan for a Commonwealth reserve may include provisions relating to an area that is proposed to be included in the reserve, but they do not have effect until the area is included in the reserve.

**368 Steps in preparing management plans for Commonwealth reserves**

*Overview of process*

- (1) Before the Director gives the Minister a management plan for a Commonwealth reserve for approval:

- (a) the Director must publish under subsection (2) an invitation to comment on the proposal to prepare a draft of the plan; and
- (b) the Director and the Board (if any) for the reserve must prepare a draft of the plan, taking into account any comments received in response to the invitation; and
- (c) the Director must publish under subsection (5) an invitation to comment on the draft; and
- (d) the Director must make publicly available copies of the draft free or for a reasonable fee determined by the Director; and
- (e) the Director and the Board (if any) must consider any comments received in response to the invitation to comment on the draft and may alter the draft.

*Notice inviting comments on proposal to prepare draft*

- (2) The Director must publish a notice in the *Gazette*, in a daily newspaper circulating in each State and self-governing Territory and in accordance with the regulations (if any):
  - (a) stating that the Director proposes to prepare a draft of a management plan for the Commonwealth reserve; and
  - (b) inviting comments on the proposal from:
    - (i) members of the public; and
    - (ii) the Chair or Chairperson of any land council for indigenous people's land in the reserve; and
    - (iii) if the reserve is in a State or self-governing Territory—the agency (if any) of the State or Territory that is responsible for managing national parks established in the State or Territory under a law of the State or Territory; and
    - (iv) if the Minister has established under Division 4 of Part 19 an advisory committee with functions relating to the reserve—the committee; and
    - (v) if the Director holds any land or seabed in the reserve under lease—anyone the Director is obliged under the lease to consult about management of the land or seabed; and
  - (c) specifying the address to which comments may be sent; and

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- (d) specifying a day (at least 30 days after the last day on which the notice is published in the *Gazette* or in accordance with the regulations (if any)) by which comments must be sent.

*Considerations in preparing a management plan*

- (3) In preparing a management plan for a Commonwealth reserve, the Director and the Board (if any) for the reserve must take account of:
  - (a) any report considered by the Minister under section 351 before a Proclamation declaring the reserve was made; and
  - (b) the regulation of the use of the reserve for the purpose for which it was declared; and
  - (c) the interests of:
    - (i) any owner of any land or seabed in the reserve; and
    - (ii) the traditional owners of any indigenous people's land in the reserve; and
    - (iii) any other indigenous persons interested in the reserve; and
    - (iv) any person who has a usage right relating to land, sea or seabed in the reserve that existed (or is derived from a usage right that existed) immediately before the reserve was declared; and
  - (d) the protection of the special features of the reserve, including objects and sites of biological, historical, palaeontological, archaeological, geological and geographical interest; and
  - (e) the protection, conservation and management of biodiversity and heritage within the reserve; and
  - (f) the protection of the reserve against damage; and
  - (g) Australia's obligations under agreements between Australia and one or more other countries relevant to the protection and conservation of biodiversity and heritage.

*Who are the traditional owners of indigenous people's land?*

- (4) The **traditional owners** of indigenous people's land are:
  - (a) a local descent group of indigenous persons who:
    - (i) have common spiritual affiliations to a site on the land under a primary spiritual responsibility for that site and for the land; and

- (ii) are entitled by indigenous tradition to forage as of right over the land; or
- (b) if the land is in the Jervis Bay Territory—the members of the Wreck Bay Aboriginal Community Council.

*Notice inviting comment on draft*

- (5) The Director must publish a notice in the *Gazette*, in a daily newspaper circulating in each State and self-governing Territory and in accordance with the regulations (if any):
  - (a) stating that the Director has prepared a draft of a management plan for the Commonwealth reserve; and
  - (b) stating how the draft can be obtained; and
  - (c) inviting comments on the draft from:
    - (i) members of the public; and
    - (ii) the Chair or Chairperson of any land council for any indigenous people's land in the reserve; and
    - (iii) if the reserve is in a State or self-governing Territory—the agency (if any) of the State or Territory that is responsible for managing national parks established in the State or Territory under a law of the State or Territory; and
    - (iv) if the Minister has established under Division 4 of Part 19 an advisory committee with functions relating to the reserve—the committee; and
    - (v) if the Director holds any land or seabed in the reserve under lease—anyone the Director is obliged under the lease to consult about management of the land or seabed; and
  - (d) specifying the address to which comments may be sent; and
  - (e) specifying a day (at least 30 days after the last day on which the notice is published in the *Gazette* or in accordance with the regulations (if any)) by which comments must be sent.

**369 Resolving disagreements between Director and Board in planning process**

- (1) The Director and the Board for a Commonwealth reserve must inform the Minister if they cannot agree on:

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- (a) the content of a management plan they are preparing for the reserve; or
  - (b) any changes to be made following comment made in response to an invitation to comment on a draft management plan for the reserve; or
  - (c) whether the Director should give a management plan for the reserve to the Minister for approval (either initially or after the Minister has given the plan back to the Director with suggestions under paragraph 370(3)(b)).
- (2) If the Minister is advised by the Director and a Board of a disagreement, the Minister must take the steps the Minister thinks fit to resolve the disagreement.
- (3) If the Minister cannot resolve the disagreement, the Minister must appoint as an arbitrator to inquire into the matter a person whom the Minister thinks is suitably qualified and in a position to deal with the matter impartially.
- (4) The appointed arbitrator must inquire into the matter and give the Minister a report and recommendations.
- (5) After the Minister receives the report and recommendations, he or she must give the Director and the Board:
- (a) the directions the Minister thinks appropriate; and
  - (b) a statement of reasons for giving the directions; and
  - (c) a copy of the report and recommendations.
- (6) The Director and the Board must comply with any directions given by the Minister.

**370 Approval of management plans for Commonwealth reserves**

*Giving management plan to Minister for approval*

- (1) The Director must give the Minister a management plan for a Commonwealth reserve for approval, but only if the Board (if any) for the reserve agrees. The Director must do so as soon as practicable after considering under paragraph 368(1)(e) the comments (if any) on a draft of the management plan.



*Things to be given to Minister with management plan*

- (2) When the Director gives the plan to the Minister, the Director must also give the Minister:
- (a) any comments received in response to the invitation to comment on a draft of the plan; and
  - (b) the views of the Director and any Board for the reserve on the comments.

*Minister's decision*

- (3) Within 60 days of the Director giving the plan, the Minister:
- (a) must consider the plan and any comments and views given to the Minister under subsection (2); and
  - (b) must either:
    - (i) approve the plan; or
    - (ii) give the plan back to the Director with suggestions for consideration by the Director and any Board for the reserve.

Note: There are some extra rules about giving back to the Director a management plan for a Commonwealth reserve in the Kakadu region, the Uluru region or Jervis Bay Territory. See section 390.

*Procedure if Minister gives plan back*

- (4) If the Minister gives the plan back to the Director with suggestions:
- (a) the Director and any Board for the Commonwealth reserve to which the plan relates must consider the suggestions; and
  - (b) the Director must give the Minister an identical or altered version of the plan, but only if any Board for the reserve agrees; and
  - (c) the Director must give the Minister, with the plan, the Director's views on the Minister's suggestions.

*Minister's decision on re-submitted plan*

- (5) As soon as practicable after the Director has given the Minister a version of the plan under subsection (4), the Minister:
- (a) must consider it and the views given to the Minister under subsection (4); and
  - (b) must approve the plan with any modifications the Minister considers appropriate.

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*Considerations for Minister assigning reserve to IUCN category*

- (6) When approving a management plan for a Commonwealth reserve to assign the reserve, or a zone of a reserve, to a particular IUCN category, the Minister must be satisfied of the matters specified in section 347 that he or she would have to be satisfied of before the Governor-General could make a Proclamation to assign the reserve or zone to that IUCN category.

**371 Approved management plans are disallowable instruments**

- (1) A management plan approved for a Commonwealth reserve by the Minister is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note: Section 46A of the *Acts Interpretation Act 1901* provides for the commencement, tabling and disallowance of disallowable instruments.

- (2) To avoid doubt, the provisions mentioned in section 46A of the *Acts Interpretation Act 1901* apply as if the approval of the management plan were the making of the plan.
- (3) When the management plan is laid before each House of the Parliament, there must also be laid before the House copies of any comments, views, report or recommendations given to the Minister under this Division in relation to the plan that have not been given effect to in the plan.

**372 Amendment and revocation of management plans for Commonwealth reserves**

A management plan for a Commonwealth reserve may amend or revoke and replace an earlier management plan for the reserve.

**373 Expiry of management plans for Commonwealth reserves**

A management plan for a Commonwealth reserve ceases to have effect 7 years after it took effect (unless it has already been revoked).

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**Subdivision F—Boards for Commonwealth reserves on indigenous people’s land****374 Simplified outline of this Subdivision**

The following is a simplified outline of this Subdivision:

The Minister must establish a Board for a Commonwealth reserve that is wholly or partly on indigenous people’s land, if the land council for that land (or traditional owners) and the Minister agree that there should be a Board for the reserve.

The Board’s role is to make decisions and plans for management of the reserve, in conjunction with the Director.

A majority of Board members must be indigenous people nominated by traditional owners if the reserve is wholly or mostly on indigenous people’s land.

**375 Application**

This Subdivision provides for Boards for Commonwealth reserves that consist of, or include, indigenous people’s land held under lease by the Director.

**376 Functions of a Board for a Commonwealth reserve**

- (1) The functions of a Board established for a Commonwealth reserve are:
  - (a) to make decisions relating to the management of the reserve that are consistent with the management plan in operation for the reserve; and
  - (b) in conjunction with the Director, to:
    - (i) prepare management plans for the reserve; and
    - (ii) monitor the management of the reserve; and
    - (iii) advise the Minister on all aspects of the future development of the reserve.
- (2) When performing its functions, a Board must comply with a direction given by the Minister to the Board under:

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- (a) section 364 (Resolving disagreement between Director and Board over implementation of plan); or
- (b) section 369 (Resolving disagreements between Director and Board in planning process).

**377 Minister must establish Board if land council or traditional owners agree**

- (1) The Minister must establish a Board for a specified Commonwealth reserve by notice published in the *Gazette* and in the way (if any) prescribed by the regulations if he or she agrees on the matters set out in subsection (2) with:
  - (a) the land council for the indigenous people's land in the reserve that the Director holds under lease; or
  - (b) if there is not such a land council—the traditional owners of the indigenous people's land in the reserve that the Director holds under lease.
- (2) The matters to be agreed on are:
  - (a) that a Board should be established for the reserve; and
  - (b) the name of the Board; and
  - (c) the number of positions of member of the Board; and
  - (d) the qualifications for appointment to each position of member of the Board.
- (3) The notice must specify each of the matters described in paragraphs (2)(b), (c) and (d).

Note: The notice may specify different qualifications for different positions. See subsection 33(3A) of the *Acts Interpretation Act 1901*.

- (4) If the reserve consists wholly or mostly of indigenous people's land held by the Director under lease, a majority of the members of the Board must be indigenous persons nominated by the traditional owners of the indigenous people's land.
- (5) If the reserve is in a State or self-governing Territory, at least one member of the Board must be a person nominated by the State or Territory.

Note: By agreement between the Minister and the land council or traditional owners, more than one member of a Board may be a person nominated by the State or Territory.

### **378 Altering the constitution of a Board or abolishing a Board**

#### *Revoking and amending notice establishing Board*

- (1) The Minister may, by notice in the *Gazette*:
- (a) revoke a notice under section 377 relating to the Board for the reserve; or
  - (b) amend a notice under section 377 relating to the Board for the reserve so as to:
    - (i) change the specification of the name by which the Board is to be known; or
    - (ii) increase the number of members of the Board and specify the qualifications for appointment to each of the extra positions of member; or
    - (iii) decrease the number of positions of member of the Board and specify which positions are abolished; or
    - (iv) change the qualifications for appointment to a position of member of the Board.

Note: The Minister may exercise the power of amendment from time to time. See subsection 33(1) of the *Acts Interpretation Act 1901*.

#### *Limits on changing composition of Board*

- (2) Paragraph (1)(b) has effect subject to subsections 377(4) and (5).

Note 1: Subsection 377(4) requires a majority of the members of the Board of a Commonwealth reserve consisting wholly or mostly of indigenous people's land held by the Director under lease to be indigenous persons nominated by the traditional owners of the land.

Note 2: Subsection 377(5) requires at least one member of a Board for a reserve in a State or self-governing Territory to be a nominee of the State or Territory.

#### *Prerequisite to revoking or amending notice*

- (3) The Minister may revoke or amend a notice under section 377 relating to a Commonwealth reserve only if the Minister agrees on the revocation or amendment with:
- (a) the land council for indigenous people's land in the reserve, if the Board for the reserve was established with the agreement of the land council; or

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- (b) the traditional owners of indigenous people's land in the reserve, if the Board for the reserve was established with the agreement of the traditional owners.

*Board's identity not affected by name change*

- (4) If the Minister amends a notice published under section 377 so as to alter a Board's name or constitution, section 25B of the *Acts Interpretation Act 1901* applies in relation to the alteration as if it had been made by an Act.

Note: This ensures that the Board's identity and functions are not affected by the alteration, and that certain references to the Board under its old name are treated as references to the Board under its new name.

### **379 Appointment of Board members**

*Appointment of qualified persons*

- (1) The Minister may appoint a person in writing on a part-time basis to a position of member of a Board if the person is qualified for appointment to the position.

Note: Subsection (1) is subject to section 390A, which deals with the appointment of a Northern Territory nominee as a member of the Board for a Commonwealth reserve consisting wholly or mostly of indigenous people's land held by the Director under lease in the Territory.

*Replacement appointments*

- (2) As soon as practicable after a position of member of a Board becomes vacant, the Minister must appoint a person to the position under subsection (1).

*Validity of appointments*

- (3) A deficiency or irregularity relating to the nomination, selection or appointment of a member of a Board does not invalidate the member's appointment.

### **380 Terms and conditions**

#### *Term of office*

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

Note: Section 382 sets out the circumstances in which a member's appointment may be (or must be) terminated.

#### *Avoiding doubt—future terms of office*

- (1A) To avoid doubt, subsection (1) does not prevent a person from being appointed as a member of a Board again. This subsection does not affect the operation of subsection 33(4A) of the *Acts Interpretation Act 1901* in relation to this Act.

#### *Resignation*

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

#### *Other terms and conditions*

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

### **381 Remuneration**

- (1) A member of a Board is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.
- (2) A member of a Board is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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**382 Termination of appointments of Board members**

*Termination when person stops being qualified for appointment*

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

*Termination for misbehaviour or incapacity*

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

*Termination for failure to attend Board meetings*

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

*Termination for engaging in conflicting work*

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

*Termination for conduct inimical to Board*

- (4A) The Minister may terminate the appointment of a member of a Board for a reserve if the Minister is satisfied that the person has acted in a way that is not in the interest of the Board as a whole. However, the Minister may not terminate under this subsection the appointment of a member nominated by traditional owners of indigenous people's land in the reserve.

*Termination for failure to disclose interests*

- (5) The Minister must terminate the appointment of a member of a Board if:
- (a) the member does not comply with any requirements prescribed by the regulations to disclose an interest the member has in a matter being considered or about to be considered by the Board; and



- (b) the member does not have a reasonable excuse for not complying.

*Termination on request by nominator*

- (6) The Minister must terminate the appointment of a member of a Board if:
  - (a) the member was appointed on the nomination of a particular person, body or group of persons; and
  - (b) the person, body or group gives the Minister a written request to terminate the appointment.

*Termination for bankruptcy or insolvency*

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

### **383 Procedure of a Board**

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

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- (2) The regulations may allow a Board to determine a matter relating to the operation of the Board for which the regulations may provide.
- (3) If there are no regulations in force, a Board may operate in the way it determines.
- (4) A meeting of a Board for a Commonwealth reserve consisting wholly of indigenous people's land:
  - (a) must not start; and
  - (b) must not continue;unless the majority of the members of the Board present are persons nominated by the traditional owners of the indigenous people's land for appointment as members.
- (5) Subsection (4) has effect despite subsections (1), (2) and (3).

**Subdivision G—Special rules for some Commonwealth reserves in the Northern Territory or Jervis Bay Territory**

**384 Simplified outline of this Subdivision**

The following is a simplified outline of this Subdivision:

Special rules apply to Commonwealth reserves in the Kakadu region, Uluru region and Jervis Bay Territory, affecting the activities that can be carried on in those reserves.

Special procedures apply to planning for management of reserves in the Kakadu region, Uluru region and Jervis Bay Territory. These provide for extra involvement of indigenous people in the planning process.

**385 Activities in Commonwealth reserve without management plan**

When a management plan is not in operation for a particular Commonwealth reserve wholly or partly in the Kakadu region, Uluru region or Jervis Bay Territory, the Director may perform the Director's functions and exercise the Director's powers in and in relation to a part of the reserve in the region, subject to any directions of the Minister.

**386 What are the *Kakadu region* and the *Uluru region*?**

- (1) The ***Kakadu region*** is the part of the Alligator Rivers Region (as defined in the *Environment Protection (Alligator Rivers Region) Act 1978*) that excludes:
  - (a) the area shown as the Arnhem Land Aboriginal Reserve on the map mentioned in that definition; and
  - (b) the areas that are pastoral leases and are described on that map as Mount Bunday and Eva Valley.
- (2) The ***Uluru region*** is the area of land described under the heading “Uluru” in Schedule 1 to the *Aboriginal Land Rights (Northern Territory) Act 1976*.

**387 No mining operations in Kakadu National Park**

- (1) A person must not carry out mining operations in Kakadu National Park.
- (2) Subsection (1) and subsection 355(1) do not prevent:
  - (a) the use, development or reconstruction of the township known as Jabiru; or
  - (b) the transportation of anything in Kakadu National Park along routes (including air routes) prescribed by the regulations for the purposes of this paragraph; or
  - (c) the construction and use of pipelines and power lines in Kakadu National Park along routes prescribed by the regulations for the purposes of this paragraph; or
  - (d) the doing of anything for the purposes of building or construction, or the supply of water, in Kakadu National Park as long as the purposes are not connected with, or incidental to, mining operations; and
  - (e) prescribed activities carried on in Kakadu National Park in connection with, or incidental to, mining operations carried on outside Kakadu National Park.
- (3) ***Kakadu National Park*** is the Commonwealth reserve (as it exists from time to time) to which the name Kakadu National Park was given by Proclamation continued in force by the *Environmental Reform (Consequential Provisions) Act 1999*.

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**388 Establishment and development of townships in the Kakadu region and Uluru region**

- (1) A person may develop a township in a part of a Commonwealth reserve, but only if:
  - (a) the part is in the Kakadu region or the Uluru region; and
  - (b) the person does so in accordance with:
    - (i) subsection (2) or (3); and
    - (ii) the management plan for the reserve; and
    - (iii) a town plan prepared and approved in accordance with the regulations.
- (2) A person (other than the Director) may develop a township only:
  - (a) on land that the person holds under lease or sub-lease from the Director; or
  - (b) on land that was developed before 9 June 1978, if the township was established before it was included in the reserve.
- (3) The Director may develop a township only if the township did not exist before its site became part of the Commonwealth reserve.
- (4) A person may only construct, alter or demolish a building or structure in a township in accordance with the management plan for the Commonwealth reserve and the town plan.

**389 Planning for townships**

*Management plan provisions*

- (1) The provisions of a management plan for a Commonwealth reserve that relate to a township must include provisions for and in relation to:
  - (a) the site of the township and the general purposes of the township, if the township was not established before its site was included in the reserve; and
  - (b) the terms and conditions of any lease or sub-lease from the Director of land on which the township is to be established or developed; and
  - (c) the purposes of any zones into which the township is to be divided.

*Town plan provisions*

- (2) A town plan must make detailed provision relating to the proposed construction or development of the township, including, in particular, the provision (if any) to be made for:
- (a) housing, shops, offices and other buildings and structures;  
and
  - (b) bridges, railways, roads, streets, footpaths and parking areas;  
and
  - (c) the supply of water, electricity and gas; and
  - (d) the standards to be maintained in the construction and alteration of buildings and structures; and
  - (e) sewerage and drainage; and
  - (f) public amenities for recreation and other purposes; and
  - (g) any other matters that are specified for the purposes of this paragraph by:
    - (i) the management plan for the Commonwealth reserve containing the township; or
    - (ii) the regulations; or
    - (iii) any lease or sub-lease from the Director of land on which the township is to be established or developed.

*Town plans may adopt, apply or incorporate other instruments*

- (3) For the purposes of subsection (2), a town plan may apply, adopt or incorporate, with or without modification:
- (a) the provisions of any law of the Northern Territory (or a part of the Territory) that would not otherwise apply in relation to the township, as in force at a specified time or as in force from time to time; or
  - (b) any matter contained in any instrument or writing as in force or existing at a specified time.

*Town plans must not be inconsistent with other instruments*

- (4) A town plan must never be inconsistent with:
- (a) the management plan for the Commonwealth reserve that includes the township; or
  - (b) any lease or sub-lease from the Director of land on which the township is to be established or developed.

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*Revocation and variation of town plans*

- (5) A town plan may be revoked or amended in the manner provided by the regulations.

Note: Town plans are to be prepared and approved in accordance with the regulations. See subparagraph 388(1)(b)(iii).

**390 Special rules to protect Aboriginal interests in planning process**

- (1) This section sets out some extra rules about the process of preparing management plans for a Commonwealth reserve wholly or partly within the Kakadu region, the Uluru region or Jervis Bay Territory.
- (2) The Minister must give a management plan for a Commonwealth reserve back to the Director with suggestions under paragraph 370(3)(b) if the Minister is satisfied that there is a substantial difference of opinion between:
- (a) the Chair or Chairperson of a land council for indigenous people's land in the reserve, on the one hand; and
  - (b) the Director, or the Director and the Board for the reserve (if it is a jointly managed reserve), on the other hand.
- (3) If the Minister gives the plan back to the Director with suggestions under paragraph 370(3)(b) (whether because of subsection (2) or not), the Minister must:
- (a) give a copy of the suggestions to:
    - (i) the Chair or Chairperson of each land council for indigenous people's land in the reserve; and
    - (ii) the Parks and Wildlife Commission of the Northern Territory, if the plan is for a Commonwealth reserve wholly or partly in the Territory; and
  - (b) invite each person to whom the Minister gave a copy of the suggestions to give the Director comments on the suggestions within 14 days.
- (4) When considering the Minister's suggestions as required by paragraph 370(4)(a), the Director and any Board for the reserve must also consider any comments made in response to the Minister's invitation.
- (5) When the Director gives the Minister an identical or altered version of the plan under paragraph 370(4)(b), the Director must also:
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- (a) give the Minister a copy of the comments (if any) made in response to the Minister's invitation, and the Director's views on those comments; and
  - (b) give the Chair or Chairperson of each land council for indigenous people's land in the reserve a copy of the version of the plan given to the Minister and of the comments and views (if any) being given to the Minister under paragraph (a).
- (6) The Chair or Chairperson of a land council for indigenous people's land in the reserve may make comments to the Minister relating to the version of the plan within 14 days of receiving the copy of it.
- (7) If the Minister receives comments from the Chair or Chairperson of a land council for indigenous people's land in the reserve and the Minister is satisfied that there is a substantial difference of opinion between the Chair or Chairperson and the Director over the plan:
- (a) the Minister may appoint a person the Minister considers to be suitably qualified and in a position to deal with the matter impartially to inquire into the matter; and
  - (b) the person appointed must inquire into the matter and give the Minister a report and recommendations.
- (8) The Minister:
- (a) must also consider:
    - (i) the comments (if any) made to the Minister by the Chair or Chairperson under subsection (6); and
    - (ii) the report and recommendations (if any) given to the Minister under subsection (7);when considering under subsection 370(5) the version of the plan given to the Minister under paragraph 370(4)(b); and
  - (b) must not approve the plan before the end of the period described in subsection (6).

### **390A Appointment of Northern Territory nominee to Board**

- (1) This section makes special provision for the appointment of a person nominated by the Northern Territory as a member of the Board for a Commonwealth reserve consisting wholly or mostly of indigenous people's land held by the Director under lease in the Territory.

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- (2) Despite subsection 379(1), the Minister must not appoint the person unless:
  - (a) the members of the Board nominated by the traditional owners of the land consent to the appointment; or
  - (b) the appointment has been recommended under subsection (5).
- (3) The Northern Territory may inform the Minister if it believes that the members of the Board nominated by the traditional owners of the land are unreasonably withholding consent to the appointment.
- (4) If the Northern Territory informs the Minister, he or she must refer the matter to the person (the *Ombudsman*) holding the office of Commonwealth Ombudsman under the *Ombudsman Act 1976*.
- (5) If the Ombudsman is satisfied that the members of the Board nominated by the traditional owners of the land are unreasonably withholding consent to the appointment, the Ombudsman must recommend to the Minister that the Minister make the appointment.



## **Division 5—Conservation zones**

### **390B Simplified outline of this Division**

The following is a simplified outline of this Division:

The Governor-General can proclaim a Commonwealth area to be a conservation zone, to protect biodiversity in the area while it is being assessed for inclusion in a Commonwealth reserve.

Regulations can be made to regulate a wide range of activities in a conservation zone.

People who have rights relating to an area that is later included in a conservation zone can continue to exercise those rights in the zone.

A conservation zone can be revoked if the Minister is satisfied the area concerned should not be included in a Commonwealth reserve. It is revoked automatically if it is included in a Commonwealth reserve.

### **390C Object of this Division**

The object of this Division is to provide for the protection of biodiversity, other natural features and heritage in Commonwealth areas while they are being assessed for inclusion in a Commonwealth reserve.

### **390D Proclamation of conservation zones**

- (1) The Governor-General may, by Proclamation, declare a Commonwealth area outside a Commonwealth reserve to be a conservation zone.
- (2) Before the Governor-General makes a Proclamation declaring a Commonwealth area to be a conservation zone, the Minister must be satisfied that the area should be assessed to determine whether the biodiversity, other natural features and heritage in the area should be protected by including the area in a Commonwealth reserve.

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**390E Regulating activities generally**

- (1) The regulations may:
  - (a) regulate or prohibit the pollution of soil, air or water in a manner that is, or is likely to be, harmful to:
    - (i) people, biodiversity or heritage in conservation zones;  
or
    - (ii) the natural features of conservation zones; and
  - (b) regulate tourism in conservation zones; and
  - (c) provide for the protection and preservation of conservation zones and property and things in conservation zones; and
  - (d) provide for the protection and conservation of biodiversity in conservation zones; and
  - (e) regulate or prohibit access to all or part of a conservation zone by persons or classes of persons; and
  - (f) provide for the removal of trespassers from conservation zones; and
  - (g) regulate camping in conservation zones; and
  - (h) provide for the safety of persons in conservation zones; and
  - (i) regulate the use of fire in conservation zones; and
  - (j) regulate the conduct of persons in conservation zones; and
  - (k) regulate the carrying on of any trade or commerce in a conservation zone; and
  - (l) regulate the use of vehicles in conservation zones and provide for signs and road markings for those purposes; and
  - (m) provide for:
    - (i) the removal of vehicles, aircraft or vessels from places in conservation zones where they have been left in contravention of the regulations or have been abandoned; and
    - (ii) the impounding of such vehicles, aircraft or vessels; and
  - (n) provide that the person taken for the purposes of the regulations to be the owner of a motor vehicle involved in a contravention of a provision of the regulations relating to the parking or stopping of vehicles in a conservation zone is, except as provided otherwise, taken to commit an offence against the provision; and
  - (o) provide for a person to be taken to be the owner of a motor vehicle for the purposes of regulations made under

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- paragraph (n) (including a person in whose name the motor vehicle is registered under the law of a State or Territory); and
- (p) regulate the use of vessels in, and the passage of vessels through, conservation zones; and
  - (q) regulate the landing and use of aircraft in, and the flying of aircraft over, conservation zones; and
  - (r) regulate or prohibit the taking of animals or plants into or out of conservation zones; and
  - (s) provide for the impounding, removal, destruction or disposal of animals found straying in conservation zones; and
  - (t) regulate or prohibit the taking into conservation zones, and the use in conservation zones, of weapons, traps, nets, snares, fishing apparatus and other devices; and
  - (u) regulate or prohibit the laying of baits and the use of explosives and poisons in conservation zones; and
  - (v) provide for the collection of specimens and the pursuit of research in conservation zones for scientific purposes; and
  - (w) provide for the issue of licences, permits and authorities relating to activities in conservation zones, the conditions subject to which they are issued and the charging of fees by the Commonwealth in respect of such licences, permits and authorities; and
  - (x) provide for any matter incidental to or connected with a matter described in another paragraph.
- (2) Regulations relating to conservation zones may also:
- (a) regulate the carrying on of mining operations, fishing, pastoral or agricultural activities for commercial purposes; and
  - (b) regulate the construction or alteration of buildings and structures; and
  - (c) regulate the construction or establishment of bridges, railways, roads, tracks, port facilities and air-strips and the carrying out of any other works; and
  - (d) regulate the felling or taking of timber; and
  - (e) provide for and in relation to the powers to be exercised, and the functions and duties to be performed, in and in relation to conservation zones by wardens, by rangers and by other persons included in specified classes of persons; and

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- (f) provide for and in relation to the giving of securities for compliance with regulations made for the purposes of this section by persons doing, or proposing to do, anything to which those regulations relate.
- (3) Regulations made for the purposes of this section have no effect to the extent that they are inconsistent with the terms and conditions of a right (however described) to explore for minerals, or to mine for or recover minerals, granted under section 124 of the *Lands Acquisition Act 1989*.

**390F Charges for activities in conservation zones**

Subject to the approval of the Minister, the Director may determine and impose charges for using services or facilities provided by the Director in or in connection with a conservation zone.

**390G Other laws and regulations made for this Division**

*Regulations regulating aircraft subject to other Commonwealth laws*

- (1) A provision of the regulations regulating the flying of aircraft over a conservation zone does not have any effect so far as it is inconsistent with a law of the Commonwealth. For this purpose, a provision is not inconsistent with such a law if it can be complied with without contravention of the law.

*Territory laws subject to regulations*

- (2) A law of a Territory has effect so far as it is not inconsistent with a provision of the regulations made for the purposes of this Division and having effect in that Territory. For this purpose, such a law is not inconsistent with the provision so far as it can operate concurrently with the provision.

**390H Prior usage rights relating to conservation zones continue to have effect**

- (1) None of the following provisions affect a usage right that was held by a person (other than the Commonwealth) in relation to land or seabed immediately before the land or seabed was included in a conservation zone:

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- (a) provisions of this Division that relate to the zone (whether or not they also relate to another conservation zone);
  - (b) provisions of the regulations made for the purposes of this Division that relate to the zone (whether or not they also relate to another conservation zone).
- (2) None of the provisions covered by subsection (1) affect the application of a law of a State or Territory in relation to the usage right.
- (3) The usage right may be renewed or have its term extended only:
- (a) with the Minister's written consent; and
  - (b) subject to any conditions determined by the Minister.
- This subsection has effect despite subsections (1) and (2) and any other law of the Commonwealth, a State or a Territory.
- (4) Subsections (1) and (2) apply in relation to a usage right relating to minerals on, in or under land or seabed included in a conservation zone as if the usage right were a usage right relating to the land or seabed.
- (5) This section applies to a right arising out of a usage right in the same way as it applies to the usage right.

**390J Revoking and altering conservation zones***Proclamations to revoke or amend declaring Proclamation*

- (1) The Governor-General may, by Proclamation, revoke or amend a Proclamation made under section 390D (declaring a Commonwealth area to be a conservation zone).

*Limit on making Proclamations*

- (2) Before the Governor-General makes a Proclamation under subsection (1) causing a Commonwealth area to cease to be within a conservation zone, the Minister must be satisfied that the area should not be included in a Commonwealth reserve.

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*Declaration of Commonwealth reserve revokes conservation zone*

- (3) A Commonwealth area ceases to be a conservation zone by force of this subsection if the area becomes or is included in a Commonwealth reserve.

*Conservation zone ends if it ceases to be in Commonwealth area*

- (4) If land, waters, seabed or airspace in a conservation zone cease to be a Commonwealth area, the land, waters, seabed or airspace cease to be (or be in) a conservation zone by force of this subsection.

*Proclamation to reflect cessation of conservation zone*

- (5) If land, waters, seabed or airspace cease to be a conservation zone by force of subsection (3) or (4), the Governor-General must make a Proclamation revoking or amending the Proclamation that included the land, waters, seabed or airspace in a conservation zone, to reflect the fact that the land, waters, seabed or airspace are no longer part of the conservation zone.

## Chapter 6—Administration

### Part 16—Precautionary principle and other considerations in making decisions

#### 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:

<b>Decisions in which precautionary principle must be considered</b>		
<b>Item</b>	<b>Section decision is made under</b>	<b>Nature of decision</b>
1	75	whether an action is a controlled action
2	133	whether or not to approve the taking of an action
3	201	whether or not to grant a permit
4	216	whether or not to grant a permit

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<b>Decisions in which precautionary principle must be considered</b>		
<b>Item</b>	<b>Section decision is made under</b>	<b>Nature of decision</b>
5	238	whether or not to grant a permit
6	258	whether or not to grant a permit
7	269A	about making a recovery plan or adopting a plan as a recovery plan
7A	270A	whether or not to have a threat abatement plan for a key threatening process
7B	270B	about making a threat abatement plan or adopting a plan as a threat abatement plan
8	280	about approving a variation of a plan adopted as a recovery plan or threat abatement plan
9	285	about making a wildlife conservation plan or adopting a plan as a wildlife conservation plan
10	295	about approving a variation of a plan adopted as a wildlife conservation plan
10A	303CG	whether or not to grant a permit
10AA	303DC	whether or not to amend the list of exempt native specimens
10B	303DG	whether or not to grant a permit
10C	303EC	about including an item in the list referred to section 303EB
10D	303EN	whether or not to grant a permit
10E	303FN	about declaring an operation to be an approved wildlife trade operation
10F	303FO	about declaring a plan to be an approved wildlife trade management plan
10G	303FP	about declaring a plan to be an accredited wildlife trade 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 World Heritage List and is entirely within one or more Commonwealth areas



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<b>Decisions in which precautionary principle must be considered</b>		
<b>Item</b>	<b>Section decision is made under</b>	<b>Nature of decision</b>
11A	324S	about making a plan for managing a National Heritage place
12	328	about making a plan for managing a wetland that is designated for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention and is entirely within one or more Commonwealth areas
13	338	about making a plan for managing a Biosphere reserve entirely within one or more Commonwealth areas
13A	341T	about endorsing a plan for managing a Commonwealth Heritage place
14	370	about approving a management plan for a Commonwealth reserve

### **391A Minister must consider information in the Register of the National Estate in making decisions**

Subject to this Act, the Minister must have regard to information in the Register of the National Estate kept under the *Australian Heritage Council Act 2003* in making any decision under this Act to which the information is relevant.

## Part 17—Enforcement

### Division 1—Wardens, rangers and inspectors

#### Subdivision A—Wardens and rangers

#### 392 Appointment of wardens and rangers

The Minister may, in writing, appoint:

- (a) an officer or employee of the Department; or
- (b) a person covered by an arrangement made under section 393; to be a warden or ranger.

#### 393 Arrangements for certain officers or employees to exercise powers etc. of wardens or rangers

- (1) The Secretary may make arrangements with an Agency Head (within the meaning of the *Public Service Act 1999*), or with an authority of the Commonwealth, for the performance or exercise of all or any of the functions or powers of wardens and rangers under this Act or the regulations by officers or employees in that Agency or authority, as the case may be.
- (1A) However, an arrangement under subsection (1) must not provide for the performance or exercise of functions or powers under this Act or the regulations in relation to a Commonwealth reserve or conservation zone.
- (2) The Minister may enter into an arrangement with the appropriate Minister of a State or of the Australian Capital Territory or of the Northern Territory for:
  - (a) officers or employees in the Public Service of the State or Territory, or in an authority of the State or Territory (including a local government body); or
  - (b) members of the police force of the State or Territory; to perform or exercise all or any of the functions or powers of wardens or rangers under this Act or the regulations.
- (3) The Minister may enter into an arrangement with the appropriate person holding an office under section 13 of the *Norfolk Island Act*

1979 for persons appointed or employed under an enactment referred to in section 61 of that Act to perform or exercise all or any of the functions or powers of wardens or rangers under this Act or the regulations.

- (4) The Director may make arrangements with an Agency Head (within the meaning of the *Public Service Act 1999*), or with an authority of the Commonwealth, for the performance or exercise of all or any of the functions or powers of wardens and rangers under this Act or the regulations by officers or employees in that Agency or authority, as the case may be.

### **394 Wardens *ex officio***

By force of this section each member or special member of the Australian Federal Police is a warden.

### **395 Identity cards**

- (1) The Minister must issue to each warden (except a member of a police force) and to each ranger, an identity card, in a form approved by the Minister, containing a photograph of the person to whom it is issued.
- (2) If a person stops being a warden or ranger, the person must immediately return his or her identity card to the Minister.
- (3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding one penalty unit.

## **Subdivision B—Inspectors**

### **396 Appointment of inspectors**

- (1) The Minister may, in writing, appoint a person to be an inspector.
- (2) The Minister may make a written determination that a specified person, or a person included in a specified class of persons, does not have such of the powers conferred on an inspector by this Act as are specified in the determination. The determination has effect accordingly.

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

**397 Inspectors *ex officio***

- (1) By force of this section each of the following is an inspector:
- (a) each member or special member of the Australian Federal Police;
  - (b) each person appointed as an inspector under section 43 of the *Great Barrier Reef Marine Park Act 1975* (other than such a person whose appointment relates only to the powers of an inspector under Part VIIA of that Act).
- (2) Paragraph (1)(b) does not apply for the purposes of the application of this Act to an offence against, or a matter relating to, Part 13A.
- (3) By force of this section, for the purposes of the application of this Act to an offence against, or a matter relating to, Part 13A, each of the following is an inspector:
- (a) each officer of Customs;
  - (b) each member of the police force of an external Territory;
  - (c) each quarantine officer (animals) (within the meaning of the *Quarantine Act 1908*);
  - (d) each quarantine officer (plants) (within the meaning of the *Quarantine Act 1908*).

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

**398 Arrangements for State and Territory officers to be inspectors**

- (1) The Minister may enter into an arrangement with the appropriate Minister of a State or of the Australian Capital Territory or of the Northern Territory for:
- (a) officers or employees of the Public Service of the State or Territory, or of an authority of the State or Territory (including a local government body); or
  - (b) members of the police force of the State or Territory;
- to be inspectors, and that arrangement has effect accordingly.
- (2) The Minister may enter into an arrangement with the appropriate person holding an office under section 13 of the *Norfolk Island Act*

1979 for persons appointed or employed under an enactment referred to in section 61 of that Act to be inspectors, and that arrangement has effect accordingly.

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

### **399 Identity cards**

- (1) The Minister must issue to an inspector, (except a member of a police force or an officer of Customs), an identity card in a form approved by the Minister, containing a photograph of the person to whom it is issued.
- (2) If a person stops being an inspector, the person must immediately return his or her identity card to the Minister.
- (3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding one penalty unit.

### **Subdivision C—Miscellaneous**

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

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

#### **401 Impersonating authorised officers and rangers**

- (1) A person is guilty of an offence if:
  - (a) the person:
    - (i) impersonates an authorised officer or a ranger on an occasion; and

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

## **402 Offences against authorised officers and rangers**

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

## **Division 2—Boarding of vessels etc. and access to premises by consent**

### **403 Boarding of vessels etc. by authorised officers**

- (1) This section applies to:
  - (a) any Australian vessel, Australian aircraft or Australian platform;
  - (b) any vehicle, vessel or aircraft that is in Australia or an external Territory;
  - (c) any vessel, or any aircraft capable of landing on water, that is in the territorial sea of Australia or an external Territory; and
  - (d) any aircraft that is over or in Australia or an external Territory.
- (2) If an authorised officer suspects on reasonable grounds that there is in, or on, a vehicle, vessel, aircraft or platform any evidential material, the authorised officer may, with such assistance as he or she thinks necessary:
  - (a) board the vehicle, vessel, aircraft or platform at any reasonable time for the purpose of exercising, and may exercise, the powers of an authorised officer under section 406; and
  - (b) in the case of a vehicle, vessel or aircraft—stop and detain the vehicle, vessel or aircraft for that purpose.
- (3) If an authorised officer or the person in command of a Commonwealth ship or of a Commonwealth aircraft suspects on reasonable grounds that a vessel which is in the territorial sea of Australia or an external Territory has been used or otherwise involved in the commission of an offence against this Act or the regulations, he or she may:
  - (a) bring the vessel to the nearest port in Australia or an external Territory to which it is safe and practicable to bring the vessel; or
  - (b) by means of an international signal code or other internationally recognised means of communication with a vessel, require the person in charge of the vessel to bring the vessel to that port.



- (4) If an authorised officer or the person in command of a Commonwealth ship or of a Commonwealth aircraft suspects on reasonable grounds that:
- (a) an aircraft has been used or otherwise involved in the commission of an offence against this Act or the regulations; and
  - (b) the aircraft is over or in Australia or an external Territory; he or she may, by means of an international signal code or other internationally recognised means of communication with an aircraft, require the person in charge of the aircraft to bring the aircraft to the nearest airport in Australia or an external Territory to which it is safe and practicable to bring the aircraft.
- (5) An authorised officer may, for the purposes of this Act, require the person in charge of a vehicle, vessel, aircraft or platform to give information concerning the vehicle, vessel, aircraft or platform and its crew and any other person on board the vehicle, vessel, aircraft or platform.
- (6) In this Act:
- Australian platform** means a platform that:
- (a) is fixed to the continental shelf of Australia or of an external Territory, or to the sea-bed between Australian waters; or
  - (b) is otherwise operating in that part of the sea above the continental shelf of Australia or of an external Territory, or in the territorial sea of Australia or an external Territory.

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

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

#### **404 Authorised officers to produce identification**

- (1) If an authorised officer (other than a member of a police force, or an officer of Customs, who is in uniform) boards a vehicle, vessel, aircraft or platform to which section 403 applies, the authorised officer must:

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

Penalty: 50 penalty units.

**405 Access to premises**

- (1) An authorised officer may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the powers of an authorised officer under section 406 (except subsection 406(4)).

- (2) If an authorised officer enters any premises under subsection (1), he or she may exercise the powers of an authorised officer under section 406 (except subsection 406(4)).
- (3) An authorised officer who enters premises under subsection (1) must, if the occupier of the premises revokes his or her consent, leave the premises forthwith, and is not entitled to exercise, or continue to exercise, the powers of an authorised officer under section 406 in relation to the premises.

#### **406 Powers of authorised officers**

- (1) An authorised officer who boards a vehicle, vessel, aircraft or platform under section 403, or enters premises under section 405 may:
  - (a) inspect and search the vehicle, vessel, aircraft, platform or premises, as the case may be; and
  - (aa) take photographs (including a video recording), and make sketches, of the premises or of any substance or thing on the vehicle, vessel, aircraft, platform or premises; and
  - (b) inspect, take extracts from, and make copies of, any document that is, or that the authorised officer suspects on reasonable grounds is, evidential material; and
  - (c) inspect, and take samples of, any other evidential material; and
  - (ca) take measurements of, and conduct tests on, the vehicle, vessel, aircraft, platform or premises or any substance or thing on the vehicle, vessel, aircraft, platform or premises; and
  - (d) exercise powers of seizure conferred on the authorised officer by this Act; and
  - (e) take onto the vehicle, vessel, aircraft, platform or premises any equipment or material reasonably necessary for the purpose of exercising a power referred to in paragraph (a), (aa), (b), (c), (ca) or (d).
- (2) Each of the following things, including any such thing in electronic form, is *evidential material*:
  - (a) a thing with respect to which an offence against this Act or the regulations has been committed or is suspected, on reasonable grounds, to have been committed;

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- (b) a thing as to which there are reasonable grounds for suspecting that it will afford evidence as to the commission of an offence against this Act or the regulations;
  - (c) a thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of committing an offence against this Act or the regulations.
- (3) For the purposes of exercising a power under subsection (1), an authorised officer may break open any hold or compartment, or any container or other receptacle (including any place that could be used as a receptacle), on a vehicle, vessel, aircraft or platform or on any premises.
- (4) An authorised officer who boards a vehicle, vessel, aircraft or platform under section 403 may require a person on the vehicle, vessel, aircraft or platform to:
  - (a) answer a question asked by the authorised officer; or
  - (b) give the authorised officer information requested by the authorised officer; or
  - (c) produce to the authorised officer records or documents kept on the vehicle, vessel, aircraft or platform.
- (5) A person is guilty of an offence if:
  - (a) an authorised officer has boarded a vehicle, vessel, aircraft or platform under section 403; and
  - (b) the person is on the vehicle, vessel, aircraft or platform; and
  - (c) the authorised officer requires the person to:
    - (i) answer a question asked by the authorised officer; or
    - (ii) give the authorised officer information requested by the authorised officer; or
    - (iii) produce to the authorised officer records or documents kept on the vehicle, vessel, aircraft or platform; and
  - (d) the person contravenes the requirement.
- (6) The offence is punishable on conviction by imprisonment for a term not more than 6 months, a fine of not more than 30 penalty units, or both.

## **Division 3—Monitoring of compliance**

### **407 Monitoring powers**

For the purposes of this Division, each of the following powers is a *monitoring power* in relation to particular premises:

- (a) the power to inspect and search the premises;
- (b) the power to take photographs (including a video recording), or to make sketches, of the premises or of any substance or thing at the premises;
- (c) the power to inspect, examine and take samples of, any substance or thing on or in the premises;
- (ca) the power to take measurements of, and conduct tests on, the premises or any substance or thing on the premises;
- (d) the power to take extracts from, or make copies of, any document, book or record on the premises;
- (e) the power to take onto the premises any equipment or material reasonably necessary for the purpose of exercising a power referred to in paragraph (a), (b), (c), (ca) or (d).

### **408 Monitoring searches with occupier's consent**

#### *Entry by consent*

- (1) An authorised officer may, with the consent of the occupier of any premises, enter the premises for the purpose of finding out whether any or all of the provisions of this Act or the regulations are being complied with.

#### *Entry for monitoring purposes*

- (2) An authorised officer may only enter premises under subsection (1) to the extent that it is reasonably necessary for the purpose of finding out whether any or all of the provisions of this Act or the regulations are being complied with.

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*Exercise of monitoring powers*

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

*Exercise of seizure powers*

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

*Right to refuse to give consent*

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

*Consent must be voluntary*

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

*Production of identity card etc.*

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

*Extension to vehicles, vessels and aircraft*

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

#### **409 Monitoring warrants**

*Application for monitoring warrant*

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

*Issue of monitoring warrant*

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

*Information about grounds for issue of monitoring warrant*

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

*Terms of warrant*

- (4) The monitoring warrant must:
- (a) authorise an authorised officer named in the monitoring warrant, with such assistance and by such force as is necessary and reasonable, from time to time while the monitoring warrant remains in force, to enter the premises and exercise monitoring powers; and

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

*Seizure powers*

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

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

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

**411 Occupier entitled to be present during search**

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



#### **412 Announcement before entry**

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

#### **412A Other powers when on premises under monitoring warrant**

- (1) If the authorised officer named in a monitoring warrant enters premises under the warrant, he or she may require a person on the premises to:
  - (a) answer a question asked by the authorised officer; or
  - (b) give the authorised officer information requested by the authorised officer; or
  - (c) produce to the authorised officer records or documents kept on the premises.
- (2) A person is guilty of an offence if:
  - (a) the authorised officer named in a monitoring warrant has entered premises under the warrant; and
  - (b) the person is on the premises; and
  - (c) the authorised officer requires the person to:
    - (i) answer a question asked by the authorised officer; or
    - (ii) give the authorised officer information requested by the authorised officer; or
    - (iii) produce to the authorised officer records or documents kept on the premises; and
  - (d) the person contravenes the requirement.

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- (3) The offence is punishable on conviction by imprisonment for a term not more than 6 months, a fine of not more than 30 penalty units, or both.

## **Division 4—Search warrants**

### **413 When search warrants can be issued**

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

### **414 Statements in warrants**

- (1) If a magistrate issues a warrant under section 413, the magistrate is to state in the warrant:

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- (a) the offence to which the warrant relates; and
  - (b) a description of the premises to which the warrant relates or the name or description of a person to whom it relates; and
  - (c) the kinds of evidential material that are to be searched for under the warrant; and
  - (d) the name of the authorised officer who is to be responsible for executing the warrant; and
  - (e) the period for which the warrant remains in force, which must not be more than 7 days; and
  - (f) whether the warrant may be executed at any time or only during particular hours.
- (2) The magistrate is also to state, in a warrant in relation to premises:
- (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (1)(c)) found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:
    - (i) evidential material in relation to an offence to which the warrant relates; or
    - (ii) evidential material in relation to another offence against this Act, where the other offence is an indictable offence;if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against this Act or the regulations; and
  - (b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed if the executing officer or an officer assisting suspects on reasonable grounds that the person has any evidential material or eligible seizable items in his or her possession.
- (3) For the purposes of this Act, **ordinary search** means a search of a person or of articles in the possession of a person that may include:
- (a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and
  - (b) an examination of those items.

- (4) The magistrate is also to state, in a warrant in relation to a person:
- (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (1)(c)) found, in the course of the search, on or in the possession of the person or in an aircraft, vehicle or vessel that the person had operated or occupied at any time within 24 hours before the search began, being a thing that the executing officer or an officer assisting believes on reasonable grounds to be:
    - (i) evidential material in relation to an offence to which the warrant relates; or
    - (ii) evidential material in relation to another offence against this Act, where the other offence is an indictable offence;if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against this Act or the regulations; and
  - (b) the kind of search of a person that the warrant authorises.
- (5) Paragraph (1)(e) does not prevent the issue of successive warrants in relation to the same premises or person.
- (6) If the application for the warrant is made under section 416, this section applies as if paragraph (1)(e) referred to 48 hours rather than 7 days.

#### **415 Powers of magistrate**

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

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

**416 Warrants by telephone or other electronic means**

*Application*

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

*Voice communication*

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

*Information*

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

*Issue of warrant*

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

*Notification*

- (5) If the magistrate decides to issue the warrant, the magistrate is to inform the applicant, by telephone, telex, facsimile or other

electronic means, of the terms of the warrant and the day on which and the time at which it was signed.

*Form of warrant*

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

*Completed form of warrant to be given to magistrate*

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

*Attachment*

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

*Presumption*

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

## **417 The things that are authorised by a search warrant**

*Search of premises*

- (1) A warrant that is in force in relation to premises authorises the executing officer or an officer assisting:
- (a) to enter the premises; and

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- (b) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes; and
- (c) to search the premises for the kinds of evidential material specified in the warrant, and to seize things of that kind found at the premises; and
- (d) to seize other things found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:
  - (i) evidential material in relation to an offence to which the warrant relates; or
  - (ii) evidential material in relation to another offence against this Act, where the other offence is an indictable offence;if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against this Act or the regulations; and
- (e) to seize other things found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be eligible seizable items; and
- (f) if the warrant so allows—to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or an officer assisting suspects on reasonable grounds that the person has any evidential material or eligible seizable items in his or her possession.

*Search of a person*

- (2) A warrant that is in force in relation to a person authorises the executing officer or an officer assisting:
  - (a) to search:
    - (i) the person as specified in the warrant and things found in the possession of the person; and
    - (ii) any aircraft, vehicle or vessel that the person had operated or occupied at any time within 24 hours before the search began, for things specified in the warrant; and
  - (b) to:



- (i) seize things of that kind; or
  - (ii) record fingerprints from things; or
  - (iii) take forensic samples from things;  
found in the course of the search; and
- (c) to seize other things found on or in the possession of the person or in the aircraft, vehicle or vessel mentioned in subparagraph (a)(ii) in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:
- (i) evidential material in relation to an offence to which the warrant relates; or
  - (ii) evidential material in relation to another offence against this Act, where the other offence is an indictable offence;
- if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against this Act or the regulations; and
- (d) to seize other things found in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be eligible seizable items.

*Hours when search warrant may be executed*

- (3) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.

*Ordinary searches or frisk searches*

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

*Seized items may be made available to other agencies*

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

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

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

**419 Details of warrant to be given to occupier etc.**

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

#### **420 Specific powers available to person executing warrant**

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

#### **421 Use of equipment to examine or process things**

- (1) The executing officer or an officer assisting may bring to the warrant premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized under the warrant.
- (2) If:
  - (a) it is not practicable to examine or process the things at the warrant premises; or
  - (b) the occupier of the premises consents in writing;the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under the warrant.
- (3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing officer must, if it is practicable to do so:

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- (a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and
  - (b) allow the occupier or his or her representative to be present during the examination or processing.
- (4) The executing officer or an officer assisting may operate equipment already at the warrant premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized under the warrant if the executing officer or an officer assisting believes on reasonable grounds that:
- (a) the equipment is suitable for the examination or processing; and
  - (b) the examination or processing can be carried out without damage to the equipment or thing.

#### **422 Use of electronic equipment at premises**

*Operation of equipment*

- (1) The executing officer or an officer assisting may operate electronic equipment at the premises to see whether evidential material is accessible by doing so if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

*Seizure etc.*

- (2) If the executing officer or an officer assisting, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:
- (a) seize the equipment and any disk, tape or other associated device; or
  - (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or
  - (c) if the material can be transferred to a disk, tape or other storage device that:
    - (i) is brought to the premises; or

(ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;

operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.

*Limitation on seizure*

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

*Securing equipment*

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

*Notice about securing equipment*

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

*Period for which equipment may be secured*

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

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*Extension of period*

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

*Notice to occupier*

- (8) The executing officer or an officer assisting must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

*Provisions relating to extensions*

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

**423 Compensation for damage to electronic equipment**

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

#### **424 Copies of seized things to be provided**

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

the authorised officer must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.

- (2) Subsection (1) does not apply if:
  - (a) the thing that has been seized was seized under paragraph 422(2)(b) or (c); or
  - (b) possession of the document, film, computer file, thing or information by the occupier could constitute an offence.

#### **425 Occupier entitled to be present during search**

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

#### **426 Receipts for things seized under warrant**

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

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**427 Restrictions on personal searches**

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

**428 When a thing is in the possession of a person**

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



## **Division 5—Stopping and searching aircraft, vehicles or vessels**

### **429 Searches of aircraft, vehicles or vessels without warrant in emergency situations**

- (1) This section applies if an authorised officer suspects, on reasonable grounds, that:
  - (a) evidential material in relation to an indictable offence against this Act is in or on an aircraft, vehicle or vessel; and
  - (b) it is necessary to exercise a power under subsection (2) in order to prevent the thing from being concealed, lost or destroyed; and
  - (c) it is necessary to exercise the power without the authority of a search warrant because the circumstances are serious and urgent.
- (2) The authorised officer may:
  - (a) stop and detain the aircraft, vehicle or vessel; and
  - (b) search the aircraft, vehicle or vessel and any container in or on it, for the evidential material; and
  - (c) seize the evidential material if he or she finds it there.
- (3) If, in the course of searching for the evidential material, the authorised officer finds any other evidential material in relation to any other offence against this Act or the regulations, he or she may seize that material if he or she suspects, on reasonable grounds, that:
  - (a) it is necessary to seize it in order to prevent its concealment, loss or destruction; and
  - (b) it is necessary to seize it without the authority of a search warrant because the circumstances are serious and urgent.
- (4) When an authorised officer exercises a power under this section, he or she:
  - (a) may use such assistance as is necessary; and
  - (b) must search the aircraft, vehicle or vessel in a public place or in some other place to which members of the public have ready access; and

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- (c) must not detain the aircraft, vehicle or vessel for longer than is necessary and reasonable to search it and any container found in or on it; and
- (d) may use such force as is necessary and reasonable in the circumstances, but must not damage the aircraft, vehicle or vessel or any container found in or on it by forcing open a part of the aircraft, vehicle or vessel or container unless:
  - (i) the person (if any) apparently in charge of the aircraft, vehicle or vessel has been given a reasonable opportunity to open that part or container; or
  - (ii) it is not possible to give that person such an opportunity.

## **Division 6—Arrest and related matters**

### **430 Powers of arrest**

- (1) An authorised officer may, without warrant, arrest any person, if the authorised officer believes on reasonable grounds that:
  - (a) the person is committing or has committed an offence against this Act or the regulations; and
  - (b) proceedings against the person by summons would not be effective.
- (2) If an authorised officer (other than a member of a police force, or an officer of Customs, who is in uniform) arrests a person under subsection (1), the authorised officer must:
  - (a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of that police force; and
  - (aa) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that he or she is an officer of Customs; and
  - (b) in any other case—produce his or her identity card for inspection by that person.
- (3) If a person is arrested under subsection (1), an authorised officer must without unreasonable delay bring the person, or cause the person to be brought, before a Justice of the Peace or other proper authority to be dealt with in accordance with law.

### **431 Power to conduct a frisk search of an arrested person**

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

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

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**432 Power to conduct an ordinary search of an arrested person**

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

- (a) evidential material in relation to that or another offence against this Act or the regulations; or
- (b) an eligible seizable item;

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

**433 Power to conduct search of arrested person's premises**

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

- (a) evidential material in relation to that or another offence against this Act or the regulations; or
- (b) an eligible seizable item.

**Division 7—Miscellaneous provisions about searches, entry to premises, warrants etc.****434 Conduct of ordinary searches and frisk searches**

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

**435 Announcement before entry**

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

**436 Offence of making false statements in warrants**

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

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

**437 Offences relating to telephone warrants**

A person must not:

- (a) state in a document that purports to be a form of warrant under section 416 the name of a magistrate unless the magistrate issued the warrant; or

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

Penalty: Imprisonment for 2 years.

**438 Retention of things which are seized**

- (1) Subject to any contrary order of a court, if a person seizes a thing under Division 4, 5 or 6 the person must return it if:
  - (a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
  - (b) if the thing was seized under section 429:
    - (i) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
    - (ii) the period of 60 days after its seizure ends;whichever first occurs;unless the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.
- (2) If a thing is seized by an authorised officer under section 429, at the end of the 60 days specified in subsection (1), he or she must take reasonable steps to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it) unless:
  - (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
  - (b) the authorised officer may retain the thing because of an order under section 439; or

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

#### **439 Magistrate may permit a thing to be retained**

- (1) If a thing is seized under section 429, and:
- (a) before the end of 60 days after the seizure; or
  - (b) before the end of a period previously specified in an order of a magistrate under this section;
- proceedings in respect of which the thing may afford evidence have not commenced, the authorised officer may apply to a magistrate for an order that he or she may retain the thing for a further period.
- (2) If the magistrate is satisfied that it is necessary for the authorised officer to continue to retain the thing:
- (a) for the purposes of an investigation as to whether an offence against this Act or the regulations has been committed; or
  - (b) to enable evidence of an offence against this Act or the regulations to be secured for the purposes of a prosecution;
- the magistrate may order that the authorised officer may retain the thing for a period specified in the order.
- (3) Before making the application, the authorised officer must:
- (a) take reasonable steps to discover who has an interest in the retention of the thing; and
  - (b) if it is practicable to do so, notify each person who the authorised officer believes to have such an interest in the proposed application.
- (4) A function of making an order conferred on a magistrate by this section is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (5) Without limiting the generality of subsection (4), an order made by a magistrate under this section has effect only by virtue of this Act and is not taken, by implication, to be made by a court.
- (6) A magistrate performing a function of, or connected with, making an order under this section has the same protection and immunity

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as if he or she were performing that function as, or as a member of, a court (being the court of which the magistrate is a member).

- (7) The Governor-General may make arrangements with the Governor of a State, the Chief Minister of the Australian Capital Territory, the Administrator of the Northern Territory or the Administrator of Norfolk Island for the performance, by all or any of the persons who from time to time hold office as magistrates in that State or Territory, of the function of making orders under this section.

**440 Law relating to legal professional privilege not affected**

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

**441 Other laws about search, arrest etc. not affected**

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

**442 Persons to assist authorised officers**

- (1) Subject to subsection (5), the owner, or person in charge:
- (a) of any vehicle, vessel, aircraft or platform boarded by an authorised officer under section 403; or
  - (b) of any premises entered by an authorised officer under section 405;
- must, if requested by an authorised officer to do so, provide reasonable assistance to the authorised officer in the performance of the functions, or carrying out of the duties, or the exercise of the powers, conferred on the authorised officer under this Act.



- (2) A person must not contravene subsection (1).

Penalty: Imprisonment for 12 months.

- (3) Subject to subsection (5), the owner, or the person in charge, of:

- (a) premises entered under a warrant; or
- (b) an aircraft, vehicle or vessel stopped under section 429;

must, if requested by an authorised officer to do so, provide reasonable assistance to the authorised officer in the performance of the functions, or carrying out of the duties, or the exercise of the powers, conferred on the authorised officer under this Act.

- (4) A person must not contravene subsection (3).

Penalty: Imprisonment for 12 months.

- (5) Where an authorised officer (other than a member of a police force, or an officer of Customs, who is in uniform) makes a request of a person under this section, the authorised officer must:

- (a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of that police force; or
- (aa) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that he or she is an officer of Customs; or
- (b) in any other case—produce his or her identity card for inspection by that person;

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

## Division 8—Power to search goods, baggage etc.

### 443 Power to search goods, baggage etc.

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

Penalty: 60 penalty units.

- (5) In this Act:

**baggage** includes any parcel or other goods that:

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

**goods** includes baggage.

## **Division 8A—Power to ask questions about specimens**

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

#### *When section applies*

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

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

#### *Questions*

- (2) If the authorised officer has reasonable grounds to suspect that a person has information about the nature or origin of the specimen, the authorised officer may ask the person one or more questions about the nature or origin of the specimen.

#### *Answers to questions*

- (3) Subject to subsections (6) and (7), if a person is asked a question under subsection (2), the person must not intentionally refuse or intentionally fail to answer the question to the extent that the person is capable of doing so.
- (4) A person who contravenes subsection (3) is guilty of an offence punishable on conviction by a fine not exceeding 10 penalty units.
- (5) In subsection (3), strict liability applies to the circumstance that the person was asked a question under subsection (2).

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

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*No requirement to give incriminating answers*

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

*Identity cards etc.*

- (7) If a person is asked a question under subsection (2) by an authorised officer, the person is not required to answer the question unless:
- (a) if the authorised officer is a member of a police force—the authorised officer produces, for inspection by the person, written evidence of the fact that the authorised officer is a member of that police force; or
  - (b) if the authorised officer is an officer of Customs—the authorised officer produces, for inspection by the person, written evidence of the fact that the authorised officer is an officer of Customs; or
  - (c) if the authorised officer is neither a member of a police force nor an officer of Customs—the authorised officer produces the authorised officer's identity card for inspection by the person.

## **Division 9—Power to ask for names and addresses**

### **444 Authorised person may ask for person’s name and address**

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

Penalty: 10 penalty units.

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

## **Division 10—Seizure and forfeiture etc.**

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

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

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

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

#### **444B Notice about seizure**

- (1) Subject to subsection (2), if a specimen is seized by an authorised officer under section 444A, the authorised officer must give:
  - (a) the owner of the specimen; or
  - (b) the person who had possession, custody or control of the specimen immediately before it was seized;a written notice:
  - (c) identifying the specimen; and
  - (d) stating that it has been seized under section 444A and giving the reason for the seizure; and
  - (e) setting out the terms of sections 444C and 444D.The notice must be given as soon as practicable after the seizure.
- (2) An authorised officer is not required to give a notice under subsection (1) about a specimen if, after making such inquiries as the authorised officer thinks appropriate, the authorised officer does not, within 30 days after the seizure, have sufficient information to enable the authorised officer to give the notice. In that event, the authorised officer must keep a written record of the seizure.

#### **444C Applications for return of specimen**

- (1) If a specimen is seized under section 444A, the owner of the specimen may apply in writing to the Secretary for the delivery to the owner of the specimen.
- (2) The application must be made:
  - (a) within 30 days after the seizure; or
  - (b) if a notice is given under subsection 444B(1) in relation to the specimen—within 30 days after the giving of the notice.
- (3) The application must be made on the ground that the specimen was not used or otherwise involved in the commission of an offence against Part 13A.
- (4) If the applicant satisfies the Secretary that the ground has been established, the Secretary must grant the application.

Note: Under section 444G, the Secretary may retain the specimen for up to 30 days after making a decision on the application.

#### **444D Court action for return of specimen**

- (1) If a specimen is seized under section 444A, the owner of the specimen may bring an action against the Commonwealth in a court of competent jurisdiction for the delivery of the specimen to the owner on the ground that the specimen was not used or otherwise involved in the commission of an offence against Part 13A.
- (2) An action under subsection (1) must be brought:
  - (a) within 30 days after the seizure; or
  - (b) if a notice is given under subsection 444B(1) in relation to the specimen—within 30 days after the giving of the notice.
- (3) If:
  - (a) an action is brought under subsection (1); and
  - (b) the court finds that the specimen was used or otherwise involved in the commission of the offence concerned;the court must order the specimen to be forfeited to the Commonwealth.
- (4) If:
  - (a) an action is brought under subsection (1); and

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- (b) the action is discontinued by the owner otherwise than because of:
  - (i) the delivery of the specimen to the owner; or
  - (ii) the forfeiture of the specimen to the Commonwealth; or
  - (iii) the disposal of the specimen under section 449;the specimen is forfeited to the Commonwealth.

**444E Consignment of specimen with consent of owner**

- (1) If:
  - (a) a specimen is seized under section 444A; and
  - (b) the specimen was imported from a particular foreign country; and
  - (c) the export of the specimen from the foreign country was not in contravention of a law of the foreign country that corresponds to Part 13A; and
  - (d) if the importer had applied for a permit authorising the import of the specimen, there is no reasonable likelihood that the permit would have been granted; and
  - (e) the importer produces written evidence from the relevant CITES authority of the foreign country that the specimen may be returned to the foreign country without contravening such a law;the Secretary may, with the consent of the owner of the specimen, consign the specimen to a place in the foreign country.
- (2) The consignment is to be at the expense of the owner of the specimen.

**444F Release of specimen**

If a specimen is seized under section 444A, the Secretary may release the specimen to the owner, or to the person from whose possession the specimen was seized, either:

- (a) unconditionally; or
- (b) on such conditions as the Secretary thinks fit (including conditions about the giving of security for payment of its value if it is forfeited).



#### **444G Retention of specimen**

- (1) If a specimen is seized under section 444A, the specimen may be retained until the end of 30 days after whichever is the latest of the following events:
  - (a) the seizure;
  - (b) if a notice is given under subsection 444B(1) in relation to the specimen—the giving of the notice;
  - (c) if an application is made under subsection 444C(1) in relation to the specimen—the making of a decision on that application;
  - (d) if:
    - (i) proceedings for an offence against Part 13A are instituted during the period within which an application may be made under subsection 444C(1) in relation to the specimen; and
    - (ii) the specimen may have been used or otherwise involved in the commission of the offence or the specimen may afford evidence of the commission of the offence;the termination of the proceedings (including any appeal to a court in relation to those proceedings);
  - (e) if proceedings under section 444K are instituted during the period within which an application may be made under subsection 444C(1) in relation to the specimen—the termination of the proceedings (including any appeal to a court in relation to those proceedings).
- (2) The rule in subsection (1) does not authorise the retention of the specimen if the owner of the specimen succeeds in an action under subsection 444D(1) for the delivery of the specimen to the owner. Nor does that rule require the return of the specimen if proceedings under subsection 444D(1) relating to the specimen are pending.

#### **444H Forfeiture of specimen after end of retention period**

- (1) If:
  - (a) a specimen is seized under section 444A; and
  - (b) none of the following happens before the end of the period for which the specimen may be retained:
    - (i) proceedings are instituted for an offence against Part 13A, where the specimen is alleged to have been

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- used or otherwise involved in the commission of the offence;
  - (ii) the specimen is delivered to the owner;
  - (iii) the owner of the specimen brings an action under subsection 444D(1) for the delivery of the specimen to the owner;
  - (iv) proceedings are instituted under section 444K in relation to the specimen;
  - (v) the specimen is disposed of under section 449;
- the specimen is forfeited to the Commonwealth at the end of that period.
- (2) Subsection (1) has effect only to the extent (if any) to which it gives effect to paragraph 1(b) of Article VIII of CITES.

**444J Forfeiture of specimen by consent etc.**

- (1) If:
- (a) a specimen is seized under section 444A; and
  - (b) the owner of the specimen agrees to transfer ownership of the specimen to the Commonwealth, either:
    - (i) unconditionally; or
    - (ii) in the event that a future contingency happens; and
  - (c) if subparagraph (b)(ii) applies—that contingency happens;
- then:
- (d) the specimen becomes the property of the Commonwealth; and
  - (e) the provisions of this Part relating to forfeiture apply as if the specimen had been forfeited to the Commonwealth under this Act.
- (2) If:
- (a) a specimen is seized under section 444A; and
  - (b) the owner of the specimen agrees to transfer ownership of the specimen to the Commonwealth in the event that a future contingency happens;
- the Secretary may retain the specimen:
- (c) until the specimen becomes the property of the Commonwealth; or

- (d) if the specimen does not become the property of the Commonwealth—until the occurrence of the last day on which that contingency could have happened.
- (3) Subsection (2) has effect despite anything in section 444G.

#### **444K Forfeiture of specimen by order of a civil court**

If:

- (a) a specimen is seized under section 444A; and
- (b) the specimen has been used or otherwise involved in a contravention of Part 13A;

a court may, on the application of the Secretary, order the forfeiture to the Commonwealth of the specimen.

#### **Subdivision A—Seizure of goods**

##### **445 Seizure of goods**

- (1) This section applies to any goods, including vehicles, vessels, aircraft, platforms, documents and organisms.
- (2) An authorised officer may seize goods if he or she has reasonable grounds to suspect that:
  - (a) the goods have been used or otherwise involved in the commission of an offence against this Act or the regulations; or
  - (b) the goods will afford evidence of the commission of an offence against this Act or the regulations.

##### **446 Retention of goods that have been seized**

- (1) Goods seized under section 445 may be retained until:
  - (a) the end of the period of 60 days after the seizure or the end of such extended period as is, or such extended periods as are, determined under subsection (3); or
  - (b) if:
    - (i) proceedings for an offence against this Act or the regulations are instituted within that period; and

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- (ii) the goods may have been used or otherwise involved in the commission of the offence or the goods may afford evidence of the commission of the offence;  
the proceedings (including any appeal to a court in relation to those proceedings) are terminated.
- (2) An authorised officer may apply to a magistrate for an extension of the period during which the authorised officer is entitled to retain particular goods seized under section 445.
- (3) If the magistrate is satisfied that the retention of the goods for an extended period is warranted, the magistrate may make an order extending the period during which the goods may be retained. The maximum period of an individual extension is 30 days.
- (4) Subsection (3) does not prevent a magistrate from granting 2 or more successive extensions under that subsection of the period during which particular goods may be retained.
- (5) A function of making an order conferred on a magistrate by subsection (3) is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (6) Without limiting the generality of subsection (5), an order made by a magistrate under subsection (3) has effect only by virtue of this Act and is not taken, by implication, to be made by a court.
- (7) A magistrate performing a function of, or connected with, making an order under subsection (3) has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the magistrate is a member).
- (8) The Governor-General may make arrangements with the Governor of a State, the Chief Minister for the Australian Capital Territory, the Administrator of the Northern Territory or the Administrator of Norfolk Island for the performance, by all or any of the persons who from time to time hold office as magistrates in that State or Territory, of the function of making orders under subsection (3).

**447 Disposal of goods if there is no owner or owner cannot be located**

If:

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- (a) goods are seized under section 445; and
  - (b) apart from this section, the Commonwealth is required to return the goods to the owner; and
  - (c) there is no owner or the Secretary cannot, despite making reasonable efforts, locate the owner;
- the Secretary may dispose of the goods in such manner as the Secretary thinks appropriate.

#### **448 Release of goods that have been seized**

The Secretary may authorise goods seized under section 445 or anything in, on or attached to such goods to be released to their owner, or to the person from whose possession they were seized, either:

- (a) unconditionally; or
- (b) on such conditions as the Secretary thinks fit (including conditions about the giving of security for giving payment of their value if they are forfeited).

#### **Subdivision B—Immediate disposal of seized items**

#### **449 Immediate disposal of seized items**

- (1) If:
  - (a) a thing is seized under this Division; and
  - (b) it is reasonably likely that the retention of the thing would:
    - (i) constitute a serious threat to the environment; or
    - (ii) constitute a serious threat to the continued existence, in the wild, of a particular species of animal or of a particular species of plant; or
    - (iii) result in the introduction of an alien species that represents a threat to ecosystems, habitats or other species; or
    - (iv) constitute a danger to public health; or
    - (v) in the case of a live organism—constitute a significant threat to the health of the organism;

the Secretary may cause the thing to be dealt with in such manner as the Secretary considers appropriate (including the destruction of the thing).

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- (2) Subject to subsection (3), if a thing is dealt with in accordance with subsection (1), the Secretary must give to:
- (a) the owner of the thing; or
  - (b) the person who had possession, custody or control of the thing immediately before it was seized;
- a written notice:
- (c) identifying the thing; and
  - (d) stating that the thing has been seized under this Division and giving the reason for the seizure; and
  - (e) stating that the thing has been dealt with under subsection (1) and specifying the manner in which it has been so dealt with and the reason for doing so; and
  - (f) setting out the terms of subsection (4).
- The notice must be given as soon as practicable after the thing is so dealt with.
- (3) The Secretary need not give a notice under subsection (2) about a thing if, after making such inquiries as the Secretary thinks appropriate, the Secretary does not, within 20 days after dealing with the thing, have sufficient information to enable the notice to be given.
- (4) If a thing is dealt with in accordance with subsection (1), the owner of the thing may bring an action against the Commonwealth in a court of competent jurisdiction for the recovery of the market value of the thing at the time it was so dealt with. The action must be brought on the ground that the thing was not used or otherwise involved in the commission of an offence against this Act or the regulations.

### **Subdivision C—Court-ordered forfeiture**

#### **450 Court-ordered forfeiture**

- (1) If a court convicts a person of an offence against this Act or the regulations, the court may order the forfeiture to the Commonwealth of any thing used or otherwise involved in the commission of the offence.
- (1A) If a court convicts a person of an offence against Part 13A, the court must order the forfeiture to the Commonwealth of any

specimen used or otherwise involved in the commission of the offence.

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

- (2) A court may make an order under subsection (1) or (1A) even if the thing or specimen has been seized under this Act.

### **Subdivision D—Dealings in forfeited items**

#### **451 Dealings in forfeited items**

- (1) A thing forfeited to the Commonwealth under this Act becomes the property of the Commonwealth.
- (2) A thing forfeited to the Commonwealth under this Act is to be dealt with in such manner as the Secretary considers appropriate.
- (3) Without limiting subsection (2), the Secretary may sell a thing forfeited to the Commonwealth under this Act.
- (4) The Secretary must not sell a specimen forfeited to the Commonwealth under this Act unless, in the opinion of the Secretary, the buyer will use the specimen for scientific or educational purposes.

### **Subdivision E—Delivery of forfeited items to the Commonwealth**

#### **452 Delivery of forfeited items to the Commonwealth**

- (1) If:
- (a) a thing is forfeited to the Commonwealth under this Act; and
  - (b) the thing has not been dealt with under section 451; and
  - (c) the thing is in the possession, custody or control of a person other than:
    - (i) the Commonwealth; or
    - (ii) an agency of the Commonwealth;
- the person must deliver the thing to the Secretary.
- (2) A person must not contravene subsection (1).

Penalty: Imprisonment for 2 years.

## **Subdivision F—Keeping of organisms that have been seized**

### **453 Keeping of organisms retained under this Part**

If a person is authorised under this Part to retain an organism, the person may do so by causing the organism to be taken to, and kept at, a place approved by the Secretary for the purpose of keeping organisms seized under this Division.

### **454 Recovery of costs of storing or keeping organisms**

- (1) If an organism is seized under this Division, the owner is liable to pay to the Commonwealth an amount equal to the sum of the following costs:
  - (a) reasonable costs incurred by the Commonwealth in relation to the custody of the organism;
  - (b) reasonable costs incurred by the Commonwealth in transporting the organism;
  - (c) reasonable costs incurred by the Commonwealth in maintaining the organism.
- (2) If:
  - (a) an organism is seized under this Division; and
  - (b) the organism is disposed of;the owner is liable to pay to the Commonwealth an amount equal to the reasonable costs incurred by the Commonwealth in disposing of the organism.
- (3) An amount payable by a person under this section is a debt due by the person to the Commonwealth.
- (4) An amount payable by a person to the Commonwealth under this section may be recovered by action in a court of competent jurisdiction.
- (5) The Secretary may remit an amount payable by a person under this section.
- (6) In addition to its effect apart from this subsection, this section also has the effect it would have if a liability under this section were, by express provision, confined to the case of an organism that:
  - (a) is forfeited to the Commonwealth under this Act; or



- (b) would have been forfeited to the Commonwealth under this Act if it had not been disposed of.

### **Subdivision G—Rescuing goods**

#### **455 Rescuing goods**

A person is guilty of an offence punishable upon conviction by imprisonment for a term not exceeding 2 years if:

- (a) the person rescues any goods; and
- (b) the goods have been, or are about to be, seized under this Act.

#### **456 Breaking or destroying goods or documents to prevent seizure etc.**

- (1) A person must not:
  - (a) stave, break or destroy any goods in order to prevent the seizure of goods, the securing of goods, or the proof of any offence under this Act; or
  - (b) destroy any documents relating to any goods in order to prevent the seizure of goods, the securing of goods, or the proof of any offence under this Act.

Penalty: Imprisonment for 2 years.

- (2) This section applies to vehicles, vessels, aircraft, platforms, documents and organisms in the same way as it applies to goods.

## **Division 11—Powers of pursuit**

### **457 Power to pursue persons etc.**

- (1) An authorised officer may exercise in relation to vessels (other than Australian vessels) and foreign nationals in any place (except the territorial sea of another country) a power conferred on the authorised officer under section 403, 406 or 430 if:
  - (a) one or more authorised officers (whether or not including the authorised officer exercising the power) have pursued the person or vessel from a place within the Australian jurisdiction to such a place; and
  - (b) the pursuit was not terminated or interrupted at any time before the authorised officer concerned arrived at such a place with a view to exercising that power.
- (2) For the purposes of paragraph (1)(b), a pursuit of a person or vessel is not taken to be terminated or interrupted only because the authorised officer or officers concerned lose sight of the person or vessel.
- (3) A reference in subsection (2) to losing sight of a person or vessel includes losing output from a radar or other sensing device.

## Division 12—Environmental audits

### 458 Directed environmental audits

- (1) The Minister may, by written notice given to the holder of an environmental authority, require the holder to carry out an environmental audit if the Minister believes or suspects on reasonable grounds:
  - (a) that the holder has contravened, or is likely to contravene, a condition of the authority; or
  - (b) the impacts that the action authorised by the authority has, has had or is likely to have on the matter dealt with by the provision for which the authority authorises the action are significantly greater than was indicated in the information available to the Minister when the authority was granted.
- (2) The notice must specify:
  - (a) the matters to be covered by the audit; and
  - (b) the form of the audit report and the kinds of particulars it is to contain; and
  - (c) the date on or before which the report must be given to the Minister.
- (3) Without limiting the matters that may be specified under paragraph (2)(a), those matters may include all or any of the following:
  - (a) an evaluation of the nature of the environment that is or will be affected by the holder's activities; and
  - (b) an assessment of the risks to the environment resulting from the activities; and
  - (c) an assessment of the holder's existing capacity to comply with the authority and the requirements of this Act and the regulations in carrying on the activities; and
  - (d) an assessment of what the holder will need to do, or continue to do, so to comply.
- (4) For the purposes of this Act, an *environmental authority* is:
  - (a) an approval under Part 9; or
  - (b) a permit issued under Chapter 5.

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**459 Appointment of auditor and carrying out of audit**

- (1) If the Minister gives the holder of an environmental authority a notice under section 458, the holder must appoint an environmental auditor and arrange for the auditor to carry out an environmental audit in accordance with the notice.
- (2) The holder of an environmental authority must not contravene subsection (1).  
  
Civil penalty:        500 penalty units.
- (3) The holder must not appoint an officer or employee of the holder to be an environmental auditor.
- (4) The holder must not appoint a person to be an environmental auditor unless the Minister has approved the person for such appointment before the appointment is made.
- (5) An appointment of a person as an environmental auditor made otherwise than in accordance with subsections (3) and (4) has no effect.

**460 Nature of directed environmental audit**

- (1) If:
  - (a) an environmental auditor carries out a directed environmental audit; and
  - (b) in the course of carrying out the audit, the auditor does not deal with a particular matter; and
  - (c) the matter is specified in the Minister's notice under section 458 as a matter that is to be covered by the audit;the auditor is guilty of an offence, punishable on conviction by a fine not exceeding 30 penalty units.

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

- (2) If:
  - (a) an environmental auditor carries out a directed environmental audit; and
  - (b) in the course of carrying out the audit, the auditor conceals, or does not take into account, any information or document; and

(c) the information or document is relevant to the audit;  
the auditor is guilty of an offence punishable on conviction by imprisonment for not more than 6 months.

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

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

- (3) In carrying out a directed environmental audit, the environmental auditor may, if:
- (a) an environmental audit (including an environmental audit carried out in accordance with a condition of the relevant authority) was completed within the last preceding 2 years; and
  - (b) the auditor is satisfied that the previous audit is still relevant; have regard to the results of the previous audit.
- (4) For the purposes of this Act, a **directed environmental audit** is an audit required by a notice under section 458.

#### **461 Audit reports**

- (1) After completing a directed environmental audit, the environmental auditor must prepare, and give the holder of the relevant environmental authority, a written report setting out the results of the audit.
- (2) The holder must give the report to the Minister:
- (a) on or before the date specified by the Minister under paragraph 458(2)(c); or
  - (b) on or before such later date as the Minister, on application by the holder, determines.
- (3) If the holder fails to comply with subsection (2), the holder is guilty of an offence, punishable on conviction by a fine not exceeding 50 penalty units.

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

- (4) If:

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- (a) the environmental auditor includes a statement in the report;  
and
- (b) the statement is false or misleading in a material particular;  
the auditor is guilty of an offence punishable on conviction by  
imprisonment for not more than 6 months.

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

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

**462 Directed environmental audits do not affect other audit obligations**

This Division does not affect any obligation of a holder of an environmental authority to carry out an environmental audit in accordance with a condition of the authority.

## **Division 13—Conservation orders**

### **Subdivision A—Simplified outline**

#### **463 Simplified outline of this Division**

The following is a simplified outline of this Division:

The Minister may make conservation orders controlling activities, and requiring specified people to take specified actions, in Commonwealth areas to protect listed threatened species or ecological communities.

A person who contravenes a conservation order commits an offence.

Before the Minister makes a conservation order, he or she must consult various Commonwealth agencies.

The Secretary must publicise conservation orders, and may give assistance to a person to comply with a conservation order.

### **Subdivision B—Making and reviewing conservation orders**

#### **464 Minister may make conservation orders**

##### *Making conservation orders*

- (1) The Minister may make a written order (a *conservation order*):
- (a) prohibiting or restricting specified activities on or in:
    - (i) all Commonwealth areas; or
    - (ii) specified Commonwealth areas; or
  - (b) requiring specified persons to take specified action on or in:
    - (i) all Commonwealth areas; or
    - (ii) specified Commonwealth areas.

Note: Section 470 makes contravening a conservation order an offence.

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*Prerequisite to making conservation order*

- (2) The Minister may only make a conservation order if he or she reasonably believes that it is necessary to make the order to protect a listed threatened species or a listed threatened ecological community.

*Minister must consider economic and social matters*

- (3) In considering whether to make a conservation order, the Minister must be satisfied that making the order is justified, having regard to economic and social considerations that are consistent with the principles of ecologically sustainable development.

*Minister must consult before making conservation order*

- (4) Before making a conservation order, the Minister:
- (a) must seek the Secretary's advice on whether it should be made; and
  - (b) must consult each Commonwealth agency that may be affected by the order, and any other Commonwealth agency the Minister thinks appropriate, unless delay in making the order would result in significant, irreparable damage to a listed threatened species or listed threatened ecological community.

**465 Duration of conservation orders**

- (1) A conservation order comes into force:
- (a) if a commencement day is specified in the order—on that day; or
  - (b) otherwise—immediately after it is made.
- (2) The order remains in force:
- (a) for the period (if any) specified in the order; or
  - (b) until it is revoked by the Minister.

**466 Reviews of conservation orders**

- (1) The Minister must:
- (a) at intervals of not more than 5 years, review the conservation order; and



- (b) after each review, confirm, vary or revoke the order by instrument in writing.
- (2) Before reviewing the order, the Minister must seek the Secretary's advice on the review.
- (3) The Minister must not revoke the order unless he or she is satisfied that the order is no longer needed to protect the listed threatened species or listed threatened ecological community the order was made to protect.
- (4) The Minister must not vary the order unless he or she is satisfied that the order as varied adequately protects the listed threatened species or listed threatened ecological community the order was first made to protect.
- (5) Immediately after a variation of the order, the order continues in force as so varied.

#### **467 Publication of conservation orders**

- (1) As soon as practicable after making or reviewing a conservation order, the Minister must cause the Secretary to be informed of the making of the order, or the decision on the review, as the case requires.
- (2) The Secretary must, as soon as practicable after being so informed:
  - (a) cause to be published in the *Gazette*, in a daily newspaper circulating in each State or self-governing Territory in which are located Commonwealth areas to which the order relates and in any other way required by the regulations, a notice containing:
    - (i) a copy of the order; and
    - (ii) a statement to the effect that contravention of the order is an offence against this Act; and
    - (iii) if applicable, a statement of the decision on the review; and
    - (iv) a statement to the effect that a person affected by the order may apply to the Minister, within 28 days of the publication (or within such further period as the Minister allows), for a reconsideration of the order by the Minister; and

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- (b) take all reasonable steps to ensure that each person who the Secretary knows would be affected by the order is given a notice containing:
  - (i) a copy of the order; and
  - (ii) if applicable, a statement of the decision on the review; and
  - (iii) unless the person is a Commonwealth agency or an agency of a State or self-governing Territory—a statement to the effect that contravention of the order is an offence against this Act; and
  - (iv) a statement to the effect that the person may apply to the Minister, within 28 days of being given the notice (or within such further period as the Minister allows), for a reconsideration of the order by the Minister.
- (3) Failure to comply with this section does not affect the validity of the order.

**468 Application for reconsideration of conservation orders or decisions on review**

- (1) A person affected by a conservation order, or by the decision on a review of a conservation order, may apply to the Minister to reconsider the order or the decision, as the case requires.
- (2) The application must be in writing.
- (3) Subject to subsection (4), the application must be made within 28 days, or within such further period as the Minister allows, after the publication under paragraph 467(2)(a) of the notice relating to the making of the order or conduct of the review.
- (4) If the person is given a copy of the order after that publication, the period of 28 days within which that person must make the application is taken to commence on the day on which the person received the notice.

**469 Reconsideration of conservation orders and decisions on review**

- (1) Upon receiving the application, the Minister must:
  - (a) seek the Secretary's advice on the application; and

- (b) reconsider the conservation order or the decision on review, as the case requires; and
  - (c) by written instrument:
    - (i) confirm, vary or revoke the order; or
    - (ii) confirm or vary the decision on review; and
  - (d) cause the Secretary to be informed accordingly.
- (2) As soon as practicable after being so informed, the Secretary must:
- (a) notify the applicant in writing of the result of the reconsideration; and
  - (b) if the order is revoked or varied or the decision on review is varied—cause to be published in the *Gazette*, and in any other way required by the regulations, a notice:
    - (i) stating that fact; and
    - (ii) in the case of a variation—setting out a copy of the order or decision as so varied.
- (3) Immediately after a variation of the order, the order continues in effect as so varied.

### **Subdivision C—Complying with conservation orders**

#### **470 Contravening conservation orders is an offence**

- (1) A person must not take an action reckless as to whether the action contravenes a conservation order.

Penalty: 500 penalty units.

- (2) If a person believes that taking an action that he or she proposes to take may contravene a particular conservation order, the person may seek the Minister's advice under subsection 471(3) on whether the order would be contravened by taking that action.
- (3) The person does not contravene the order if he or she acts in accordance with advice given to him or her under subsection 471(3) to the effect that the order would not be contravened.

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**471 Minister to consider proposed actions etc.**

- (1) This section applies to a proposed action if it is referred to the Minister under section 470 for the Minister's advice on whether it would contravene a conservation order.
- (2) A person who proposes to take the action may make written submissions to the Minister about the proposed action.
- (3) The Minister must:
  - (a) refer the proposed action, together with any submissions received by the Minister about the proposed action, to the Secretary; and
  - (b) after considering the Secretary's advice on the matter, give the person who sought the Minister's advice under section 470 a written notice of the minister's advice on the proposed action.

**472 Contents of notices of advice**

- (1) The notice of advice must state whether the Minister thinks that the proposed action would contravene a conservation order.
- (2) If the notice of advice is given to a person who is not a Commonwealth agency, it must include:
  - (a) a statement to the effect that, if the person is dissatisfied with the Minister's decision to give that advice, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision; and
  - (b) a statement to the effect that the person may request a statement under section 28 of that Act in relation to the decision.

**473 Review by the Administrative Appeals Tribunal**

- (1) Applications may be made to the Administrative Appeals Tribunal for review of the Minister's decision to give the advice.
- (2) Despite section 27 of the *Administrative Appeals Tribunal Act 1975*, applications are not to be made by or on behalf of Commonwealth agencies.

**474 Assistance in complying with conservation orders**

- (1) On behalf of the Commonwealth, the Secretary may provide assistance to a person (other than a Commonwealth agency) to comply with prohibitions, restrictions or requirements imposed on a person by a conservation order.
- (2) The assistance may take any one or more of the following forms:
  - (a) payment of money;
  - (b) provision of goods;
  - (c) provision of labour;
  - (d) provision of other services.
- (3) The value of the assistance must not exceed that which the Secretary thinks are the reasonable and direct costs of complying with the prohibitions, restrictions or requirements in question.
- (4) Assistance given under this section must be taken into account in determining compensation payable under section 519.

## **Division 14—Injunctions**

### **475 Injunctions for contravention of the Act**

#### *Applications for injunctions*

- (1) If a person has engaged, engages or proposes to engage in conduct consisting of an act or omission that constitutes an offence or other contravention of this Act or the regulations:
  - (a) the Minister; or
  - (b) an interested person (other than an unincorporated organisation); or
  - (c) a person acting on behalf of an unincorporated organisation that is an interested person;may apply to the Federal Court for an injunction.

#### *Prohibitory injunctions*

- (2) If a person has engaged, is engaging or is proposing to engage in conduct constituting an offence or other contravention of this Act or the regulations, the Court may grant an injunction restraining the person from engaging in the conduct.

#### *Additional orders with prohibitory injunctions*

- (3) If the court grants an injunction restraining a person from engaging in conduct and in the Court's opinion it is desirable to do so, the Court may make an order requiring the person to do something (including repair or mitigate damage to the environment).

#### *Mandatory injunctions*

- (4) If a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail to do an act, and the refusal or failure did, does or would constitute an offence or other contravention of this Act or the regulations, the Court may grant an injunction requiring the person to do the act.

*Interim injunctions*

- (5) Before deciding an application for an injunction under this section, the Court may grant an interim injunction:
- (a) restraining a person from engaging in conduct; or
  - (b) requiring a person to do an act.

*Meaning of interested person—individuals*

- (6) For the purposes of an application for an injunction relating to conduct or proposed conduct, an individual is an **interested person** if the individual is an Australian citizen or ordinarily resident in Australia or an external Territory, and:
- (a) the individual's interests have been, are or would be affected by the conduct or proposed conduct; or
  - (b) the individual engaged in a series of activities for protection or conservation of, or research into, the environment at any time in the 2 years immediately before:
    - (i) the conduct; or
    - (ii) in the case of proposed conduct—making the application for the injunction.

*Meaning of interested person—organisations*

- (7) For the purposes of an application for an injunction relating to conduct or proposed conduct, an organisation (whether incorporated or not) is an **interested person** if it is incorporated (or was otherwise established) in Australia or an external Territory and one or more of the following conditions are met:
- (a) the organisation's interests have been, are or would be affected by the conduct or proposed conduct;
  - (b) if the application relates to conduct—at any time during the 2 years immediately before the conduct:
    - (i) the organisation's objects or purposes included the protection or conservation of, or research into, the environment; and
    - (ii) the organisation engaged in a series of activities related to the protection or conservation of, or research into, the environment;

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- (c) if the application relates to proposed conduct—at any time during the 2 years immediately before the making of the application:
  - (i) the organisation’s objects or purposes included the protection or conservation of, or research into, the environment; and
  - (ii) the organisation engaged in a series of activities related to the protection or conservation of, or research into, the environment.

**476 Injunctions for contraventions of conservation agreements**

*Applications for injunctions*

- (1) If a person bound by a conservation agreement engages or proposes to engage in conduct consisting of an act or omission that constitutes a contravention of the agreement, another person bound by the agreement or the Minister may apply to the Federal Court for an injunction.

Note: Section 307 explains who is bound by a conservation agreement.

*Prohibitory injunctions*

- (2) If a person has engaged, is engaging or is proposing to engage in conduct contravening the agreement, the Court may grant an injunction restraining the person from engaging in the conduct.

*Additional orders with prohibitory injunctions*

- (3) If the court grants an injunction restraining a person from engaging in conduct and in the Court’s opinion it is desirable to do so, the Court may make an order requiring the person to do something (including repair or mitigate damage to the environment).

*Mandatory injunctions*

- (4) If a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail to do an act, and the refusal or failure was, is or would be a contravention of the agreement, the Court may grant an injunction requiring the person to do the act.



*Interim injunctions*

- (5) Before deciding an application for an injunction under this section the Court may grant an interim injunction:
- (a) restraining a person from engaging in conduct; or
  - (b) requiring a person to do an act.

**477 Discharge of injunctions**

On application, the Federal Court may discharge or vary an injunction.

**478 No undertakings as to damages**

The Federal Court is not to require an applicant for an injunction to give an undertaking as to damages as a condition of granting an interim injunction.

**479 Certain considerations for granting injunctions not relevant**

*Prohibitory injunctions*

- (1) The Federal Court may grant an injunction restraining a person from engaging in conduct:
- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind; and
  - (c) whether or not there is a significant risk of injury or damage to human beings or the environment if the person engages, or continues to engage, in conduct of that kind.

*Mandatory injunctions*

- (2) The Federal Court may grant an injunction requiring a person to do a particular act or thing:
- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do the act or thing; and
  - (b) whether or not the person has previously refused or failed to do the act or thing; and

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- (c) whether or not there is a significant risk of injury or damage to human beings or the environment if the person refuses or fails, or continues to refuse or fail, to do the act or thing.

**480 Powers conferred are in addition to other powers of the Court**

The powers conferred on the Federal Court by this Division are in addition to (and do not limit) any other powers of the Court.

## **Division 15—Civil penalties**

### **Subdivision A—Obtaining an order for a civil penalty**

#### **481 Federal Court may order person to pay pecuniary penalty for contravening civil penalty provision**

##### *Application for order*

- (1) Within 6 years of a person (the *wrongdoer*) contravening a civil penalty provision, the Minister may apply on behalf of the Commonwealth to the Federal Court for an order that the wrongdoer pay the Commonwealth a pecuniary penalty.

##### *Court may order wrongdoer to pay pecuniary penalty*

- (2) If the Court is satisfied that the wrongdoer has contravened a civil penalty provision, the Court may order the wrongdoer to pay to the Commonwealth for each contravention the pecuniary penalty that the Court determines is appropriate (but not more than the relevant amount specified for the provision).

##### *Determining amount of pecuniary penalty*

- (3) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

##### *Conduct contravening more than one civil penalty provision*

- (4) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one

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pecuniary penalty under this section in respect of the same conduct.

**482 What is a *civil penalty provision*?**

A subsection of this Act (or a section of this Act that is not divided into subsections) is a *civil penalty provision* if:

- (a) the words “civil penalty” and one or more amounts in penalty units are set out at the foot of the subsection (or section); or
- (b) another provision of this Act specifies that the subsection (or section) is a civil penalty provision.

**483 Contravening a civil penalty provision is not an offence**

A contravention of a civil penalty provision is not an offence.

**484 Persons involved in contravening civil penalty provision**

- (1) A person must not:
  - (a) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (b) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (c) be in any way directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (d) conspire to contravene a civil penalty provision.
- (2) This Division applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the provision.

**485 Recovery of a pecuniary penalty**

If the Federal Court orders a person to pay a pecuniary penalty:

- (a) the penalty is payable to the Commonwealth; and
- (b) the Commonwealth may enforce the order as if it were a judgment of the Court.

### **486 Gathering information for application for pecuniary penalty**

- (1) This section applies if it appears to the Minister that a person (the *wrongdoer*) may have contravened a civil penalty provision.
- (2) If the Minister, on reasonable grounds, suspects or believes that a person other than the wrongdoer can give information relevant to an application for a civil penalty order in relation to the contravention, whether or not such an application has been made, the Minister may, by writing given to the person, require the person to give all reasonable assistance in connection with such an application.
- (3) Subsection (2) does not apply in relation to a duly qualified legal practitioner who is acting, or has acted, for the wrongdoer.
- (4) If a person fails to give assistance as required under subsection (2):
  - (a) the person contravenes this subsection; and
  - (b) the Federal Court may, on the application of the Minister, order the person to comply with the requirement as specified in the order.

### **Subdivision B—Civil penalty proceedings and criminal proceedings**

#### **486A Civil proceedings after criminal proceedings**

The Federal Court must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

#### **486B Criminal proceedings during civil proceedings**

- (1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if:
  - (a) criminal proceedings are started or have already been started against the person for an offence; and
  - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

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- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

**486C Criminal proceedings after civil proceedings**

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a pecuniary penalty order has been made against the person.

**486D Evidence given in proceedings for penalty not admissible in criminal proceedings**

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

## Division 16—Review of administrative decisions

### 487 Extended standing for judicial review

- (1) This section extends (and does not limit) the meaning of the term *person aggrieved* in the *Administrative Decisions (Judicial Review) Act 1977* for the purposes of the application of that Act in relation to:
  - (a) a decision made under this Act or the regulations; or
  - (b) a failure to make a decision under this Act or the regulations; or
  - (c) conduct engaged in for the purpose of making a decision under this Act or the regulations.
- (2) An individual is taken to be a person aggrieved by the decision, failure or conduct if:
  - (a) the individual is an Australian citizen or ordinarily resident in Australia or an external Territory; and
  - (b) at any time in the 2 years immediately before the decision, failure or conduct, the individual has engaged in a series of activities in Australia or an external Territory for protection or conservation of, or research into, the environment.
- (3) An organisation or association (whether incorporated or not) is taken to be a person aggrieved by the decision, failure or conduct if:
  - (a) the organisation or association is incorporated, or was otherwise established, in Australia or an external Territory; and
  - (b) at any time in the 2 years immediately before the decision, failure or conduct, the organisation or association has engaged in a series of activities in Australia or an external Territory for protection or conservation of, or research into, the environment; and
  - (c) at the time of the decision, failure or conduct, the objects or purposes of the organisation or association included protection or conservation of, or research into, the environment.

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- (4) A term (except *person aggrieved*) used in this section and in the *Administrative Decisions (Judicial Review) Act 1977* has the same meaning in this section as it has in that Act.

**488 Applications on behalf of unincorporated organisations**

- (1) A person acting on behalf of an unincorporated organisation that is a person aggrieved (for the purposes of the *Administrative Decisions (Judicial Review) Act 1977*) by:
- (a) a decision made under this Act or the regulations; or
  - (b) a failure to make a decision under this Act or the regulations;  
or
  - (c) conduct engaged in for the purpose of making a decision under this Act or the regulations;
- may apply under that Act for a review of the decision, failure or conduct.
- (2) The *Administrative Decisions (Judicial Review) Act 1977* applies in relation to the person as if he or she were a person aggrieved.



## **Division 17—Duty to provide accurate information**

### **489 Providing false or misleading information to obtain approval or permit**

- (1) A person is guilty of an offence if:
- (a) the person provides information in response to a requirement or request under Part 7, 8, 9, 13 or 13A; and
  - (b) the person is reckless as to whether the information is false or misleading in a material particular.

Note: The fault element in paragraph (1)(b) can be demonstrated by proof of knowledge. See subsection 5.4(4) of the *Criminal Code*.

- (2) An offence against subsection (1) is punishable on conviction by:
- (a) imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both, if it is proved the person knew the information was false or misleading; or
  - (b) imprisonment for a term not more than 1 year, a fine not more than 60 penalty units, or both, if it is proved the person was reckless as to whether the information was false or misleading.

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

- (2A) A person is guilty of an offence if:
- (a) the person provides information in response to a requirement or request under Part 7, 8, 9, 13 or 13A; and
  - (b) the person is negligent as to whether the information is false or misleading in a material particular.

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

- (2B) An offence against subsection (2A) is punishable on conviction by a fine not more than 30 penalty units.

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

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- (3) Subsections (1) and (2A) do not apply to a requirement to provide information that is imposed by a condition attached to an environmental authority.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

**490 Providing false or misleading information in response to a condition on an approval or permit**

- (1) A person is guilty of an offence if:
- (a) the person is the holder of an environmental authority; and
  - (b) a condition attached to the environmental authority requires the person to provide information; and
  - (c) the person provides information in response (or purportedly in response) to the requirement; and
  - (d) the person is reckless as to whether the information is false or misleading in a material particular.

Note: The fault element in paragraph (1)(d) can be demonstrated by proof of knowledge. See subsection 5.4(4) of the *Criminal Code*.

- (2) The offence is punishable on conviction by:
- (a) imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both, if it is proved the person knew the information was false or misleading; or
  - (b) imprisonment for a term not more than 1 year, a fine not more than 60 penalty units, or both, if it is proved the person was reckless as to whether the information was false or misleading.

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

**491 Providing false or misleading information to authorised officer etc.**

- (1) A person is guilty of an offence if the person:
- (a) provides information or a document to another person (the *recipient*); and
  - (b) knows the recipient is:
    - (i) an authorised officer; or
    - (ii) the Minister; or

- (iii) an employee or officer in the Department; or
  - (iv) a commissioner;  
performing a duty or carrying out a function under this Act or  
the regulations; and
  - (c) knows the information or document is false or misleading in  
a material particular.
- (2) The offence is punishable on conviction by imprisonment for a  
term not more than 1 year, a fine not more than 60 penalty units, or  
both.

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

## **Division 18—Liability of executive officers for corporations**

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

In this Act:

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

### **494 Civil penalties for executive officers of bodies corporate**

(1) If:

- (a) a body corporate contravenes a provision of Part 3 that is a civil penalty provision or section 142; and
- (b) an executive officer of the body knew that, or was reckless or negligent as to whether, the contravention would occur; and
- (c) the officer was in a position to influence the conduct of the body in relation to the contravention; and
- (d) the officer failed to take all reasonable steps to prevent the contravention;

the officer contravenes this subsection.

(2) Subsection (1) is a civil penalty provision. Under section 481, the Federal Court may order a person contravening subsection (1) to pay a pecuniary penalty not more than the pecuniary penalty the Court could order an individual to pay for contravening the civil penalty provision contravened by the body corporate.

### **495 Criminal liability of executive officers of bodies corporate**

(1) If:

- (a) a body corporate contravenes:
  - (i) section 489 (Providing false or misleading information to obtain approval or permit); or
  - (ii) section 490 (Providing false or misleading information in response to a condition on an approval or permit); or

- (iii) section 491 (Providing false or misleading information to authorised officer etc.); and
- (b) an executive officer of the body knew that, or was reckless or negligent as to whether, the contravention would occur; and
- (c) the officer was in a position to influence the conduct of the body in relation to the contravention; and
- (d) the officer failed to take all reasonable steps to prevent the contravention;

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

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

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

(2) If:

- (a) a body corporate contravenes:
  - (i) section 15A (Offences relating to declared World Heritage properties); or
  - (ia) section 15C (Offences relating to National Heritage places); or
  - (ii) section 17B (Offences relating to declared Ramsar wetlands); or
  - (iii) section 18A (Offences relating to threatened species etc.); or
  - (iv) section 20A (Offences relating to listed migratory species); or
  - (v) section 22A (Offences relating to nuclear actions); or
  - (vi) section 24A (Offences relating to marine areas); or
  - (vii) section 27A (Offences relating to Commonwealth land); or
  - (viii) section 142A (Offence of breaching conditions on approval); and
- (b) an executive officer of the body was reckless as to whether the contravention would occur; and
- (c) the officer was in a position to influence the conduct of the body in relation to the contravention; and

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

the officer is guilty of an offence.

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

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

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

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

- (1) For the purposes of sections 494 and 495, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent the contravention, a court is to have regard to:

- (a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):
  - (i) that the body arranges regular professional assessments of the body's compliance with this Act and the regulations;
  - (ii) that the body implements any appropriate recommendations arising from such an assessment;
  - (iii) that the body has an appropriate system established for managing the effects of the body's activities on the environment;
  - (iv) that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Act and the regulations, in so far as those requirements affect the employees, agents or contractors concerned;
- (b) what action (if any) the officer took when he or she became aware that the body was contravening:
  - (i) this Act; or
  - (ii) the regulations; or

- (iii) if the body contravened Part 3 or section 142 or 142A—  
any environmental management plan that was prepared  
by the body, and approved by the Minister, as required  
by a condition attached to an approval under Part 9 for  
the purposes of a provision of Part 3 of the body's  
taking of an action.
- (2) This section does not, by implication, limit the generality of  
sections 494 and 495.

## **Division 19—Infringement notices**

### **497 Infringement notices**

- (1) The regulations may make provision enabling a person who is alleged to have committed an offence against the regulations to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must equal one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.



## **Division 20—Publicising contraventions**

### **498 Minister may publicise contraventions of this Act or the regulations**

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

## **Division 21—Immunity of officers**

### **498A Immunity of officers and assistants**

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

## **Part 18—Remediating environmental damage**

### **499 Commonwealth powers to remedy environmental damage**

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

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

**500 Liability for loss or damage caused by contravention**

- (1) A person (the *wrongdoer*) who contravenes this Act or the regulations is liable to pay to another person (the *affected party*) who suffers loss or damage arising from the contravention an amount equal to the other person's loss or damage.
  - (2) Without limiting the amount payable under subsection (1), the loss or damage a person suffers from a contravention of this Act or the regulations includes the expenses and liabilities (if any) reasonably incurred by the affected party to:
    - (a) repair or remove any condition that arises from the act or omission constituting the contravention and relates to:
      - (i) the environment; or
      - (ii) if the contravention was of a provision of Part 3—the matter protected by the provision; or
    - (b) mitigate any damage that arises from the act or omission constituting the contravention and relates to:
      - (i) the environment; or
      - (ii) if the contravention was of a provision of Part 3—the matter protected by the provision; or
    - (c) prevent any damage likely to arise from the act or omission constituting the contravention and relates to:
      - (i) the environment; or
      - (ii) if the contravention was of a provision of Part 3—the matter protected by the provision.
- Note: This makes the person who contravenes the Act liable to pay the Commonwealth the expenses reasonably incurred in taking steps under section 499 in relation to the contravention.
- (3) An amount payable under subsection (1) is a debt due to the affected party, recoverable in a court of competent jurisdiction.

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

**501 Other powers not affected**

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

## **Part 19—Organisations**

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

#### **502 Establishment**

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

#### **503 Functions of the Committee**

The functions of the Committee are:

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

## **Division 2—Establishment and functions of the Biological Diversity Advisory Committee**

### **504 Establishment**

- (1) The Biological Diversity Advisory Committee is established.
- (2) The Minister is to determine in writing the composition of the Committee, including the qualifications of its members.
- (3) The Minister is to appoint the members of the Committee on a part-time basis, and must appoint one of the members to chair the Committee.
- (4) The Minister must ensure that the membership includes members who are appointed to represent the following:
  - (a) the body known as the Australian and New Zealand Environment and Conservation Council;
  - (b) conservation organisations that are not authorities of the Commonwealth or of any State or Territory;
  - (c) the scientific community (including both that part of the scientific community concerned with marine species and that part of the scientific community concerned with terrestrial species);
  - (d) the rural community;
  - (e) the business community;
  - (ea) indigenous peoples;
  - (f) the Commonwealth.
- (5) The Minister must ensure that, as far as practicable, each one of at least 5 members:
  - (a) possess scientific qualifications that the Minister thinks relevant to the performance of the Committee's functions;  
and
  - (b) is appointed to represent the scientific community and is not appointed to represent any of the other bodies, groups of bodies or communities referred to in subsection (4).

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- (6) The Minister must ensure that a majority of the members are not persons employed by the Commonwealth or Commonwealth agencies.

**505 Functions of the Committee**

The functions of the Committee are:

- (a) to advise the Minister, at his or her request, on matters relating to the conservation and ecologically sustainable use of biological diversity; and
- (b) to perform such other functions as are conferred on the Committee by this Act or the regulations.



## **Division 2A—Indigenous Advisory Committee**

### **505A Establishment**

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

### **505B Functions of the Committee**

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

## **Division 3—Members and procedures of Committees**

### **506 Application**

This Division applies to the following Committees:

- (a) the Threatened Species Scientific Committee;
- (b) the Biological Diversity Advisory Committee;
- (c) the Indigenous Advisory Committee.

### **507 Terms and conditions**

#### *Term of office*

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

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

#### *Resignation*

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

#### *Other terms and conditions*

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

### **508 Remuneration**

- (1) A member of a Committee is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.
- (2) A member of a Committee is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

## **509 Termination of appointments of Committee members**

### *Termination when person stops being qualified for appointment*

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

### *Termination for misbehaviour or incapacity*

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

### *Termination for failure to attend Committee meetings*

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

### *Termination for engaging in conflicting work*

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

### *Termination for failure to disclose interests*

- (5) The Minister must terminate the appointment of a member of a Committee if:
  - (a) the member does not comply with any requirements prescribed by the regulations to disclose an interest the member has in a matter being considered or about to be considered by the Committee; and
  - (b) the member does not have a reasonable excuse for not complying.

### *Termination for bankruptcy or insolvency*

- (6) The Minister may terminate the appointment of a member of a Committee if the member:
  - (a) becomes bankrupt; or

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- (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (c) compounds with his or her creditors; or
- (d) makes an assignment of his or her remuneration for the benefit of his or her creditors.

**510 Procedure of a Committee**

- (1) The regulations may provide for:
  - (a) matters relating to the operation of a Committee, including:
    - (i) procedures for convening meetings of the Committee; and
    - (ii) procedures for determining who is to preside at a meeting of the Committee; and
    - (iii) determining who may attend a meeting of the Committee; and
    - (iv) the constitution of a quorum for a meeting of the Committee; and
    - (v) procedures relating to a member's interest in matters being dealt with by the Committee; and
    - (vi) the way in which matters are to be resolved by the Committee; and
  - (b) the appointment and rights of a deputy of a member of a Committee.
- (2) The regulations may allow a Committee to determine a matter relating to the operation of the Committee for which the regulations may provide.
- (3) If there are no regulations in force, a Committee may operate in the way it determines.

## **Division 4—Advisory committees**

### **511 Minister may establish advisory committees**

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

### **512 Appointments**

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

### **513 Members of advisory committees**

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

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

### **514 Committee procedure**

- (1) An advisory committee may operate in the way it determines, subject to any regulations.

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- (2) The regulations may provide for the operation and procedures of an advisory committee. The regulations may allow a committee to determine its own procedure on any matter.

## **Division 5—Director of National Parks**

### **Subdivision A—Establishment, functions and powers**

#### **514A Continuation**

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

Note: Subject to section 514U, the *Commonwealth Authorities and Companies Act 1997* applies to the Director. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

#### **514B Functions**

- (1) The functions of the Director are:
  - (a) to administer, manage and control Commonwealth reserves and conservation zones; and
  - (b) to protect, conserve and manage biodiversity and heritage in Commonwealth reserves and conservation zones; and
  - (c) to co-operate with any country in matters relating to the establishment and management of national parks and nature reserves in that country; and
  - (d) to provide, and assist in the provision of, training in the knowledge and skills relevant to the establishment and management of national parks and nature reserves; and
  - (e) to carry out alone or in co-operation with other institutions and persons, and to arrange for any other institution or person to carry out, research and investigations relevant to the establishment and management of Commonwealth reserves; and
  - (f) to make recommendations to the Minister in relation to the establishment and management of Commonwealth reserves; and
  - (g) to administer the Australian National Parks Fund; and
  - (h) any other functions conferred on the Director under any other Act; and

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- (i) to do anything incidental or conducive to the performance of any of the functions mentioned in paragraphs (a) to (h) (inclusive).

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

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

**514C Powers**

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

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

**514D Requirements relating to functions and powers**

*Ministerial directions*

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



*Consultation*

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

*Australian National Botanic Gardens in Jervis Bay Territory*

- (3) The Director must consult and have regard to the views of the Chairperson of the Wreck Bay Aboriginal Community Council in relation to the performance of the Director's functions and the exercise of the Director's powers in relation to the part of the Commonwealth reserve known as the Australian National Botanic Gardens that is in the Jervis Bay Territory.

*Trust property*

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

*Limits on contracts and leases*

- (5) The Director must not:
- (a) enter into a contract involving the payment or receipt of an amount more than:
    - (i) \$250,000; or
    - (ii) if the regulations prescribe a greater amount—that greater amount; or
  - (b) take land (except indigenous people's land) on lease for more than 10 years;

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without the Minister's approval.

*No borrowing*

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

**Subdivision B—Constitution of Director of National Parks**

**514E Constitution**

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

**514F Appointment**

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

**514G Acting appointments**

- (1) The Minister may appoint a person to act as the Director:
- (a) during a vacancy in the office of Director; or

- (b) during any period, or during all periods, when the person appointed as the Director is absent from duty or from Australia, or is, for any reason, temporarily unable to perform the duties of the office.
- (2) A person acting as the Director is taken to constitute the corporation mentioned in section 514A while the person is acting.
- (3) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

### **Subdivision C—Terms and conditions of appointment**

#### **514H Term of office**

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

#### **514J Remuneration**

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

#### **514K Outside employment**

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

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**514L Disclosure of interests**

If the person appointed as the Director has a material personal interest in a matter that he or she is considering or is about to consider as the Director, the person must give written notice of the interest to the Minister.

**514M Leave of absence**

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

**514N Resignation**

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

**514P Termination**

- (1) The Governor-General may terminate the appointment of a person as the Director for misbehaviour or physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of a person as the Director if:
  - (a) the person:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the person is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) the person engages, except with the Minister's approval, in paid employment outside the duties of the office of Director; or
  - (d) the person fails, without reasonable excuse, to comply with section 514L.

### **514Q Other terms and conditions**

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

### **Subdivision D—Australian National Parks Fund**

#### **514R Australian National Parks Fund**

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

#### **514S Payments to Australian National Parks Fund**

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

- (a) any money appropriated by the Parliament for the purposes of the Department and allocated by the Secretary for the management of Commonwealth reserves or conservation zones;
- (b) the proceeds of the sale of any property acquired out of money standing to the credit of the Fund;
- (c) any amounts paid to the Director in respect of leases, licences, permits and other authorities granted by the Director in relation to Commonwealth reserves or conservation zones;
- (d) any other amount paid by a person to the Director if:
  - (i) payment of the amount into the Fund would be consistent with the purposes for which the amount was paid; and
  - (ii) the Minister administering the *Commonwealth Authorities and Companies Act 1997* considers it appropriate that the amount should be paid into the Fund;
- (e) any charges paid under section 356A or section 390F;
- (f) any other money received by the Director in the performance of his or her functions.

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**514T Application of money**

- (1) The money of the Australian National Parks Fund may be applied only:
  - (a) in payment or discharge of the costs, expenses and other obligations incurred by the Director in the performance of the Director's functions; and
  - (b) in payment of any remuneration, allowances and compensation payable under this Division or Division 4 of Part 15.
- (2) Subsection (1) does not prevent investment of surplus money of the Fund under section 18 of the *Commonwealth Authorities and Companies Act 1997*.

**Subdivision E—Accountability**

**514U Modification of the *Commonwealth Authorities and Companies Act 1997***

- (1) Sections 514A and 514E provide that the Director is a corporation. The *Commonwealth Authorities and Companies Act 1997* applies (subject to subsections (2) and (3)) in relation to the corporation as if the person holding, or performing the duties of, the office of Director were a director of the corporation for the purposes of that Act.
- (2) Sections 27G, 27H, 27J and 27K of the *Commonwealth Authorities and Companies Act 1997* do not apply in relation to the Director.
- (3) To avoid doubt, the *Commonwealth Authorities and Companies Act 1997* applies to the Australian National Parks Fund as though the Fund were money of the Director.

**514V Extra matters to be included in annual report**

The annual report prepared by the Director under section 9 of the *Commonwealth Authorities and Companies Act 1997* must also include particulars of any directions given by the Minister under subsection 514D(1) of this Act during the year to which the report relates.

## **Subdivision F—Miscellaneous**

### **514W Exemption from taxation**

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

### **514X Changes in office of Director**

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

## **Part 20—Delegation**

### **515 Delegation**

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



## **Part 20A—Publication of information on the Internet**

### **515A Publication of information on the Internet**

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

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

## Part 21—Reporting

### Division 1—Annual reports

#### 516 Annual report on operation of Act

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

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

Note 2: Section 34C of the *Acts Interpretation Act 1901* sets out rules about the time within which annual reports must be given to the Minister.

- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he or she receives the report.

#### 516A Annual reports to deal with environmental matters

##### *Agency annual reports*

- (1) The Head of an Agency (as defined in the *Public Service Act 1999*) must ensure that an annual report under that Act on the Agency's activities complies with subsection (6).

##### *Annual reports of Commonwealth authorities*

- (3) The directors of a Commonwealth authority (as defined in the *Commonwealth Authorities and Companies Act 1997*) must ensure that an annual report relating to the authority prepared under that Act complies with subsection (6).

##### *Annual reports of Commonwealth companies*

- (4) A Commonwealth company (as defined in the *Commonwealth Authorities and Companies Act 1997*) that is a Commonwealth agency must ensure that the documents given to the responsible Minister (as defined in that Act) under section 36 of that Act include a report complying with subsection (6).

*Annual reports of other Commonwealth agencies*

- (5) A Commonwealth agency that is:
- (a) established by or under a law of the Commonwealth; and
  - (b) required by law to give the Minister responsible for it an annual report; and
  - (c) not described in subsection (3) or (4);
- must ensure that the annual report complies with subsection (6).

*Content of report*

- (6) A report described in subsection (1), (3), (4) or (5) relating to a body or person (the *reporter*) for a period must:
- (a) include a report on how the activities of, and the administration (if any) of legislation by, the reporter during the period accorded with the principles of ecologically sustainable development; and
  - (b) identify how the outcomes (if any) specified for the reporter in an Appropriations Act relating to the period contribute to ecologically sustainable development; and
  - (c) document the effect of the reporter's activities on the environment; and
  - (d) identify any measures the reporter is taking to minimise the impact of activities by the reporter on the environment; and
  - (e) identify the mechanisms (if any) for reviewing and increasing the effectiveness of those measures.

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

- (7) In subsection (6):

*activities* includes:

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

## **Division 2—State of the environment reports**

### **516B State of the environment reports**

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

## **Chapter 7—Miscellaneous**

### **Part 22—Miscellaneous**

#### **517 Determinations of species**

- (1) The Minister may, by instrument in writing, determine that a distinct population of biological entities is a species for the purposes of this Act.
- (2) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) A determination does not apply for the purposes of:
  - (a) Part 13A; or
  - (b) the definitions of *CITES I species*, *CITES II species* and *CITES III species* in section 528.
- (4) Subsection (3) does not affect the meaning of the expression *listed threatened species* when used in Part 13A.

#### **518 Non-compliance with time limits**

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

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**519 Compensation for acquisition of property**

*When compensation is necessary*

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

*Definition*

- (2) In this Act:

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

*Court can decide amount of compensation*

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

*Other compensation to be taken into account*

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

**520 Regulations**

- (1) The Governor-General may make regulations prescribing all matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may prescribe penalties for offences against the regulations. A penalty must not be more than 50 penalty units.
- (3) Regulations may be made for and in relation to giving effect to any of the following agreements:
  - (a) the Apia Convention;

- (b) the Convention for the Protection of the Natural Resources and Environment of the South Pacific (the SPREP Convention) signed at Noumea on 24 November 1986;
  - (c) the Bonn Convention;
  - (d) CAMBA;
  - (e) JAMBA;
  - (f) an agreement between the Commonwealth and one or more other countries relating to whales;
  - (g) the World Heritage Convention;
  - (h) the Ramsar Convention;
  - (i) the Biodiversity Convention;
  - (j) CITES;
  - (k) the Framework Convention on Climate Change done at New York on 9 May 1992.
- (4) Regulations made in relation to an agreement that has not entered into force for Australia are not to come into operation on a day earlier than the day on which the agreement enters into force for Australia.
- (5) Subsection (3) does not limit subsection (1).
- (6) The regulations may prohibit or regulate the export from an external Territory to Australia or another external Territory of:
- (a) CITES specimens; and
  - (b) regulated native specimens.
- (7) The regulations may prohibit or regulate the import into an external Territory from Australia or another external Territory of:
- (a) CITES specimens; and
  - (b) regulated live specimens.
- (8) The regulations may prohibit or regulate the possession in an external Territory of:
- (a) specimens that have been imported into that Territory in contravention of regulations made for the purposes of subsection (7); or
  - (b) the progeny of such specimens.

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**521 Fees and charges must not be taxes**

A fee or charge provided for by or under this Act, and whether prescribed by the regulations or not, must be reasonably related to the expenses incurred or to be incurred by the Commonwealth in relation to the matters to which the fee or charge relates and must not be such as to amount to taxation.

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

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

**522A Review of operation of Act**

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



## Chapter 8—Definitions

### Part 23—Definitions

#### Division 1—Some definitions relating to particular topics

##### Subdivision A—Actions

###### 523 *Actions*

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

###### 524 *Things that are not actions*

- (1) This section applies to a decision by each of the following kinds of person (**government body**):
  - (a) the Commonwealth;
  - (b) a Commonwealth agency;
  - (c) a State;
  - (d) a self-governing Territory;
  - (e) an agency of a State or self-governing Territory;
  - (f) an authority established by a law applying in a Territory that is not a self-governing Territory.
- (2) A decision by a government body to grant a governmental authorisation (however described) for another person to take an action is not an **action**.
- (3) To avoid doubt, a decision by the Commonwealth or a Commonwealth agency to grant a governmental authorisation under one of the following Acts is not an **action**:
  - (a) the *Customs Act 1901*;
  - (b) the *Export Control Act 1982*;

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- (c) the *Export Finance and Insurance Corporation Act 1991*;
- (d) the *Fisheries Management Act 1991*;
- (e) the *Foreign Acquisitions and Takeovers Act 1975*;
- (f) the *Petroleum (Submerged Lands) Act 1967*;
- (g) the *Quarantine Act 1908*;
- (h) the *Trade Practices Act 1974*.

This subsection does not limit this section.

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

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

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

**Subdivision B—Areas**

**525 Commonwealth areas**

*What is a Commonwealth area?*

- (1) Each of the following, and any part of it, is a *Commonwealth area*:
  - (a) land owned by the Commonwealth or a Commonwealth agency (including land owned in Norfolk Island) and airspace over the land;
  - (b) an area of land held under lease by the Commonwealth or a Commonwealth agency (including an area held under lease in Norfolk Island) and airspace over the land;
  - (c) land in:
    - (i) an external Territory (except Norfolk Island); or
    - (ii) the Jervis Bay Territory;and airspace over the land;
  - (d) the coastal sea of Australia or an external Territory;

- (e) the continental shelf, and the waters and airspace over the continental shelf;
- (f) the waters of the exclusive economic zone, the seabed under those waters and the airspace above those waters;
- (g) any other area of land, sea or seabed that is included in a Commonwealth reserve.

*Territory Land in ACT is not a Commonwealth area*

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

*Coastal waters of States and NT are not Commonwealth areas*

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

## **Subdivision C—Entities**

### **526 Subsidiaries of bodies corporate**

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

## Subdivision D—Criminal law

### 527 Convictions

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

## Subdivision E—Specimens

### 527A Specimens

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

*this Act* does not include sections 356 and 390E.

### **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:

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- (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;
- 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.

## Division 2—General list of definitions

### 528 Definitions

In this Act, unless the contrary intention appears:

*accredited management plan* 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.

*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 or Norfolk Island—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

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- (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 or Norfolk Island—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.

***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.

***Apia Convention*** means the Convention on Conservation of Nature in the South Pacific, done at Apia, Western Samoa, on 12 June 1976, as in force for Australia immediately before the commencement of this Act.

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

***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 platform** has the meaning given by section 403.

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

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

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

**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 management plan** 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 in force for Australia immediately before the commencement of this Act.

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.

***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 in force for Australia immediately before the commencement of this Act.

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.

***business day*** means a day that is not:

- (a) a Saturday or a Sunday; or
- (b) a public holiday or bank holiday in the place concerned.

***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 in force for Australia immediately before the commencement of this Act.

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 part of such a member and any product derived from a 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.

**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.

**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.

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

**Commonwealth agency** means:

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- (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) an Aboriginal corporation within the meaning of the *Aboriginal Councils and Associations Act 1976*;
- (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 kept under Subdivision B of Division 3A of Part 15.

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

***Commonwealth Heritage place*** has the meaning given by subsection 341C(2).

***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.

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**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.

**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.

**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.

***declared Ramsar wetland*** has the meaning given by section 17.

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

***disease*** means:

- (a) a disease, parasite or pest that, for the purposes of the *Quarantine Act 1908*, is a disease in relation to animals; or
- (b) a disease, pest or plant that, for the purposes of that Act, is a disease in relation to plants.

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

***ecological community*** means 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.

***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.

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***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) or (c).

Note: The places mentioned in paragraph (d) of the definition of ***environment*** include places included in the Register of the National Estate kept under the *Australian Heritage Council Act 2003*.

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

***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***, for a warrant, means the person named in the warrant as being responsible for executing the warrant.

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

***export***, in relation to a cetacean, means:

- (a) export from Australia or from an external Territory; or
- (b) export from the sea;

but does not include:

- (c) export from Australia to an external Territory; or
- (d) export from an external Territory to Australia; or



(e) export from an external Territory to another external Territory.

**export from the sea**, in relation to a cetacean, means take in a Commonwealth marine area and then take out of that area to another country without bringing into Australia or into an external Territory.

**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.

**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.

**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

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(b) in the case of an approval under Part 9—the person to whom the approval applies.

*imported* in relation to a cetacean or foreign whaling vessel means brought into the Australian jurisdiction.

*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.

*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 in force for Australia immediately before the commencement of this Act.

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-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.

***live animal*** includes animal reproductive material.

***live plant*** includes plant reproductive material.

***magistrate*** means a magistrate who is remunerated by salary or otherwise.

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

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

***member*** of a listed threatened species, listed migratory species, listed marine species or listed threatened ecological community, includes, in the case of a species of animal or community of animals, the whole or part of the dead body of the member.

***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 kept under Subdivision B of Division 1A of Part 15.

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

***National Heritage place*** has the meaning given by subsection 324C(2).

***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
- (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; 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

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- (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.

**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.

**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 in force for Australia immediately before the commencement of this Act.

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.

*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 to 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.

*self-governing Territory* means:

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

*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;

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and includes:

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

Note: Determinations under paragraph (d) are disallowable instruments. See section 517.

*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.

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

*terms of reference* has the meaning given by paragraph 107(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 cetacean or member of a listed threatened species, listed migratory species, listed marine species or threatened ecological community includes:



- (a) buy the cetacean or member, agree to receive it under an agreement to buy, agree to accept it under such an agreement or acquire it by barter; or
- (b) sell the cetacean or 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
- (c) export the cetacean or member from Australia or an external Territory or import it into Australia or an external Territory; or
- (d) cause or allow any of the acts referred to in paragraph (a), (b) or (c) to be done.

**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).

**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.

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**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 in force for Australia immediately before the commencement of this Act.

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).

**Table of Acts****Notes to the *Environment Protection and Biodiversity Conservation Act 1999*****Note 1**

The *Environment Protection and Biodiversity Conservation Act 1999* as shown in this compilation comprises Act No. 91, 1999 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequential and Transitional) Act 2001*, see Act No. 55, 2001.

For all other relevant information pertaining to application, saving or transitional provisions see Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	91, 1999	16 July 1999	16 July 2000	
<i>Environmental Reform (Consequential Provisions) Act 1999</i>	92, 1999	16 July 1999	Schedules 8 and 9 (item 1): 16 July 2000 (a)	Sch. 9 (item 1)
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 422, 423): (b)	—
<i>Corporations (Repeals, Consequential and Transitional) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (item 172): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (c)	Ss. 4–14
<i>Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act 2001</i>	82, 2001	11 July 2001	Ss. 1–3 and Schedule 1 (items 83–86): Royal Assent Remainder: 11 Jan 2002	Sch. 1 (items 70–82)
<i>Regional Forest Agreements Act 2002</i>	30, 2002	5 Apr 2002	Sections 1 and 2: Royal Assent Remainder: 3 May 2002 (see <i>Gazette</i> 2002, No. S133)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Statute Law Revision Act 2002</i>	63, 2002	3 July 2002	Schedule 1 (items 15, 16, 18): (d) Schedule 1 (item 17): (d)	—
<i>Crimes Legislation Enhancement Act 2003</i>	41, 2003	3 June 2003	Schedule 3 (items 31, 32): (e) Schedule 3 (item 42): Royal Assent	Sch. 3 (item 42)
<i>Australian Heritage Council (Consequential and Transitional Provisions) Act 2003</i>	86, 2003	23 Sept 2003	Ss. 1–3: Royal Assent Remainder: 1 Jan 2004 (see s. 2)	—
<i>Environment and Heritage Legislation Amendment Act (No. 1) 2003</i>	88, 2003	23 Sept 2003	Schedules 1 and 3: 1 Jan 2004 (see <i>Gazette</i> 2003, No. GN47) Schedule 2: [see (f) and Note 2] Remainder: Royal Assent	Sch. 1 (items 8, 24, 25), Sch. 3 and Sch. 4 (item 1G)
<i>Aboriginal and Torres Strait Islander Commission Amendment Act 2005</i>	32, 2005	22 Mar 2005	Schedule 4 (item 23): 24 Mar 2005	—
<i>Administrative Appeals Tribunal Amendment Act 2005</i>	38, 2005	1 Apr 2005	Schedule 1 (item 207): 16 May 2005	—
<i>Statute Law Revision Act 2006</i>	9, 2006	23 Mar 2006	Schedule 1 (items 13–15): (g)	—
<i>Offshore Petroleum (Repeals and Consequential Amendments) Act 2006</i>	17, 2006	29 Mar 2006	Schedule 2 (item 21): [see Note 3]	—

**Act Notes**

- (a) The *Environment Protection and Biodiversity Conservation Act 1999* was amended by Schedule 8 only of the *Environmental Reform (Consequential Provisions) Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences when the *Environment Protection and Biodiversity Conservation Act 1999* commences.
- (b) The *Environment Protection and Biodiversity Conservation Act 1999* was amended by Schedule 1 (items 422 and 423) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsection 2(3) of which provides as follows:
- (3) If:
- (a) an item (the **amending item**) of a Schedule to this Act is expressed to amend another Act (the **amended Act**); and
- (b) the whole of the amended Act is expressed to commence at one time; and
- (c) at the time when the *Public Service Act 1999* commences, the amended Act:
- (i) has not yet been enacted; or
- (ii) has been enacted but has not yet commenced;
- then the amending item commences immediately after the commencement of the amended Act.
- Items 422 and 423 of Schedule 1 commenced immediately after 16 July 2000.
- (c) The *Environment Protection and Biodiversity Conservation Act 1999* was amended by Schedule 3 (item 172) only of the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.
- (d) Subsection 2(1) (items 10–13) of the *Statute Law Revision Act 2002* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
10. Schedule 1, item 15	Immediately after subsection 151(3) of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> commenced	16 July 2000
11. Schedule 1, item 16	Immediately after paragraph 520(3)(k) of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> commenced	16 July 2000
12. Schedule 1, item 17	Immediately after item 36 of Schedule 1 to the <i>Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act 2001</i> commenced	11 January 2002
13. Schedule 1, item 18	Immediately after section 528 of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> commenced	16 July 2000

- (e) Subsection 2(1) (item 21) of the *Crimes Legislation Enhancement Act 2003* provides as follows:

**Act Notes**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
21. Schedule 3, items 31 and 32	Immediately after the commencement of the <i>Environment Protection and Biodiversity Conservation Act 1999</i>	16 July 2000

- (f) Subsection 2(1) (item 3) of the *Environment and Heritage Legislation Amendment Act (No. 1) 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Schedule 2	The later of: (a) immediately after the commencement of the provisions covered by item 2 of this table; and (b) the time when section 9 of the Act that establishes the Director of Indigenous Heritage Protection commences	[see Note 2]

Note 2: The Director of Indigenous Heritage Protection is expected to be established by the Aboriginal and Torres Strait Islander Heritage Protection Act, which may be enacted in 2002 or a later year.

- (g) Subsection 2(1) (item 9) of the *Statute Law Revision Act 2006* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
9. Schedule 1, items 13 to 15	Immediately after the commencement of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> .	16 July 2000

**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Chapter 1</b>	
<b>Part 1</b>	
S. 3 .....	am. No. 88, 2003
S. 9 .....	am. No. 86, 2003
<b>Chapter 2</b>	
<b>Part 3</b>	
<b>Division 1</b>	
<b>Subdivision A</b>	
S. 12 .....	am. No. 88, 2003
<b>Subdivision AA</b>	
Subdiv. AA of Div. 1 of Part 3 .....	ad. No. 88, 2003
Ss. 15B, 15C .....	ad. No. 88, 2003
<b>Subdivision H</b>	
Subdiv. H of Div. 1 of Part 3 .....	ad. No. 82, 2001
S. 25A .....	ad. No. 82, 2001
<b>Subdivision I</b>	
Subdiv. I of Div. 1 of Part 3 .....	ad. No. 82, 2001
Ss. 25B–25F .....	ad. No. 82, 2001
<b>Division 2</b>	
<b>Subdivision A</b>	
Note to s. 26(3) .....	rep. No. 88, 2003
Notes 1, 2 to s. 26(3) .....	ad. No. 88, 2003
Note 2 to s. 27A(6) .....	rs. No. 88, 2003
Note 3 to s. 27A(6) .....	ad. No. 88, 2003
<b>Subdivision AA</b>	
Subdiv. AA of Div. 2 of Part 3 .....	ad. No. 88, 2003
Ss. 27B, 27C .....	ad. No. 88, 2003
<b>Subdivision B</b>	
Note to s. 28(1) .....	rep. No. 88, 2003
Notes 1, 2 to s. 28(1) .....	ad. No. 88, 2003
<b>Subdivision C</b>	
Subdiv. C of Div. 2 of Part 3 .....	ad. No. 88, 2003
S. 28AA .....	ad. No. 88, 2003
<b>Part 4</b>	
<b>Division 2</b>	
<b>Subdivision B</b>	
S. 34 .....	am. No. 88, 2003

## Table of Amendments

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision C</b>	
S. 34BA .....	ad. No. 88, 2003
S. 34F .....	ad. No. 88, 2003
<b>Division 4</b>	
<b>Subdivision A</b>	
S. 38 .....	rs. No. 30, 2002
<b>Subdivision B</b>	
S. 40 .....	am. No. 30, 2002
<b>Subdivision C</b>	
S. 42 .....	am. No. 30, 2002
<b>Division 6</b>	
Div. 6 of Part 4 .....	ad. No. 82, 2001
Ss. 43A, 43B .....	ad. No. 82, 2001
<b>Chapter 3</b>	
<b>Part 5</b>	
<b>Division 2</b>	
<b>Subdivision B</b>	
S. 51A .....	ad. No. 88, 2003
<b>Division 3</b>	
<b>Subdivision A</b>	
Heading to s. 63(1) .....	am. No. 63, 2002
<b>Chapter 4</b>	
<b>Part 7</b>	
<b>Division 1</b>	
S. 70 .....	am. No. 82, 2001
S. 74 .....	am. No. 88, 2003; No. 32, 2005
S. 74A .....	ad. No. 88, 2003
<b>Division 2</b>	
S. 75.....	am. No. 88, 2003
S. 77.....	am. No. 88, 2003
S. 77A .....	ad. No. 88, 2003
S. 78.....	am. No. 88, 2003
<b>Part 8</b>	
<b>Division 2</b>	
S. 84 .....	am. No. 88, 2003
<b>Division 7</b>	
<b>Subdivision E</b>	
S. 124 .....	am. No. 92, 1999
S. 125 .....	am. No. 92, 1999



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
<b>Part 9</b>	
<b>Division 1</b>	
<b>Subdivision B</b>	
S. 137 .....	rs. No. 88, 2003
S. 137A .....	ad. No. 88, 2003
<b>Division 2</b>	
S. 142A .....	am. No. 9, 2006
<b>Part 10</b>	
<b>Division 1</b>	
S. 146 .....	am. No. 82, 2001
Note 1 to s. 146(2) .....	am. No. 82, 2001
<b>Division 2</b>	
Ss. 148–150 .....	am. No. 82, 2001
S. 151 .....	am. No. 82, 2001; No. 63, 2002
<b>Chapter 5</b>	
Heading to Chapter 5 .....	rs. No. 88, 2003
<b>Part 12</b>	
<b>Division 2</b>	
S. 176 .....	am. No. 88, 2003
<b>Part 13</b>	
<b>Division 1</b>	
<b>Subdivision B</b>	
S. 197 .....	am. No. 82, 2001
<b>Subdivision C</b>	
S. 208A .....	ad. No. 82, 2001
<b>Division 2</b>	
<b>Subdivision B</b>	
S. 212 .....	am. No. 82, 2001
<b>Subdivision C</b>	
S. 222A .....	ad. No. 82, 2001
<b>Division 3</b>	
<b>Subdivision A</b>	
S. 224 .....	am. No. 82, 2001
<b>Subdivision C</b>	
S. 231 .....	am. No. 82, 2001
<b>Subdivision D</b>	
Heading to Subdiv. D of .....	rs. No. 82, 2001
Div. 3 of Part 13	
Ss. 232A, 232B .....	ad. No. 82, 2001
Ss. 233, 234 .....	am. No. 82, 2001
Heading to s. 235 .....	am. No. 82, 2001
S. 235 .....	am. No. 82, 2001

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision F</b>	
S. 238 .....	am. No. 82, 2001
<b>Subdivision G</b>	
Heading to s. 245 .....	am. No. 82, 2001
S. 245 .....	am. No. 82, 2001
<b>Division 4</b>	
<b>Subdivision B</b>	
S. 255 .....	am. No. 82, 2001
<b>Subdivision C</b>	
Heading to s. 265 .....	am. No. 82, 2001
S. 265 .....	am. No. 82, 2001
<b>Part 13A</b>	
Part 13A .....	ad. No. 82, 2001
<b>Division 1</b>	
S. 303BA .....	ad. No. 82, 2001
S. 303BAA .....	ad. No. 82, 2001
Ss. 303BB, 303BC .....	ad. No. 82, 2001
<b>Division 2</b>	
<b>Subdivision A</b>	
Ss. 303CA, 303CB .....	ad. No. 82, 2001
<b>Subdivision B</b>	
Ss. 303CC–303CK .....	ad. No. 82, 2001
<b>Subdivision C</b>	
Ss. 303CL–303CN .....	ad. No. 82, 2001
<b>Division 3</b>	
<b>Subdivision A</b>	
Ss. 303DA–303DC .....	ad. No. 82, 2001
<b>Subdivision B</b>	
Ss. 303DD–303DJ .....	ad. No. 82, 2001
<b>Division 4</b>	
<b>Subdivision A</b>	
Ss. 303EA–303EC .....	ad. No. 82, 2001
<b>Subdivision B</b>	
Ss. 303ED–303EJ .....	ad. No. 82, 2001
<b>Subdivision C</b>	
Ss. 303EK–303EQ .....	ad. No. 82, 2001
<b>Subdivision D</b>	
Ss. 303ER–303EW .....	ad. No. 82, 2001
<b>Division 5</b>	
<b>Subdivision A</b>	
Ss. 303FA–303FI .....	ad. No. 82, 2001

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
<b>Subdivision B</b>	
Ss. 303FJ–303FR .....	ad. No. 82, 2001
S. 303FRA .....	ad. No. 82, 2001
Ss. 303FS–303FU .....	ad. No. 82, 2001
<b>Division 6</b>	
Ss. 303GA–303GI .....	ad. No. 82, 2001
S. 303GJ .....	ad. No. 82, 2001 am. No. 38, 2005
Ss. 303GK–303GY .....	ad. No. 82, 2001
<b>Part 14</b>	
Ss. 304–306 .....	am. No. 88, 2003
S. 309 .....	am. No. 88, 2003
<b>Part 15</b>	
<b>Division 1</b>	
<b>Subdivision D</b>	
S. 318 .....	rs. No. 88, 2003
<b>Subdivision F</b>	
S. 323 .....	am. No. 88, 2003
<b>Division 1A</b>	
Div. 1A of Part 5 .....	ad. No. 88, 2003
<b>Subdivision A</b>	
Ss. 324A, 324B .....	ad. No. 88, 2003
<b>Subdivision B</b>	
Ss. 324C–324H .....	ad. No. 88, 2003
Ss. 324J–324N .....	ad. No. 88, 2003
Ss. 324P–324R .....	ad. No. 88, 2003
<b>Subdivision C</b>	
Ss. 324S–324W .....	ad. No. 88, 2003
<b>Subdivision D</b>	
S. 324X .....	ad. No. 88, 2003
<b>Subdivision E</b>	
S. 324Y .....	ad. No. 88, 2003
<b>Subdivision F</b>	
S. 324Z .....	ad. No. 88, 2003
S. 324ZA .....	ad. No. 88, 2003
<b>Subdivision G</b>	
S. 324ZB .....	ad. No. 88, 2003
<b>Subdivision H</b>	
S. 324ZC .....	ad. No. 88, 2003
<b>Division 2</b>	
<b>Subdivision D</b>	
S. 330 .....	rs. No. 88, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 3A</b>	
Div. 3A of Part 5 .....	ad. No. 88, 2003
<b>Subdivision A</b>	
Ss. 341A, 341B .....	ad. No. 88, 2003
<b>Subdivision B</b>	
Ss. 341C–341H .....	ad. No. 88, 2003
Ss. 341J–341N .....	ad. No. 88, 2003
Ss. 341P–341R .....	ad. No. 88, 2003
<b>Subdivision C</b>	
Ss. 341S–341X .....	ad. No. 88, 2003
<b>Subdivision D</b>	
S. 341Y .....	ad. No. 88, 2003
<b>Subdivision E</b>	
S. 341Z .....	ad. No. 88, 2003
Ss. 341ZA–341ZE .....	ad. No. 88, 2003
<b>Subdivision F</b>	
S. 341ZF .....	ad. No. 88, 2003
<b>Subdivision G</b>	
S. 341ZG .....	ad. No. 88, 2003
<b>Subdivision H</b>	
S. 341ZH .....	ad. No. 88, 2003
<b>Division 4</b>	
<b>Subdivision E</b>	
S. 367 .....	am. No. 88, 2003
<b>Chapter 6</b>	
<b>Part 16</b>	
Heading to Part 16 of .....	rs. No. 88, 2003
Chapter 6	
S. 391 .....	am. No. 82, 2001; No. 88, 2003; No. 9, 2006
S. 391A .....	ad. No. 88, 2003
<b>Part 17</b>	
<b>Division 1</b>	
<b>Subdivision A</b>	
S. 393 .....	am. No. 146, 1999
<b>Subdivision B</b>	
S. 397 .....	am. No. 82, 2001
S. 399 .....	am. No. 82, 2001
<b>Division 2</b>	
S. 404 .....	am. No. 82, 2001
<b>Division 3</b>	
Ss. 408, 409 .....	am. No. 82, 2001
S. 411 .....	am. No. 41, 2003

**Table of Amendments**


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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
<b>Division 4</b>	
S. 425 .....	am. No. 41, 2003
S. 427 .....	am. No. 9, 2006
<b>Division 6</b>	
S. 430 .....	am. No. 82, 2001
<b>Division 7</b>	
S. 442 .....	am. No. 82, 2001
<b>Division 8A</b>	
Div. 8A of Part 17 .....	ad. No. 82, 2001
S. 443A .....	ad. No. 82, 2001
<b>Division 9</b>	
S. 444 .....	am. No. 82, 2001
<b>Division 10</b>	
<b>Subdivision AA</b>	
Subdiv. AA of Div. 10 of Part 17 .....	ad. No. 82, 2001
Ss. 444A–444H .....	ad. No. 82, 2001
Ss. 444J, 444K .....	ad. No. 82, 2001
<b>Subdivision C</b>	
S. 450 .....	am. No. 82, 2001
<b>Subdivision D</b>	
S. 451 .....	am. No. 82, 2001
<b>Division 17</b>	
S. 489 .....	am. No. 82, 2001
<b>Division 18</b>	
S. 495 .....	am. No. 88, 2003
<b>Part 19</b>	
<b>Division 5</b>	
<b>Subdivision C</b>	
S. 514M .....	am. No. 92, 1999
<b>Subdivision E</b>	
S. 514U .....	am. No. 92, 1999
<b>Part 20</b>	
S. 515 .....	am. No. 88, 2003
<b>Part 20A</b>	
Part 20A .....	ad. No. 88, 2003
S. 515A .....	ad. No. 88, 2003
<b>Part 21</b>	
<b>Division 1</b>	
S. 516A .....	am. No. 92, 1999; No. 82, 2001
<b>Chapter 7</b>	
<b>Part 22</b>	

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## Table of Amendments

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 517 .....	am. No. 82, 2001
S. 520 .....	am. No. 82, 2001; No. 63, 2002
S. 522B .....	rep. No. 82, 2001
<b>Chapter 8</b>	
<b>Part 23</b>	
<b>Division 1</b>	
<b>Subdivision A</b>	
S. 523 .....	am. No. 82, 2001; No. 63, 2002
S. 524B .....	rep. No. 82, 2001
<b>Subdivision C</b>	
S. 526 .....	am. No. 55, 2001
<b>Subdivision E</b>	
Subdiv. E of Div. 1 of .....	ad. No. 82, 2001
Part 23	
Ss. 527A–527D .....	ad. No. 82, 2001
<b>Division 2</b>	
S. 528 .....	am. No. 82, 2001; Nos. 30 and 63, 2002; No. 88, 2003

**Note 2**

*Environment and Heritage Legislation Amendment Act (No. 1) 2003*  
(No. 88, 2003)

The following amendments commence on the later of Schedule 1 or section 9 of the Act that establishes the Director of Heritage Protection:

**Schedule 2**

**1 After subsection 324G(4)**

Insert:

- (4A) If, in making an assessment, the Australian Heritage Council considers that the place might have indigenous heritage value, it must:
- (a) ask the Director of Indigenous Heritage Protection to provide written advice on the place's indigenous heritage value:
    - (i) within 40 business days if the Minister requested the assessment under section 324E or this section; or
    - (ii) within 20 business days if the Minister requested the assessment under section 324F (emergency listing); or
    - (iii) within a reasonable period if the Council is making the assessment under this section on the Council's own initiative; and
  - (b) if the Director provides the advice on time—consider the advice and give a copy of it to the Minister with the assessment.

Note: This item will only commence after the commencement of section 9 of the Act that establishes the Director of Indigenous Heritage Protection (see section 2 of this Act).

**2 After paragraph 324J(8)(b)**

Insert:

- (ba) the advice (if any) of the Director of Indigenous Heritage Protection, a copy of which was given to the Minister by the Council under paragraph 324G(4A)(b) with the assessment; and

Note: This item will only commence after the commencement of section 9 of the Act that establishes the Director of Indigenous Heritage Protection (see section 2 of this Act).

## **Note 2**

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### **3 After subsection 341G(4)**

Insert:

- (4A) If, in making an assessment, the Australian Heritage Council considers that the place might have indigenous heritage value, it must:
- (a) ask the Director of Indigenous Heritage Protection to provide written advice on the place's indigenous heritage value:
    - (i) within 40 business days if the Minister requested the assessment under section 341E or this section; or
    - (ii) within 20 business days if the Minister requested the assessment under section 341F (emergency listing); or
    - (iii) within a reasonable period if the Council is making the assessment under this section on the Council's own initiative; and
  - (b) if the Director provides the advice on time—consider the advice and give a copy of it to the Minister with the assessment.

Note: This item will only commence after the commencement of section 9 of the Act that establishes the Director of Indigenous Heritage Protection (see section 2 of this Act).

### **4 After paragraph 341J(8)(b)**

Insert:

- (ba) the advice (if any) of the Director of Indigenous Heritage Protection, a copy of which was given to the Minister by the Council under paragraph 341G(4A)(b) with the assessment; and

Note: This item will only commence after the commencement of section 9 of the Act that establishes the Director of Indigenous Heritage Protection (see section 2 of this Act).

As at 10 April 2006 the amendments are not incorporated in this compilation.



**Note 3**

*Offshore Petroleum (Repeals and Consequential Amendments) Act 2006*  
(No. 17, 2006)

The following amendment commences on proclamation:

**Schedule 2**

**21 Paragraph 524(3)(f)**

Repeal the paragraph, substitute:

(f) the *Offshore Petroleum Act 2006*;

As at 10 April 2006 the amendment is not incorporated in this compilation.

## Table A

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### Table A

#### Application, saving or transitional provisions

*Environmental Reform (Consequential Provisions) Act 1999* (No. 92, 1999)

### Schedule 9

#### 1 Regulation-making power

- (1) The Governor-General may make regulations prescribing matters:
  - (a) permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make transitional or saving provisions relating to either or both of the following:
  - (a) the enactment of the *Environment Protection and Biodiversity Conservation Act 1999*;
  - (b) the repeal of all or any of the Acts repealed by this Act.
- (3) Subitem (2) does not limit subitem (1).

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*Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act 2001* (No. 82, 2001)

### Schedule 1

#### 70 Transitional—applications pending immediately before this item commenced

- (1) For the purposes of this item, an application for a permit or authority to export or import a specimen is a *pending application* if:
  - (a) the application was made by a person under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* (other than section 41 or 43A) before the commencement of this item; and
  - (b) the application was not withdrawn before that commencement; and

**Table A**

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- (c) the permit or authority was neither granted, nor refused, before that commencement.
- (2) If:
- (a) the pending application is an application for a permit or authority to export or import a CITES specimen; and
  - (b) within 28 days after the commencement of this item, the person pays the fee prescribed by the regulations;
- the person is taken, on the day on which the fee is paid, to have made an application (the ***fresh application***) under section 303CE of the *Environment Protection and Biodiversity Conservation Act 1999* for a permit to be issued under section 303CG of that Act authorising the export or import, as the case may be, of the specimen.
- (3) If:
- (a) the pending application is an application for a permit or authority to export a regulated native specimen (other than a CITES specimen); and
  - (b) within 28 days after the commencement of this item, the person pays the fee prescribed by the regulations;
- the person is taken, on the day on which the fee is paid, to have made an application (the ***fresh application***) under section 303DE of the *Environment Protection and Biodiversity Conservation Act 1999* for a permit to be issued under section 303DG of that Act authorising the export of the specimen.
- (4) If:
- (a) the pending application is an application for a permit or authority to import a regulated live specimen (other than a CITES specimen); and
  - (b) within 28 days after the commencement of this item, the person pays the fee prescribed by the regulations;
- the person is taken, on the day on which the fee is paid, to have made an application (the ***fresh application***) under section 303EL of the *Environment Protection and Biodiversity Conservation Act 1999* for a permit to be issued under section 303EN of that Act authorising the import of the specimen.
- (5) If information was given to the Minister in connection with the pending application, the information is taken to have been given to the Minister in connection with the fresh application.
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**Table A**

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- (6) At the same time as the fee was paid, or at any time during the 28-day period beginning on the day on which the fee was paid, the person may:
- (a) give the Minister a written notice:
    - (i) setting out information relevant to the fresh application; and
    - (ii) requesting the Minister to have regard to the information when dealing with the fresh application; or
  - (b) give the Minister a written notice requesting the Minister to consider the fresh application as soon as practicable.
- (7) If the person gives the Minister a notice under paragraph (6)(a), the Minister must have regard to the information when considering the fresh application.
- (8) The Minister must not consider the fresh application until whichever is the earlier of the following days:
- (a) the first day after the end of the 28-day period beginning on the day on which the fee was paid;
  - (b) if the person gives the Minister a notice under paragraph (6)(a) or (b)—the day on which the notice was given.
- (9) For the purposes of the application of sections 303CF, 303CI, 303DF, 303DH, 303EM, 303EO and 303GB of the *Environment Protection and Biodiversity Conservation Act 1999* to the fresh application, the period of 40 business days is to be increased by one business day for each business day in the period beginning on the day on which the fee was paid and ending on whichever is the earlier of the following days:
- (a) the last day of the 28-day period beginning on the day on which the fee was paid;
  - (b) if the person gives the Minister a notice under paragraph (6)(a) or (b)—the day on which the notice was given.
- (10) If, before the commencement of this item, the person paid a fee in respect of the grant of the permit or authority under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*:
- (a) the Commonwealth must refund the fee unless the person elects to treat the payment as fully discharging the person's liability to pay the fee for the fresh application worked out under whichever of subitem (2), (3) or (4) is applicable; and

**Table A**

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- (b) if, under paragraph (a), the person elects to treat a payment as fully discharging the person's liability to pay a fee under whichever of subitem (2), (3) or (4) is applicable, the fee is taken to have been paid when the election was made.
- (11) Subsections 303CE(2), 303DE(2) and 303EL(2) of the *Environment Protection and Biodiversity Conservation Act 1999* do not apply to the fresh application.
- (12) A fee under subitem (2) must not exceed the fee that would have been payable under subsection 303CE(2) of the *Environment Protection and Biodiversity Conservation Act 1999* if that subsection applied to the fresh application.
- (13) A fee under subitem (3) must not exceed the fee that would have been payable under subsection 303DE(2) of the *Environment Protection and Biodiversity Conservation Act 1999* if that subsection applied to the fresh application.
- (14) A fee under subitem (4) must not exceed the fee that would have been payable under subsection 303EL(2) of the *Environment Protection and Biodiversity Conservation Act 1999* if that subsection applied to the fresh application.
- (15) If, before the commencement of this item, any comments had been given to the Minister in relation to the pending application in response to a notice given under paragraph 44(1)(f) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, those comments have effect as if they had been given to the Minister in relation to the fresh application in response to a notice given under subsection 303GB(7) of the *Environment Protection and Biodiversity Conservation Act 1999*.
- (16) The Governor-General may make regulations for the purposes of subitem (2), (3) or (4).
- (17) A fee provided for under subitem (2), (3) or (4) must be reasonably related to the expenses incurred or to be incurred by the Commonwealth in relation to the matters to which the fee relates and must not be such as to amount to taxation.
- (18) In this item:  
**grant** includes give.
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**Table A**

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**71 Transitional—permits or authorities in force immediately before this item commenced**

- (1) For the purposes of this item, a permit or authority to export or to import a specimen is an *old permit* or an *old authority* if:
    - (a) the permit or authority was granted or given to a person under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* (other than section 41 or 43A) before the commencement of this item; and
    - (b) the permit or authority was in force immediately before that commencement; and
    - (c) the specimen had not been exported or imported, as the case may be, before that commencement.
  
  - (2) If the old permit or old authority authorised the export or import of a CITES specimen, the *Environment Protection and Biodiversity Conservation Act 1999* has effect as if:
    - (a) the old permit or old authority were a permit issued under section 303CG of that Act authorising the export or import, as the case may be, of the specimen; and
    - (b) the person were the holder of the section 303CG permit; and
    - (c) the section 303CG permit ceases to be in force when the old permit or old authority would have ceased to be in force if this Act had not been enacted (unless the section 303CG permit is sooner cancelled under section 303GI of the *Environment Protection and Biodiversity Conservation Act 1999*); and
    - (d) any conditions of the old permit or old authority were conditions of the section 303CG permit; and
    - (e) a notice from the Designated Authority under paragraph 45(1)(b) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* in relation to the old permit or old authority were a notice from the Secretary under paragraph 303GK(1)(b) of the *Environment Protection and Biodiversity Conservation Act 1999* in relation to the section 303CG permit.
  
  - (3) If the old permit or old authority authorised the export of a regulated native specimen (other than a CITES specimen), the *Environment Protection and Biodiversity Conservation Act 1999* has effect as if:
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**Table A**

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- (a) the old permit or old authority were a permit issued under section 303DG of that Act authorising the export of the specimen; and
  - (b) the person were the holder of the section 303DG permit; and
  - (c) the section 303DG permit ceases to be in force when the old permit or old authority would have ceased to be in force if this Act had not been enacted (unless the section 303DG permit is sooner cancelled under section 303GI of the *Environment Protection and Biodiversity Conservation Act 1999*); and
  - (d) any conditions of the old permit or old authority were conditions of the section 303DG permit; and
  - (e) a notice from the Designated Authority under paragraph 45(1)(b) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* in relation to the old permit or old authority were a notice from the Secretary under paragraph 303GK(1)(b) of the *Environment Protection and Biodiversity Conservation Act 1999* in relation to the section 303DG permit.
- (4) If the old permit or old authority authorised the import of a regulated live specimen (other than a CITES specimen), the *Environment Protection and Biodiversity Conservation Act 1999* has effect as if:
- (a) the old permit or old authority were a permit issued under section 303EN of that Act authorising the import of the specimen; and
  - (b) the person were the holder of the section 303EN permit; and
  - (c) the section 303EN permit ceases to be in force when the old permit or old authority would have ceased to be in force if this Act had not been enacted (unless the section 303EN permit is sooner cancelled under section 303GI of the *Environment Protection and Biodiversity Conservation Act 1999*); and
  - (d) any conditions of the old permit or old authority were conditions of the section 303EN permit.

**Table A**

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**72 Transitional—section 303EU of the *Environment Protection and Biodiversity Conservation Act 1999***

- (1) This item applies if a determination was in force under section 51D of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* immediately before the commencement of this item.
- (2) The *Environment Protection and Biodiversity Conservation Act 1999* has effect, after the commencement of this item, as if:
  - (a) the determination had been made by the Secretary under section 303EU of the *Environment Protection and Biodiversity Conservation Act 1999*; and
  - (b) each reference in the determination to the Designated Authority were a reference to the Secretary; and
  - (c) anything done under the determination by or in relation to the Designated Authority before the commencement of this item had been done by or in relation to the Secretary under the corresponding provision of the determination.

**73 Transitional—section 303FN of the *Environment Protection and Biodiversity Conservation Act 1999***

- (1) This item applies if:
  - (a) a declaration relating to specimens was in force under subsection 10A(2) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* immediately before the commencement of this item; and
  - (b) the declaration related to a particular operation.
- (2) The *Environment Protection and Biodiversity Conservation Act 1999* has effect, after the commencement of this item, as if:
  - (a) the declaration had been made under subsection 303FN(2) of that Act; and
  - (b) the operation were a wildlife trade operation; and
  - (c) the declaration had provided that the operation is an approved wildlife trade operation for the purposes of section 303FN of that Act; and
  - (d) the period:
    - (i) beginning on the day on which the declaration took effect; and



**Table A**

- (ii) ending when the declaration would have ceased to be in force if this Act had not been enacted;  
were specified in the declaration in accordance with subsection 303FT(4) the *Environment Protection and Biodiversity Conservation Act 1999*.

**74 Transitional—section 303FO of the *Environment Protection and Biodiversity Conservation Act 1999***

- (1) This item applies if a declaration relating to a program was in force under subsection 10(1) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* immediately before the commencement of this item.
- (2) The *Environment Protection and Biodiversity Conservation Act 1999* has effect, after the commencement of this item, as if:
  - (a) the declaration had been made under subsection 303FO(2) of that Act; and
  - (b) the program were a plan; and
  - (c) each reference in the declaration to a program were a reference to a plan; and
  - (d) each reference in the declaration to an approved management program were a reference to an approved wildlife trade management plan; and
  - (e) each reference in the declaration to the purposes of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* were a reference to the purposes of section 303FO of the *Environment Protection and Biodiversity Conservation Act 1999*; and
  - (f) the period:
    - (i) beginning on the day on which the declaration took effect; and
    - (ii) ending when the declaration would have ceased to be in force if this Act had not been enacted;  
were specified in the declaration in accordance with subsection 303FT(4) the *Environment Protection and Biodiversity Conservation Act 1999*.

**Table A**

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**75 Transitional—section 303FR of the *Environment Protection and Biodiversity Conservation Act 1999***

- (1) This item applies if:
- (a) before the commencement of this item, the Minister formulated a proposal to declare specimens under section 10A of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*; and
  - (b) before the commencement of this item, any comments had been given to the Minister in relation to the proposal in response to a notice given under section 9B of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*; and
  - (c) the proposal related to a particular operation; and
  - (d) the operation is a wildlife trade operation for the purposes of section 303FN of the *Environment Protection and Biodiversity Conservation Act 1999*; and
  - (e) after the commencement of this item, the Minister formulates a proposal (the *new proposal*) to declare the operation under subsection 303FN(2) of the *Environment Protection and Biodiversity Conservation Act 1999*.
- (2) Those comments have effect as if they had been given to the Minister in relation to the new proposal in response to a notice given under subsection 303FR(1) of the *Environment Protection and Biodiversity Conservation Act 1999*.

**76 Transitional—section 303FR of the *Environment Protection and Biodiversity Conservation Act 1999***

- (1) This item applies if:
- (a) before the commencement of this item, the Minister formulated a proposal to declare a program under section 10 of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*; and
  - (b) before the commencement of this item, any comments had been given to the Minister in relation to the proposal in response to a notice given under section 9B of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*; and
  - (c) the program is a plan; and

**Table A**

- (d) after the commencement of this item, the Minister formulates a proposal (the *new proposal*) to declare the plan under subsection 303FO(2) of the *Environment Protection and Biodiversity Conservation Act 1999*.
- (2) Those comments have effect as if they had been given to the Minister in relation to the new proposal in response to a notice given under subsection 303FR(1) of the *Environment Protection and Biodiversity Conservation Act 1999*.

**77 Transitional—section 303FU of the *Environment Protection and Biodiversity Conservation Act 1999***

- (1) This item applies if:
  - (a) a declaration relating to specimens was in force under subsection 10A(3) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* immediately before the commencement of this item; and
  - (b) the declaration related to a particular program.
- (2) The *Environment Protection and Biodiversity Conservation Act 1999* has effect, after the commencement of this item, as if the program were a program that, under regulations made for the purposes of section 303FU of that Act, is taken to be an approved commercial import program.
- (3) Subitem (2) ceases to have effect in relation to the program at:
  - (a) the time when the declaration would have ceased to be in force if this Act had not been enacted; or
  - (b) if an earlier time is specified in the regulations in relation to the program—that earlier time.
- (4) Subitem (2) does not prevent the program from becoming an approved commercial import program under regulations made for the purposes of section 303FU of the *Environment Protection and Biodiversity Conservation Act 1999* at any time after subitem (2) ceases to have effect in relation to that program.
- (5) The Governor-General may make regulations for the purposes of subitem (3).

**Table A**

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**78 Transitional—section 303GS of the *Environment Protection and Biodiversity Conservation Act 1999***

- (1) This item applies if an appointment was in force under section 75 of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* immediately before the commencement of this item.
- (2) The *Environment Protection and Biodiversity Conservation Act 1999* has effect, after the commencement of this item, as if:
  - (a) the appointment had been made under the corresponding provision of section 303GS of the *Environment Protection and Biodiversity Conservation Act 1999*; and
  - (b) each reference in the appointment to the purposes of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* were a reference to the purposes of Part 13A of the *Environment Protection and Biodiversity Conservation Act 1999*.

**79 Transitional—section 303GX of the *Environment Protection and Biodiversity Conservation Act 1999***

- (1) This item applies if a declaration was in force under subsection 8A(2) or (3) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* immediately before the commencement of this item.
- (2) The *Environment Protection and Biodiversity Conservation Act 1999* has effect, after the commencement of this item, as if:
  - (a) the declaration had been made under the corresponding provision of section 303GX of the *Environment Protection and Biodiversity Conservation Act 1999*; and
  - (b) each reference in the declaration to section 8A of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* were a reference to section 303GX of the *Environment Protection and Biodiversity Conservation Act 1999*.

**80 Transitional—section 396 of the *Environment Protection and Biodiversity Conservation Act 1999***

- (1) This item applies if an appointment or determination was in force under subsection 58(1) or (2) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* immediately before the commencement of this item.

**Table A**

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- (2) The *Environment Protection and Biodiversity Conservation Act 1999* has effect, after the commencement of this item, as if:
- (a) the appointment or determination had been made under the corresponding provision of section 396 of the *Environment Protection and Biodiversity Conservation Act 1999*; and
  - (b) the appointment or determination was revoked at the end of the 6-month period beginning at the commencement of this item; and
  - (c) in the case of a determination—each reference in the determination to particular powers conferred on an inspector by the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* were a reference to powers conferred on an inspector by the corresponding provisions of the *Environment Protection and Biodiversity Conservation Act 1999*.
- (3) This item does not prevent the Minister, at the end of that 6-month period, from making a fresh appointment or determination under section 396 of the *Environment Protection and Biodiversity Conservation Act 1999* in terms corresponding to the first-mentioned appointment or determination.

**81 Transitional—Part 17 of the *Environment Protection and Biodiversity Conservation Act 1999***

- (1) Part 17 of the *Environment Protection and Biodiversity Conservation Act 1999* applies to an offence against the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* in a corresponding way to the way in which it applies to an offence against Part 13A of the *Environment Protection and Biodiversity Conservation Act 1999*.
- (2) The *Environment Protection and Biodiversity Conservation Act 1999* has effect, after the commencement of this item, as if anything done under Part III of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* (other than section 58 or 60) before the commencement of this item had been done under the corresponding provision of Part 17 of the *Environment Protection and Biodiversity Conservation Act 1999*.
- (3) The *Environment Protection and Biodiversity Conservation Act 1999* has effect, after the commencement of this item, as if anything done under Part III of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* by or in relation to the Designated Authority before
-

## **Table A**

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the commencement of this item had been done by or in relation to the Secretary under the corresponding provision of Part 17 of the *Environment Protection and Biodiversity Conservation Act 1999*.

### **82 Transitional—regulations**

- (1) The regulations may make provision for matters of a transitional nature relating to the amendments made by Part 1 of this Schedule.
- (2) The Governor-General may make regulations for the purposes of subitem (1).

---

*Crimes Legislation Enhancement Act 2003* (No. 41, 2003)

## **Schedule 3**

### **42 Saving provision**

- (1) The amendments made by this Schedule do not invalidate:
  - (a) an instrument made under, or referring to, a Part of the *Crimes Act 1914* whose heading is repealed and substituted by this Schedule; or
  - (b) anything done under such an instrument or such a Part.
- (2) Subitem (1) has effect whether the instrument was made, or the thing was done, before or after this Act received the Royal Assent.

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*Environment and Heritage Legislation Amendment Act (No. 1) 2003*  
(No. 88, 2003)

## **Schedule 1**

### **8 Application**

- (1) This item is about the application of:
  - (a) Subdivision AA of Division 1 of Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999*; and
  - (b) Subdivision AA of Division 2 of that Part.

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**Table A**

- Note: So far as those Subdivisions have effect in relation to places and actions outside the Australian jurisdiction, those Subdivisions apply only to persons with a jurisdictional connection with Australia or the external Territories. See subsection 5(3) of that Act.
- (2) Neither Subdivision applies to a particular action if, before the commencement of this Schedule, the Minister has decided under section 75 of that Act whether the action is a controlled action (whether the decision was that the action is a controlled action or that the action is not a controlled action).

**24 Saving of agreements**

The amendment of section 305 of the *Environment Protection and Biodiversity Conservation Act 1999* by this Schedule does not affect the validity of a conservation agreement made before the commencement of this Schedule.

**25 Saving of matters prescribed by the regulations**

Matters prescribed for the purposes of section 305 of the *Environment Protection and Biodiversity Conservation Act 1999* immediately before the commencement of this Schedule are taken to be, immediately after the commencement of this Schedule, matters prescribed for the purposes of that section as amended by this Schedule.

**Schedule 3**

**1A Including World Heritage properties in National Heritage List**

- (1) This item applies to a place consisting of a property that, at any time within 6 months after this item commences, is included in the World Heritage List after being submitted by the Commonwealth to the World Heritage Committee under Article 11 of the World Heritage Convention. It does not matter whether the property was first included in the List before, on or after the commencement of this item.

*Place may be included in National Heritage List within 6 months*

- (2) The Minister may, by instrument published in the *Gazette* within 6 months after this item commences, include in the National Heritage List the place and the National Heritage values it has because of subitem (3). To avoid doubt:
- (a) all those values must be included in the List if the Minister includes the place in the List under this item; and

## Table A

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(b) this item does not prevent the Minister from including in the List at any time under the *Environment Protection and Biodiversity Conservation Act 1999*:

- (i) the place; and
- (ii) a National Heritage value the place has because of subitem (3) or otherwise.

### *World heritage values taken to cause place to meet National Heritage criteria*

(3) For the purposes of this item and the *Environment Protection and Biodiversity Conservation Act 1999*, each world heritage value that the World Heritage Committee has identified the property as having is taken to cause the place to meet a National Heritage criterion.

Note: This has the effect that, under subsection 324D(1) of the *Environment Protection and Biodiversity Conservation Act 1999*, the place has a National Heritage value corresponding to that world heritage value. Under that subsection, the place will also have another National Heritage value if the place has a heritage value that causes the place to meet one of the National Heritage criteria apart from this item.

## **1 Places may be taken to be included in the Commonwealth Heritage List**

(1) In this item:

***Register of the National Estate*** means the Register of the National Estate kept under the *Australian Heritage Commission Act 1975*, including the Interim List kept under section 26 of that Act, as in force immediately before this item commences.

(2) Within 6 months after this item commences, the Minister may determine that the Commonwealth Heritage List is taken to include a place if:

- (a) the place:
  - (ia) is, or is part of, a place to which item 1A (about World Heritage properties) applies; or
  - (i) was included, immediately before this item commences, in the Register of the National Estate; or
  - (ii) is part of a place that was included, immediately before this item commences, in the Register of the National Estate; and
- (b) the place is within a Commonwealth area; and



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**Table A**

- (c) the Minister is satisfied that the place has one or more Commonwealth Heritage values.
- (3) The Minister must ensure that the Commonwealth Heritage List specifies the Commonwealth Heritage value or values for each place that the Minister determines is taken to be included in the Commonwealth Heritage List.
- (4) A determination under subitem (2) must be in writing and a copy of the determination must be published in the *Gazette*.

**Schedule 4**

**1G Application**

The amendment of paragraph 78(1)(b) of the *Environment Protection and Biodiversity Conservation Act 1999* made by this Schedule applies in relation to notices given under section 77 of that Act after the commencement of that amendment.



# Heritage Act 1977 No 136

## Status Information

### Currency of version

This is the latest version of this legislation.

Legislation on this site is usually updated within 3 working days after a change to the legislation.

This version was last updated on 24 November 2005.

This version relates to the period commencing on 24 November 2005 to date.

### Assent date

21 December 1977

### Provisions in force

The provisions displayed in this version of the legislation have all commenced. See [Historical notes](#)

### Future operation of legislation

See [Related information](#) (if any) for additional information on Bills, uncommenced legislation, repeals, resolutions and other matters that may affect the future operation of this legislation.

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## **Related information**

### **Reprint history:**

Reprint No 1 21 August 1979

Reprint No 2 6 August 1981

Reprint No 3 13 July 1988

Reprint No 4 20 February 1992

Reprint No 5 24 March 1998

Reprint No 6 13 April 1999

Reprint No 7 18 December 2001



**New South Wales**

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An Act to conserve the environmental **heritage**→ of the State.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the [Heritage Act 1977](#).

### 2 Commencement

- (1) Section 1 and this section shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 (Repealed)

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

***affected owner or occupier***, in relation to an interim [heritage](#) order or to listing on the State [Heritage](#) Register, means:

- (a) in the case of an order or listing applicable to a place—the owner or any occupier of land that comprises the place, or
- (b) in the case of an order or listing applicable to a building, work or relic (being a relic that is attached to or forms part of land)—the owner or any occupier of land on which the building, work or relic is situated, or
- (c) in the case of an order or listing applicable to a relic that is not attached to or does not form part of land or is applicable to a moveable object—the owner of the relic or moveable object, or
- (d) in the case of an order or listing applicable to a precinct—the owners or occupiers of land in the precinct.

***approval*** includes an authority or a consent or permission.

***approved form*** means a form approved by the Minister.

***area*** has the same meaning as it has in the [Local Government Act 1993](#).

***building*** includes a part of a building, a structure or a part of a structure.

***Chairperson*** means the Chairperson of the [Heritage](#) Council, appointed as referred to in section 8 (2) (a) (i).

***Commissioner of Inquiry*** has the same meaning as in the [Environmental Planning and Assessment Act 1979](#).

***consent authority***, in relation to any act, matter or thing specified in or of a kind specified in the [Local Government Act 1993](#), any instruments made under that Act, the [Environmental Planning and Assessment Act 1979](#) or an environmental planning instrument in force thereunder, the [Strata Schemes \(Freehold Development\) Act 1973](#) or the [Strata Schemes \(Leasehold Development\) Act 1986](#) means:

- (a) the person or body with whose approval that act, matter or thing may be done or without whose approval that act, matter or thing may not be done.
- (b) (Repealed)

***conservation*** includes preservation, protection, maintenance, restoration and adaptation.

***council*** has the same meaning as it has in the [Local Government Act 1993](#).



**Court** means the Land and Environment Court.

**deferred commencement approval** means an approval referred to in section 63A (1).

**Department** means the Department of Infrastructure, Planning and Natural Resources.

**development**, in relation to land, means:

- (a) the erection of a building on that land,
- (b) the carrying out of a work in, on, over or under that land,
- (c) the use of that land or of a building or work on that land, and
- (d) the subdivision of that land,

but does not include any development of a class or description prescribed by the regulations for the purposes of this definition.

**Director** means the Director of the ◀Heritage▶ Office.

**Director-General** means the Director-General of the Department.

**environmental◀ heritage▶** means those places, buildings, works, relics, moveable objects, and precincts, of State or local ◀heritage▶ significance.

**functions** includes powers, authorities and duties.

**government instrumentality** means:

- (a) a statutory body that, or Department Head who, is required to furnish details of land to the Director-General of the Premier's Department under section 14 of the *Annual Reports (Statutory Bodies) Act 1984* or section 17 of the *Annual Reports (Departments) Act 1985*, and
- (b) a State owned corporation.

**harm** means:

- (a) in relation to a building or work—demolish, or
- (b) in relation to a relic or moveable object—damage, despoil, move or alter, or
- (c) in relation to a place or precinct—damage, despoil or develop the land that comprises the place or is within the precinct or damage or destroy any tree or other vegetation on, or remove any tree or other vegetation from, the place or precinct.

◀heritage▶ **agreement** means a ◀heritage▶ agreement under Part 3B.

◀Heritage▶ **Council** means the ◀Heritage▶ Council of New South Wales constituted under this Act.

**interim◀ heritage▶ order** means an interim ◀heritage▶ order in force under Part 3.

**item** means a place, building, work, relic, moveable object or precinct.

**list** means list on the State ◀Heritage▶ Register.

**local◀ heritage▶ significance** has the meaning given by section 4A.

**moveable object** means a moveable object that is not a relic.

**owner** has the same meaning as it has in the *Local Government Act 1993*.

**place** means an area of land, with or without improvements.

**precinct** means an area, a part of an area, or any other part of the State.

**regulations** means the regulations made under this Act.

**relic** means any deposit, object or material evidence:

- (a) which relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and
- (b) which is 50 or more years old.

**State◀ heritage▶ significance** has the meaning given by section 4A.

**State◀ Heritage▶ Register** means the State ◀Heritage▶ Register kept under Part 3A.

**Valuer-General** means the valuer-general appointed under the *Valuation of Land Act 1916*.

- (2) A reference in this Act to an item of the environmental ◀heritage▶ is a reference to an item that comprises part of the environmental◀ heritage▶.
- (2A) A reference in this Act to the excavation of land extends to the excavation of any land beneath State waters within the meaning of Part 3C, and includes a reference to the dredging of a body of water or watercourse.
- (3) A reference in this Act to the exercise of a function includes, where that function is a duty, a reference to the performance of that duty.
- (4) Where functions are conferred or imposed by or under this Act on a council, those functions may be exercised in respect of an area by the council of that area.
- (5) A reference in this Act to:
  - (a) the erection of a building includes a reference to the rebuilding, enlargement or extension of a building or the placing or relocating of a building on land,
  - (b) the alteration of a building or work is a reference to the making of changes to the internal or external fabric or appearance of that building or work whether or not involving:
    - (i) the carrying out of structural work, or
    - (ii) the repair or renovation, or the painting, plastering or other decoration, of that building or work,
  - (c) the carrying out of a work includes a reference to the rebuilding, enlargement or extension of a work,
  - (c1) a work includes a reference to any physical activity in relation to land that is specified by a regulation to be a work for the purposes of this Act but does not include a reference to any activity that is specified by a regulation not to be a work for the purposes of this Act,
  - (d) the subdivision of land is a reference to the subdivision of land as defined by section 4B of the *Environmental Planning and Assessment Act 1979*,
  - (e) the demolition of a building or work is a reference to the damaging, defacing, destruction, pulling down or removal of that building or work, in whole or in part, and
  - (f) the carrying out of development includes a reference to the erection of a building, the carrying out of a work, the use of land or of a building or work, or the subdivision of land, as the case may require.
- (6) A reference in this Act to a prescribed form includes a reference to a form that is to the effect of that prescribed form.

## 4A ◀Heritage▶ significance—interpretation

(1) In this Act:

**State ◀heritage▶ significance**, in relation to a place, building, work, relic, moveable object or precinct, means significance to the State in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item.

**local ◀heritage▶ significance**, in relation to a place, building, work, relic, moveable object or precinct, means significance to an area in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item.

(2) An item can be both of State ◀heritage▶ significance and local ◀heritage▶ significance. An item that is of local ◀heritage▶ significance may or may not be of State ◀heritage▶ significance.

(3) The ◀Heritage▶ Council is to notify the Minister of the criteria that it uses for the making of decisions as to whether or not an item is of State ◀heritage▶ significance and is to notify the Minister of any change to those criteria that may occur from time to time. The Minister is to cause notice of the criteria and any such change to the criteria to be published in the Gazette.

## 5 Act binds Crown

This Act binds the Crown not only in right of New South Wales but also, as far as the legislative power of Parliament permits, the Crown in all its other capacities.

## Part 2 The ◀Heritage▶ Council of New South Wales

### Division 1 Constitution of the ◀Heritage▶ Council

#### 6 Definitions

In this Division:

**appointed member** means a member appointed by the Minister under section 8 (2).

**member** means a member of the ◀Heritage▶ Council and includes, where an alternate member is acting during the absence or illness of an appointed member, that alternate member.

#### 7 The Council

There is hereby constituted a ◀Heritage▶ Council of New South Wales.

#### 8 Members of the ◀Heritage▶ Council

(1) The ◀Heritage▶ Council is to consist of 15 members, 12 of whom are to be appointed by the Minister.

(2) Of the members to be appointed by the Minister:

(a) six are to be:

(i) a person who is appointed, in and by the person's instrument of appointment, as the Chairperson of the ◀Heritage▶ Council, and

(ii) a person appointed from a panel of 3 persons nominated by the National Trust of Australia (New South Wales), and

(iii) a person appointed from a panel of 3 persons nominated by the Royal Australian Historical Society, and

(iv) a person nominated by the Director-General who is an officer of the Department, and

(v) a person appointed from a panel of 3 persons nominated jointly by the Council of the Royal Australian

Institute of Architects (New South Wales Chapter) and the Planning Institute of Australia (New South Wales Division), and

(vi) a person appointed from a panel of 3 persons nominated by Unions NSW, and

(b) six are to be persons who, in the opinion of the Minister, possess suitable qualifications, knowledge and skills relating to any of the following areas:

- (i) Aboriginal ◀heritage▶,
- (ii) the building, development and property industries,
- (iii) corporate promotion,
- (iv) the conservation of the environmental◀ heritage▶,
- (v) local government,
- (vi) moveable ◀heritage▶,
- (vii) natural ◀heritage▶,
- (viii) the property rights of citizens,
- (ix) rural interests.

(3) The other 3 members are to be:

- (a) the Government Architect, and
- (b) the Director-General of the Department of Environment and Conservation, and
- (c) the Director.

(4) If, for the purposes of this section, a nomination of a person for appointment as a member or a panel of such persons is not made within the time or in the manner specified by the Minister in a notice in writing given to the body or person entitled to make the nomination, the Minister may appoint any person to be a member instead of the person required to be appointed on that nomination or from that panel, as the case may be.

(5) The Government Architect may appoint an architect employed in the Government Architect's Office in the Department of Commerce as a deputy to act on his or her behalf at any meeting of the ◀Heritage▶ Council that he or she is unable to attend. The deputy so appointed is entitled to act accordingly.

(6) The Director-General of the Department of Environment and Conservation may appoint an officer of the Department of Environment and Conservation as a deputy to act on his or her behalf at any meeting of the◀ Heritage▶ Council that he or she is unable to attend. The deputy so appointed is entitled to act accordingly.

(7) The Director of the ◀Heritage▶ Office may appoint an officer employed in the ◀Heritage▶ Office as a deputy to act on his or her behalf at any meeting of the ◀Heritage▶ Council that he or she is unable to attend. The deputy so appointed is entitled to act accordingly.

## 9 Term of office

Subject to this Part, an appointed member holds office for such period not exceeding 3 years as is specified in the instrument by which the appointment is made and, if eligible for reappointment, may be reappointed for 2 further terms of office each for such period not exceeding 3 years as is specified in the instrument by which each reappointment is made.

## 10 Removal from office

The Minister may for any cause which to the Minister seems sufficient remove from office any appointed member.

## 11 Vacation of office

An appointed member shall be deemed to have vacated his or her office if the member:

- (a) dies,
- (b) resigns his or her office by writing under his or her hand addressed to the Minister and the Minister accepts his or her resignation,
- (c) is absent from 4 consecutive ordinary meetings of the [Heritage](#) Council of which reasonable notice has been given to the member, unless with leave granted to the member by the [Heritage](#) Council,
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
- (e) becomes a mentally incapacitated person,
- (f) is convicted in New South Wales of an indictable offence that is punishable by imprisonment for 12 months or upwards, or if the member is convicted elsewhere than in New South Wales of an indictable offence that if committed in New South Wales, would be an offence so punishable,
- (g) being the member appointed under section 8 (2) (a) (iv), ceases to be an officer of the Department,
- (h) is removed from office by the Minister.

## 12 Filling of casual vacancy

On the occurrence of a vacancy in the office of an appointed member, otherwise than by the expiration of the term for which the member was appointed, the Minister may appoint a person to hold that office for the balance of his or her predecessor's term of office, being a person qualified or nominated under section 8 (2) in the same manner, if any, as that predecessor.

## 13 Alternate members

- (1) The Minister may at any time appoint, as an alternate member to act during the absence or illness of an appointed member, a person qualified or nominated under section 8 (2) in the same manner, if any, as the person for whom he or she is the alternate member.
- (2) An alternate member, other than an alternate member for the Chairperson or Deputy Chairperson, shall have and may exercise, while acting as a member of the [Heritage](#) Council, the functions, as such a member, of the person for whom he or she is the alternate member.
- (3) Any alternate member for the Chairperson or Deputy Chairperson has and may exercise, while acting as a member of the [Heritage](#) Council, the functions, as such a member, of a member of the [Heritage](#) Council other than the Chairperson or Deputy Chairperson.

## 14 Chairperson

The Chairperson is to preside at all meetings of the [Heritage](#) Council at which the Chairperson is present, unless the Chairperson requests the Deputy Chairperson to preside.

### 14A Deputy Chairperson

- (1) The Minister may appoint a member to be the Deputy Chairperson.
- (2) The Deputy Chairperson is to preside at a meeting of the [Heritage](#) Council in the absence of the Chairperson or when the Chairperson requests the Deputy Chairperson to preside.

## 15 Absence of Chairperson and Deputy Chairperson

If both the Chairperson and the Deputy Chairperson are absent from a meeting of the [Heritage](#) Council, a member

appointed by the members present at the meeting is to preside at the meeting.

## 16 Chairperson's vote

The Chairperson or member presiding at a meeting of the ◀Heritage▶ Council shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.

## 17 Quorum

- (1) Eight members shall form a quorum at any meeting of the ◀Heritage▶ Council and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Council.
- (2) Questions arising at a meeting of the ◀Heritage▶ Council shall be determined by a majority of votes of the members present and voting.

## 18 Procedure

The procedure for the calling of meetings of the ◀Heritage▶ Council and for the conduct of business at those meetings shall, subject to this Part and any regulations made in relation thereto, be as determined by the Council.

## 19 Minutes of meetings

- (1) The ◀Heritage▶ Council shall cause minutes of the proceedings and decisions at each meeting of the Council to be kept and shall furnish the Minister with a copy of those minutes as soon as practicable after each meeting.
- (2) A copy of those minutes which have been furnished to the Minister in accordance with subsection (1) shall be available for public inspection without charge at the office of the ◀Heritage▶ Council during ordinary office hours.

## 20 Remuneration

Each member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

## Division 2 Functions of the ◀Heritage▶ Council

### 21 Functions of the ◀Heritage▶ Council

- (1) The functions of the ◀Heritage▶ Council are:
  - (a) to make recommendations to the Minister for or with respect to the exercise by the Minister of any functions conferred or imposed on the Minister by or under this Act or the regulations,
  - (b) to make recommendations to the Minister relating to the taking of measures for or with respect to:
    - (i) the conservation of,
    - (ii) the exhibition or display of,
    - (iii) the provision of access to, and
    - (iv) the publication of information concerning,
 items of the environmental ◀heritage▶,
  - (c) to carry out investigations, research and inquiries relating to the matters referred to in paragraph (b),
  - (d) to arrange and co-ordinate consultations, discussions, seminars and conferences relating to the matters referred to in paragraph (b), and
  - (e) to maintain a database (to be called the State ◀Heritage▶ Inventory) listing items of State and local ◀heritage▶ significance, and
  - (f) to conduct community education concerning the State's environmental ◀heritage▶, and

(g) to exercise such other functions as are conferred or imposed on it by or under this or any other Act or the regulations.

(2) Without limiting subsection (1), the ◀Heritage▶ Council may:

(a) make submissions to persons or bodies in respect of:

- (i) environmental studies,
- (ii) draft environmental planning instruments, and
- (iii) environmental impact statements,

prepared under the *Environmental Planning and Assessment Act 1979* in so far as they relate to the environmental ◀heritage▶, and

(b) provide opinions, statements or other information relating to the environmental ◀heritage▶ to persons or bodies if the ◀Heritage▶ Council considers it appropriate to do so.

## 21A Committees of the ◀Heritage▶ Council

- (1) The ◀Heritage▶ Council may establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not members of the ◀Heritage▶ Council.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the ◀Heritage▶ Council or (subject to any determination of the ◀Heritage▶ Council) by the committee.

## 22 Registers

- (1) The ◀Heritage▶ Council is to keep a register of the following:
  - (a) items and land that are the subject of interim ◀heritage▶ orders,
  - (b) orders made under this Act,
  - (c) notices served under this Act,
  - (d) ◀heritage▶ agreements entered into under this Act.
- (2) The ◀Heritage▶ Council is also to keep the State ◀Heritage▶ Register under Part 3A.
- (3) The register kept under this section and the State ◀Heritage▶ Register are each to be available for public inspection without charge at the office of the ◀Heritage▶ Council during ordinary office hours.

## 23 Annual report

- (1) As soon as practicable after 30 June in each year, the ◀Heritage▶ Council shall prepare and present to the Minister a report on its operations and activities during the year ending on that day.
- (2) The report shall, in respect of the year for which it is prepared, include:
  - (a) a summary of the recommendations, advice and opinions made and given by the ◀Heritage▶ Council to the Minister during the year under the following provisions:
    - (i) section 24 (Minister can make interim ◀heritage▶ orders for items of State or local ◀heritage▶ significance)
    - (ii) section 32 (Minister can direct listing on State ◀Heritage▶ Register)



- (iii) section 38 (Removal of items from State ◀Heritage▶ Register)
- (iv) section 39 (Minister can enter into ◀heritage▶ agreements)
- (iva) section 50 (◀Heritage▶ Council advice on historic shipwrecks protection orders)
- (v) section 83 (◀Heritage▶ Council to be consulted in preparation of certain environmental planning instruments)
- (vi) section 136 (Order restricting harm to buildings etc)

(b) particulars of all additions to, deletions from and other amendments to the register kept under this section and the State ◀Heritage▶ Register during that year, and

(c) particulars of such financial assistance as is provided under Division 2 of Part 6 during that year.

(3) The Minister shall lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after its receipt by the Minister.

(4) The annual report of the ◀Heritage▶ Office can include any of the matters that the annual report of the ◀Heritage▶ Council is required to include under this section. The annual report of the ◀Heritage▶ Council is not required to include any matter that is included in the annual report of the ◀Heritage▶ Office.

### Part 3 Interim ◀heritage▶ orders for items of State or local ◀heritage▶ significance

#### 24 Minister can make interim ◀heritage▶ orders for items of State or local ◀heritage▶ significance

(1) The Minister may make an interim ◀heritage▶ order for a place, building, work, relic, moveable object or precinct that the Minister considers may, on further inquiry or investigation, be found to be of State or local ◀heritage▶ significance.

(2) The ◀Heritage▶ Council is to provide advice to the Minister on the making of interim ◀heritage▶ orders, either at the request of the Minister or on its own initiative.

#### 25 Minister can authorise councils to make interim ◀heritage▶ orders for items of local ◀heritage▶ significance

(1) The Minister may, by order published in the Gazette, authorise a council to make interim ◀heritage▶ orders for items in the council's area.

(2) A council authorised under this section may make an interim ◀heritage▶ order for a place, building, work, relic, moveable object or precinct in the council's area that the council considers may, on further inquiry or investigation, be found to be of local ◀heritage▶ significance, and that the council considers is being or is likely to be harmed.

(3) An interim ◀heritage▶ order made by a council is of no effect in so far as it applies to any of the following items:

- (a) an item to which an interim ◀heritage▶ order made by the Minister applies,
- (b) an item listed on the State ◀Heritage▶ Register.

(4) An authorisation under this section can be given subject to conditions and a council cannot act in contravention of the conditions of its authorisation.

(5) The Minister may at any time by notice published in the Gazette withdraw a council's authorisation or change the conditions of its authorisation. The withdrawal of a council's authorisation does not of itself affect any interim ◀heritage▶ order made before the authorisation was withdrawn.

#### 26 No notice required of intention to make interim ◀heritage▶ order



The Minister or a council is not required, before making an interim **←heritage→** order, to notify any person who will be affected by the order of the intention to make the order.

## 27 Application of interim **←heritage→** orders to curtilage and site

An interim **←heritage→** order made in respect of an item may be expressed to apply (and if so expressed does apply) to:

- (a) if the item is a building—the curtilage of that building or the site of that building, being the curtilage or site specified or described in the order, or
- (b) if the item is a work or a relic that is attached to or forms part of land—the site specified or described in the order for that work or relic.

## 28 Procedure for notifying interim **←heritage→** orders

- (1) When an interim **←heritage→** order is made, the Minister (in the case of an order made by the Minister) or the council that made the order (in the case of an order made by a council) is to do or cause the following to be done:
  - (a) the order is to be published in the Gazette,
  - (b) as soon as possible after the order is published in the Gazette, notice of the making of the order is to be given to the Chairperson and to each person who appears to the Minister or the council to be an affected owner or occupier,
  - (c) the notice to an affected owner or occupier is to include a statement as to the effect of the order and a statement of the reasons for the making of the order,
  - (d) within 7 days after the order is published in the Gazette, notice of the making of the order is to be published in a newspaper circulating in the area in which the item is situated.
- (2) An interim **←heritage→** order is taken to have been published in the Gazette even if any map or plan referred to in the order is not published with it.
- (3) An interim **←heritage→** order is not invalid merely because of:
  - (a) any failure to give notice of that order as required by this section, or
  - (b) any failure to include in that notice a statement required by this section to be included in it, or
  - (c) any error in or omission from such a statement included in the notice.

## 29 Commencement, duration and revocation of IHOs

- (1) An interim **←heritage→** order takes effect on the date of publication of the order in the Gazette.
- (2) An interim **←heritage→** order remains in force for 12 months or such shorter period as may be specified in the order, unless it is revoked sooner.
- (3) The Minister may revoke an interim **←heritage→** order made by the Minister or by a council.
- (4) A council may revoke an interim **←heritage→** order that the council has made (but cannot revoke one made by the Minister or by another council).
- (5) When an interim **←heritage→** order is revoked, the Minister (in the case of an order revoked by the Minister) or the council that revoked the order (in the case of an order revoked by a council) is to do or cause the following to be done:
  - (a) notice of the revocation of the order is to be published in the Gazette,
  - (b) as soon as possible after the notice of revocation is published in the Gazette, notice of the revocation of the order is to be given to the Chairperson and to each person who appears to the Minister or the council to be an

affected owner or occupier,

(c) within 7 days after notice of the revocation of the order is published in the Gazette, notice of the revocation of the order is to be published in a newspaper circulating in the area in which the item is situated.

(6) The listing of an item on the State ◀Heritage▶ Register revokes any interim ◀heritage▶ order in respect of that item.

### 30 Appeal against IHO made by council

(1) An affected owner or occupier may appeal to the Court against the making of an interim ◀heritage▶ order by a council.

(2) The appeal must be made within 28 days after the interim ◀heritage▶ order takes effect.

(3) The appeal does not stay an interim ◀heritage▶ order except to the extent that the Court may otherwise order.

## Part 3A State ◀Heritage▶ Register

### 31 State ◀Heritage▶ Register to be kept by ◀Heritage▶ Council

(1) There is to be a register called the State ◀Heritage▶ Register kept by the ◀Heritage▶ Council. The Register is to be kept in such form and manner as the ◀Heritage▶ Council determines.

(2) Items can only be listed on or removed from the State ◀Heritage▶ Register at the direction of the Minister, as provided by this Part.

**Note.** Schedule 1 (Savings and transitional provisions) provides for the automatic listing of items that were formerly the subject of permanent conservation orders, or that are owned by government instrumentalities and identified as being of State ◀heritage▶ significance.

### 32 Minister can direct listing on State ◀Heritage▶ Register

(1) The Minister may direct the listing on the State ◀Heritage▶ Register of a place, building, work, relic, moveable object or precinct that the Minister considers is of State ◀heritage▶ significance, but only if the ◀Heritage▶ Council recommends the listing.

(2) The ◀Heritage▶ Council may make such a recommendation to the Minister either at the request of the Minister, or on the ◀Heritage▶ Council's own initiative, or at the request of the owner of the item concerned or of the council of the area in which the item is situated.

(3) A listing in respect of an item can be expressed to apply (and if so expressed does apply) to:

(a) if the item is a building—the curtilage of that building or the site of that building, being the curtilage or site specified or described in the listing, or

(b) if the item is a work or a relic that is attached to or forms part of land—the site specified or described in the listing of that work or relic.

### 33 Procedure before recommendation for listing

(1) To recommend the listing of an item on the State ◀Heritage▶ Register, the ◀Heritage▶ Council must follow this procedure:

(a) the ◀Heritage▶ Council is to give each person that it considers to be an affected owner or occupier written notice that it is going to consider whether or not to recommend the listing of the item concerned (a *notice of intention to consider listing*),

(b) within 14 days after notice of intention to consider listing is given under paragraph (a), the ◀Heritage▶ Council is to cause a notice of intention to consider listing to be published in a newspaper circulating in the area in which the item is situated,

(c) a notice of intention to consider listing is to invite submissions on the listing and is to specify a date as the closing date for the receipt of submissions (being a date that is at least 14 days after publication of the newspaper notice) and the manner in which submissions may be made,

(d) the ◀Heritage▶ Council is to consider the submissions that are received before the closing date for receipt of submissions and is to decide within 30 days after that closing date whether or not to recommend the listing,

(e) the ◀Heritage▶ Council is to give notice of its decision to the persons given notice under paragraph (a), to the council of the area in which the item is situated, and to each of the persons who made submissions that were considered,

(f) if the decision of the ◀Heritage▶ Council is to recommend the listing, the ◀Heritage▶ Council is to make that recommendation to the Minister as soon as possible after notice is given of the decision under paragraph (e).

(2) Without limiting the submissions that can be made for the purposes of this section, any of the following submissions can be made:

(a) a submission that the item the subject of the proposed recommendation should not be subject to listing on the State ◀Heritage▶ Register by reason that it is not of State ◀heritage▶ significance,

(b) a submission that the item the subject of the proposed recommendation should not be subject to listing on the State ◀Heritage▶ Register by reason that its long-term conservation is not necessary,

(c) a submission that the item the subject of the proposed recommendation should not be subject to listing on the State ◀Heritage▶ Register by reason that listing would render the item incapable of reasonable or economic use,

(d) a submission that conservation of the item the subject of the proposed recommendation could not be achieved without causing undue financial hardship to the owner, mortgagee or lessee.

### 34 Action by Minister following recommendation for listing

(1) Within 14 days after the ◀Heritage▶ Council makes a recommendation for listing to the Minister, the Minister must:

(a) decide whether or not to direct the listing and inform the ◀Heritage▶ Council of that decision, or

(b) refer the matter to a Ministerial Review Panel for advice, or

(c) appoint a Commissioner of Inquiry to hold an inquiry into the matter.

(2) If the Minister refers the matter to a Ministerial Review Panel or appoints a Commissioner of Inquiry, the Minister must, within 14 days after the Ministerial Review Panel provides its advice or the Commissioner of Inquiry provides the Commissioner's report:

(a) consider that advice or report, and

(b) decide whether or not to direct the listing, and

(c) inform the ◀Heritage▶ Council of that decision.

### 35 Ministerial Review Panel

(1) The Minister may appoint a panel of 3 persons (a *Ministerial Review Panel*) to advise the Minister on a recommendation by the ◀Heritage▶ Council for a listing on the State ◀Heritage▶ Register.

(2) Appointment of persons to a Ministerial Review Panel is to be made on the basis of such qualifications, expertise and experience as the Minister considers relevant.

(3) The appointment of a person to a Ministerial Review Panel is to be on such terms and conditions (including as

to remuneration) as the Minister determines from time to time.

(4) The procedures of a Ministerial Review Panel are to be as determined by the Minister.

(5) A Ministerial Review Panel is to provide its advice to the Minister within 30 days after the matter concerned is referred to the Panel or within such longer period as the Minister may allow in a particular case.

### 36 Commissioner of Inquiry

(1) At an inquiry held by a Commissioner of Inquiry each of the following is entitled to appear before the Commissioner either personally or by an Australian legal practitioner or agent:

- (a) an owner, mortgagee or lessee of land to which the proposed listing will apply or of land on which is situated the building, work or relic (being a relic that is attached to or forms part of land) that will be subject to the proposed listing,
- (b) an owner of a relic (not being a relic that is attached to or forms part of land) or moveable object that will be subject to the proposed listing,
- (c) the council of the area in which the item or precinct concerned is situated,
- (d) the ←Heritage→ Council,
- (e) the Director,
- (f) any other person with the leave of the Commissioner of Inquiry.

(2) At the conclusion of the inquiry, the Commissioner of Inquiry is to provide a report in writing to the Minister containing a summary of the submissions made at the inquiry, the findings of the Commissioner with respect to those submissions and a recommendation as to how those submissions should be dealt with. The Minister is to make copies of the report available to the public after the Minister decides whether or not to direct the listing.

(3) Section 120 (Procedure at inquiries) of the *Environmental Planning and Assessment Act 1979* applies to and in respect of an inquiry by a Commissioner of Inquiry under this Part in the same way as it applies to and in respect of an inquiry by a Commission of Inquiry constituted under section 119 of that Act.

### 37 Action by ←Heritage→ Council on Minister's decision

(1) Within 14 days after being notified of the Minister's decision on a recommendation for listing on the State ←Heritage→ Register, the ←Heritage→ Council is to do the following:

- (a) give each person that it considers to be an affected owner or occupier written notice of the Minister's decision,
- (b) if the Minister's decision is to direct the listing, make the listing in accordance with the Minister's decision and cause notice of the listing to be published in the Gazette.

(2) A listing takes effect on the date of publication of the notice of listing in the Gazette. That notice need not include any map or plan referred to in the listing.

(3) A listing is not invalid merely because of any failure to give notice of the Minister's decision as required by this section.

### 38 Removal of items from State ←Heritage→ Register

(1) The Minister may direct the removal of a listing from the State ←Heritage→ Register if the Minister considers the item concerned is not of State ←heritage→ significance and the ←Heritage→ Council recommends its removal.

(2) The ←Heritage→ Council may make such a recommendation to the Minister either at the request of the Minister, or on the ←Heritage→ Council's own initiative, or at the request of the owner of the item or of the council of the area in which the item is situated.

(3) The procedure for the removal of a listing from the State ◀Heritage▶ Register is the same as the procedure for listing on the State ◀Heritage▶ Register and for that purpose the provisions of sections 33–37 apply to and in respect of the removal of a listing in the same way as they apply to and in respect of a listing.

## Part 3B ◀Heritage▶ agreements

### 39 Minister can enter into ◀heritage▶ agreements

The Minister may enter into a ◀heritage▶ agreement with the owner of an item that is listed on the State ◀Heritage▶ Register with respect to the conservation of the item. The Minister is to obtain and consider the advice of the ◀Heritage▶ Council before entering into a ◀heritage▶ agreement.

### 40 What ◀heritage▶ agreement can provide for

A ◀heritage▶ agreement in respect of an item can include provisions relating to all or any of the following:

- (a) the conservation of the item,
- (b) the financial, technical or other professional advice or assistance required for the conservation of the item,
- (c) the review of the valuation of the item or the land on which it is situated,
- (d) the restriction on the use of the item or the land on which it is situated,
- (e) requirements for the carrying out of specified works or works of a specified kind,
- (f) the standards in accordance with which the works are to be carried out,
- (g) the restriction on the kind of works that may be carried out,
- (h) the exemption of specified activities or activities of a specified kind from Part 4 (Effect of interim ◀heritage▶ orders and listing on State ◀Heritage▶ Register),
- (i) the repayment of money advanced or loaned by the Minister under section 45 (Financial and other assistance),
- (j) the public appreciation of the State ◀heritage▶ significance of the item,
- (k) the availability of the item for public inspection,
- (l) the charges made for admission,
- (m) such other matters as the Minister considers, on the advice of the ◀Heritage▶ Council, will assist in the conservation of the item,
- (n) such other matters as may be prescribed by the regulations.

### 41 Variation and termination of ◀heritage▶ agreements

The Minister may vary or terminate a ◀heritage▶ agreement by a subsequent agreement with the owner of the item concerned or in a manner specified in the original agreement. The Minister is to obtain and consider the advice of the ◀Heritage▶ Council before varying or terminating a ◀heritage▶ agreement.

### 42 Duration of ◀heritage▶ agreements

A ◀heritage▶ agreement takes effect on a date specified in the agreement and expires on a date specified in the agreement.

### 43 Registered ◀heritage▶ agreement to run with land

- (1) A ◀heritage▶ agreement can be registered under this section if the following persons agree to its registration:
  - (a) if the agreement relates to land under the *Real Property Act 1900*—each person who has an estate or

interest in the land registered under that Act, or

(b) if the agreement relates to land not under the *Real Property Act 1900*—each person who is seised or possessed of an estate or interest in the land.

(2) On lodgment by the Minister of an application for registration in a form approved by the Registrar-General, the Registrar-General is to register the agreement:

(a) by making an entry in the Register kept under the *Real Property Act 1900* if the agreement relates to land under that Act, or

(b) by registering the agreement in the General Register of Deeds if the agreement relates to land not under the *Real Property Act 1900*.

(3) A **←heritage→** agreement that has been registered by the Registrar-General under this section is binding on, and is enforceable against, the owner of the land from time to time as if each owner for the time being were the owner who entered into the agreement.

(4) A **←heritage→** agreement relating to land under the *Real Property Act 1900* about which an entry is made in a folio is an interest recorded in the folio for the purposes of section 42 of that Act.

(5) A reference in this section to a **←heritage→** agreement includes a reference to any variation or termination of the **←heritage→** agreement.

#### 44 Injunction

(1) On the application of the Minister, the Court may grant an injunction restraining a threatened or apprehended breach, or the continuation of a breach, of a **←heritage→** agreement.

(2) An injunction may be granted without the Minister being required to show a likelihood of damage.

(3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.

(4) When the Minister makes an application to the Court for the grant of an injunction under this section, the Court is not to require the Minister or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

#### 45 Financial and other assistance

(1) The Minister may provide or arrange for the provision of such financial, technical or other assistance to the owner of an item or land that is the subject of a **←heritage→** agreement as the Minister considers necessary to ensure the conservation of the item or land.

(2) The financial assistance provided under this section can only be for the payment of land tax, duty or council rates. The financial assistance is to be provided out of the **←Heritage→** Incentive Fund established under section 105A.

#### 46 **←Heritage→** agreement cannot be suspended by EPI

A **←heritage→** agreement is not a regulatory instrument for the purposes of section 28 (Suspension of laws etc by environmental planning instruments) of the *Environmental Planning and Assessment Act 1979*.

### Part 3C Protection of historic shipwrecks

#### Division 1 Preliminary

#### 47 Definitions

(1) In this Part:



**excavation permit** means an excavation permit referred to in section 139.

**historic shipwreck** means the remains of any ship (including any articles associated with the ship):

- (a) that have been situated in State waters, or otherwise within the limits of the State, for 75 years or more, or
- (b) that are the subject of a historic shipwrecks protection order.

**historic shipwrecks permit** means a historic shipwrecks permit referred to in section 51.

**historic shipwrecks protection order** means an order referred to in section 48 (1).

**Register of Shipwrecks** means the Register referred to in section 49.

**ship** includes any navigable vessel.

**State waters** means:

- (a) the coastal waters of the State (within the meaning of Part 10 of the *Interpretation Act 1987*), or
  - (b) any other waters within the limits of the State.
- (2) In this Part, a reference to an article being **associated** with a ship includes a reference to:
- (a) any article that appears to have formed part of the ship, and
  - (b) any article that appears to have been installed on, or carried in, the ship, and
  - (c) any article that appears to have been constructed or used by a person associated with the ship.
- (3) In this Part, a reference to any remains of a ship, or any article associated with a ship, being **situated in State waters** includes a reference to any such remains or article:
- (a) being situated in, or forming part of, the land beneath those waters, or
  - (b) being situated in, or forming part of, a reef in those waters.

## Division 2 Historic shipwrecks protection

### 48 Declaration of historic shipwrecks

- (1) The Minister, by order published in the Gazette, may declare to be a historic shipwreck the remains of any ship situated in State waters or otherwise within the limits of the State, and may do so regardless of the length of time for which it has been so situated.
- (2) An order under this section may relate to one or more ships or one or more articles, or to both one or more ships and one or more articles.
- (3) An order under this section must identify, in accordance with any requirements imposed by the regulations, the nature and location of the historic shipwreck to which the order relates.

### 49 Register of Shipwrecks

- (1) There is to be a register called the Register of Shipwrecks kept by the **Heritage** Council. The Register is to be kept in such form and manner as the **Heritage** Council determines.
- (2) The Register is to contain particulars of each historic shipwrecks protection order made under this Part.

### 50 **Heritage** Council advice on historic shipwrecks protection orders

The **Heritage** Council is to provide advice to the Minister on the making of historic shipwrecks protection orders, either at the request of the Minister or on its own initiative.

## Division 3 General

### 51 Movement, damage or destruction of historic shipwrecks

- (1) A person must not move, damage or destroy any historic shipwreck otherwise than in accordance with a historic shipwrecks permit.
- (2) This section does not apply to a historic shipwreck that is subject to an interim **◀heritage▶** order made by the Minister or a listing on the State **◀Heritage▶** Register.
- (3) This section does not prevent a person from moving, damaging or destroying a historic shipwreck situated in any land in accordance with an excavation permit in force in respect of that land.
- (4) It is a defence to proceedings for an offence under this section if the defendant establishes that the act giving rise to the offence was done for the purpose of:
  - (a) saving human life, or
  - (b) securing the safety of a ship where the ship was endangered by stress of weather or by navigational hazards, or
  - (c) dealing with an emergency involving a serious threat to the environment.

### 52 Part not to apply to certain waters

This Part does not apply to such of the State waters as are waters to which the *Historic Shipwrecks Act 1976* of the Commonwealth applies.

### 53–55B (Repealed)

## Part 4 Effect of interim **◀heritage▶** orders and listing on State **◀Heritage▶** Register

### Division 1 Preliminary

#### 56 Definitions

In this Part:

**approval body** means:

- (a) in respect of an interim **◀heritage▶** order made by the Minister or listing on the State **◀Heritage▶** Register—the **◀Heritage▶** Council, or
- (b) in respect of an interim **◀heritage▶** order made by a council—the council that made the order.

**integrated development** has the same meaning as in section 91 of the *Environmental Planning and Assessment Act 1979*.

**prescribed application** means an application for the approval of a consent authority under any of the following:

- (a) the *Environmental Planning and Assessment Act 1979*, not being an application under Part 3A or an application relating to integrated development,
- (b) Part 1 of Chapter 7 of the *Local Government Act 1993*,
- (c) any prescribed provision of the *Local Government Act 1993* or any prescribed provision of any instrument made under that Act,
- (d) Division 4 of Part 2 of the *Strata Schemes (Freehold Development) Act 1973*,
- (e) Division 7 of Part 2 of the *Strata Schemes (Leasehold Development) Act 1986*,



in respect of the doing or carrying out of an act, matter or thing the doing or carrying out of which requires an approval of the **Heritage** Council under Subdivision 1 of Division 3 of this Part.

## Division 2 Controlled activities

### 57 Effect of interim **heritage** orders and listing on State **Heritage** Register

(1) When an interim **heritage** order or listing on the State **Heritage** Register applies to a place, building, work, relic, moveable object, precinct, or land, a person must not do any of the following things except in pursuance of an approval granted by the approval body under Subdivision 1 of Division 3:

- (a) demolish the building or work,
- (b) damage or despoil the place, precinct or land, or any part of the place, precinct or land,
- (c) move, damage or destroy the relic or moveable object,
- (d) excavate any land for the purpose of exposing or moving the relic,
- (e) carry out any development in relation to the land on which the building, work or relic is situated, the land that comprises the place, or land within the precinct,
- (f) alter the building, work, relic or moveable object,
- (g) display any notice or advertisement on the place, building, work, relic, moveable object or land, or in the precinct,
- (h) damage or destroy any tree or other vegetation on or remove any tree or other vegetation from the place, precinct or land.

(1A) In the case of an interim **heritage** order made by a council, subsection (1) does not apply to:

(a) State significant development within the meaning of the *Environmental Planning and Assessment Act 1979*, or

(b) development, or demolition of a building or work, carried out by or on behalf of the Crown (with **Crown** including the persons prescribed for the purposes of section 116C of the *Environmental Planning and Assessment Act 1979* as referred to in section 116B (a) of that Act).

(1B) Subsection (1) does not apply to anything that is exempted from the operation of this Part by a **heritage** agreement.

(1C) Subsection (1) (d) does not apply in the case of a relic to which an interim **heritage** order made by a council applies.

(2) The Minister, on the recommendation of the **Heritage** Council, may, by order published in the Gazette, grant an exemption from subsection (1) or such of the provisions of that subsection as are specified in the order in respect of the engaging in or carrying out of such activity or class of activities by such person or class of persons in such circumstances as may be so specified. The Minister's power under this subsection extends to apply in respect of interim **heritage** orders made by councils.

(3) A council may, by order published in the Gazette, grant an exemption from subsection (1) or such of the provisions of that subsection as are specified in the order in respect of the engaging in or carrying out of such activity or class of activities by such person or class of persons in such circumstances as may be so specified. Such an exemption has effect only in respect of an interim **heritage** order made by the council concerned.

## Division 3 Applications for approval

### Subdivision 1 Applications generally

## 58 Application of Subdivision

- (1) This Subdivision applies to an application for approval in respect of the doing or carrying out of an act, matter or thing referred to in section 57 (1).
- (2) This Subdivision applies in addition to, and not in derogation from, the provisions of any other Act or statutory instrument under which an application for approval in respect of the doing or carrying out of an act, matter or thing referred to in section 57 (1) is required to be made.

## 59 Making of application

An application for approval may be made by:

- (a) the owner of the item or land the subject of the application, or
- (b) any person with the consent in writing of that owner, or
- (c) if the item or land is situated on or comprises Crown land as defined in the *Crown Lands Act 1989*, the lawful occupier of the Crown land.

## 60 Form of application

An application for approval shall be made to the approval body in the approved form and shall be accompanied by such fee as may be prescribed.

## 61 Public notice of certain applications

(1) Where an application for approval is made in respect of an item of the environmental **←heritage→** and that application, if approved, would, in the opinion of the approval body, materially affect the significance of that item as an item of the environmental **←heritage→**, the approval body shall cause public notice of that application to be given in a daily newspaper circulating throughout the State.

(1A) Public notice is not to be given under this section of an application for approval in respect of integrated development of which public notice has been given under the *Environmental Planning and Assessment Act 1979*.

(2) A notice referred to in subsection (1) shall contain a statement to the effect that the application for approval referred to in that notice and any plans, specifications or similar documents lodged in connection with that application and in the custody of the approval body may be inspected at the office of the approval body by any person during ordinary office hours within a period of 21 days after the day on which that notice is published in the newspaper in accordance with subsection (1).

(3) During the period specified in subsection (2), any person may inspect the application and any documents referred to in that subsection which have been lodged in connection with that application at the office of the approval body during ordinary office hours and make representations in writing to the approval body with respect to that application.

(4) The approval body shall not determine the application until the expiration of the period specified in subsection (2).

## 62 Matters for consideration

In determining an application for approval in respect of an item or land, the approval body shall take into consideration:

- (a) the extent to which that application, if approved, would affect the significance of any item as an item of the environmental **←heritage→**,
- (b) the representations, if any, made with respect to that application under section 61 (3),
- (c) such matters relating to the conservation of that item or land as to it seem relevant, and

- (d) such other matters as to it seem relevant.

### 63 Determination of application

(1) Except as provided by subsection (2), the approval body may determine an application for approval by granting approval to that application, either unconditionally or subject to conditions, or by refusing approval.

(1A) The determination of an application for approval in relation to integrated development is subject to Division 5 of Part 4 of the *Environmental Planning and Assessment Act 1979*.

(2) Where:

(a) an application for approval is made to demolish the whole of a building or work, or

(b) an application for approval is made which would, if it were approved, necessitate the demolition of the whole of a building or work,

the approval body shall determine that application by refusing approval.

(3) Nothing in subsection (2) prevents the approval body from approving an application referred to in that subsection if:

(a) it is of the opinion that the building or work constitutes a danger to the users or occupiers of that building or work, the public or a section of the public, or

(b) it is a condition of the approval that the building or work be relocated on other land, or

(c) the building or work is situated (whether wholly or partly) in a place or precinct that is an item of State **←heritage→** significance, but is not itself such an item, and the approval body is of the opinion that the demolition of the whole of the building or work will not have a materially detrimental effect on the **←heritage→** significance of the place or precinct.

(4) Without limiting or restricting the power of the approval body to impose conditions under subsection (1), it may, in granting approval to an application for approval, impose, as a condition of its approval, a condition:

(a) that the applicant give security in such form and such amount as is determined by the approval body having regard to the nature and extent of the work referred to in the approval to ensure the satisfactory completion of that work, and

(b) that where the approval is to the demolition, in whole or in part, of a building or work, such measures as are specified in the approval be taken in the interests of public safety and convenience with respect to the demolition.

### 63A Deferred commencement approvals

(1) An approval may be granted subject to a condition that it is not to operate until the applicant for the approval satisfies the approval body as to any matter specified in the condition (a *deferred commencement approval*).

(2) Nothing in this Act prevents a person from doing such things as may be necessary to comply with the condition.

(3) A deferred commencement approval must be clearly identified as a deferred commencement approval (whether by the use of that expression or by reference to this section or otherwise).

(4) A deferred commencement approval must clearly distinguish conditions concerning matters as to which the approval body must be satisfied before the approval can operate from any other conditions.

(5) An approval body may specify the period within which the applicant must produce evidence to the approval body sufficient enough to enable it to be satisfied as to those matters.

(6) The applicant may produce evidence to the approval body sufficient to enable it to be satisfied as to those

matters and, if the approval body has specified a period for the purpose, the evidence must be produced within that period.

(7) If the applicant produces evidence in accordance with this section, the approval body must notify the applicant whether or not it is satisfied as to the relevant matters.

(8) If the approval body has not notified the applicant within the period of 28 days after the applicant's evidence is produced to it, the approval body is, for the purposes only of sections 70 and 70A, taken to have notified the applicant that it is not satisfied as to those matters on the date on which that period expires.

### **63B Partial and conditional approvals**

(1) An approval may be granted:

- (a) for the doing or carrying out of the act, matter or thing for which the approval is sought, or
- (b) for the doing or carrying out of that act, matter or thing, except for a specified part or aspect of that act, matter or thing, or
- (c) for the doing or carrying out of a specified part or aspect of that act, matter or thing.

(2) An approval referred to in subsection (1) may be granted subject to a condition that:

- (a) the act, matter or thing for which the approval is sought, or
- (b) the specified part or aspect of that act, matter or thing, or
- (c) any thing associated with that act, matter or thing or the doing or carrying out of that act, matter or thing, must be the subject of another approval.

### **64 Notice of determination**

(1) The approval body shall give notice in writing of its determination of an application for approval to the applicant.

(2) Where the approval body determines an application for approval by granting approval subject to conditions or by refusing approval, the notice shall:

- (a) indicate the reasons for the determination, and
- (b) except in relation to the determination of an application referred to in section 63 (2) which is required to be determined by refusing approval, notify the applicant that he or she has a right of appeal under this Act against the determination.

### **65 Effect of failure to make determination**

(1) Where the approval body has not determined an application for approval (other than an application for approval in respect of integrated development) within a period of 40 days, or, where public notice of that application has been given under section 61, within a period of 60 days, after service of that application on it, it shall, for the purposes only of section 70, be deemed to have determined that application by refusing approval.

(2) Nothing in subsection (1) prevents the approval body from determining an application after the expiration of the period referred to in subsection (1) in relation to that application.

(3) The determination of an application as referred to in subsection (2) shall not, where an appeal in respect of that application has been made under section 70, prejudice or affect the making, continuance or determination of that appeal.

### **65A Modification of approvals**

(1) On application in the approved form by any person entitled to act on an approval, the approval body may

modify the approval:

(a) so as to vary any aspect of the original approval, but only if it is satisfied that the act, matter or thing authorised by the modified approval is substantially the same as the act, matter or thing authorised by the original approval, or

(b) so as to correct a minor error, misdescription or miscalculation.

(2) The provisions of sections 61, 62, 64 and 65 apply to an application under subsection (1) (a) in the same way as they apply to an application for an approval, but do not apply to or in respect of an application under subsection (1) (b).

(3) For the purposes of this section:

(a) the Minister is taken to be the approval body in relation to an approval granted by the Minister as a result of an appeal under Division 4, and

(b) the Court is taken to be the approval body in relation to an approval granted by the Court as a result of an appeal under Division 4,

but, in either case, the application for modification of the approval is to be lodged not with the Minister or Court but with the approval body to whom the application for original approval was made.

(4) Modification of an approval under this section is not to be construed as the granting of an approval, but a reference in this or any other Act to an approval includes a reference to the modified approval.

## Subdivision 2 Prescribed applications

### 66 Application of Subdivision

This Subdivision prevails the extent of any inconsistency between this Subdivision and the *Environmental Planning and Assessment Act 1979* (Part 3A and Division 5 of Part 4 excepted), any environmental planning instrument in force under that Act, the *Local Government Act 1993*, any instrument made under that Act, the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

### 67 Order of giving of approvals

An approval given by a consent authority to a prescribed application before the **←Heritage→** Council's determination of the application has been notified to the consent authority is void.

### 68 Consistency of approvals

An approval given by a consent authority to a prescribed application is, to the extent of any inconsistency with the **←Heritage→** Council's determination of the application, void.

### 69 Liability of consent authorities

Nothing in this Subdivision affects the liability of a consent authority in respect of an approval granted by it.

## Division 4 Appeals

### Subdivision 1 Appeals in respect of applications other than prescribed applications

#### 70 Appeals against certain determinations of the **←Heritage→** Council

(1) An applicant dissatisfied with a determination of the **←Heritage→** Council with respect to an application for approval, or application for modification of an approval, made under Subdivision 1 of Division 3, not being the determination of an application referred to in section 63 (2) or 65A (1) (b), may appeal to the Minister or, in the case of the determination of an application for approval, or application for modification of an approval, in respect of integrated development, to the Court:

- (a) within 12 months after the date on which the applicant received notice of that determination,
  - (b) within 12 months after the expiration of the period of 40 days or the period of 60 days, as the case may require, referred to in section 65 (1), or
  - (c) within such longer period as the Minister or the Court may in special circumstances allow.
- (2) An applicant who is dissatisfied with a decision by the **Heritage** Council to the effect that it is not satisfied as to a matter as to which it must be satisfied before a deferred commencement approval can operate may appeal to the Minister or, in the case of a decision concerning an approval in respect of integrated development, to the Court within 12 months after the **Heritage** Council notifies the applicant of its decision.

## 70A Appeal to the Court against certain council determinations

- (1) An applicant dissatisfied with a determination of a council with respect to an application for approval, or application for modification of an approval, made under Subdivision 1 of Division 3, not being the determination of an application referred to in section 63 (2) or 65A (1) (b), may appeal to the Court:
- (a) within 12 months after the date on which the applicant received notice of that determination, or
  - (b) within 12 months after the expiration of the period of 40 days or the period of 60 days, as the case may require, referred to in section 65 (1), or
  - (c) within such longer period as the Court may in special circumstances allow.
- (2) An applicant who is dissatisfied with a decision by a council to the effect that it is not satisfied as to a matter as to which it must be satisfied before a deferred commencement approval can operate may appeal to the Court within 12 months after the council notifies the applicant of its decision.

## 71 Appointment of Commissioner of Inquiry to furnish report to the Minister

Where an appeal is made to the Minister under section 70, the Minister may appoint a Commissioner of Inquiry to furnish a report to the Minister with respect to that appeal containing:

- (a) a recommendation as to whether that appeal should, in the opinion of the Commissioner, be dismissed or allowed either unconditionally or subject to such conditions as may be specified in the report, and
- (b) the reasons for that recommendation.

## 72 Right of appearance

Before making a report under section 71, the Commissioner of Inquiry shall, if either the appellant, the **Heritage** Council or a person who has made representations to the **Heritage** Council under section 61 (3) with respect to the application for approval from the determination of which the appeal has been made so desires, afford the appellant, the **Heritage** Council or the person an opportunity of appearing personally or by an Australian legal practitioner or agent.

## 73 Minister's decision

- (1) The Minister, after considering such report as may be furnished to the Minister pursuant to section 71, may:
- (a) dismiss the appeal,
  - (b) allow the approval either unconditionally or subject to such conditions as he or she thinks proper to impose,
  - (c) where the appeal is against the imposition of conditions, refuse to approve the application for approval from the determination of which the appeal has been made, or
  - (d) return the report to the Commissioner of Inquiry concerned and request further consideration of the report.
- (2) Where a report is returned under subsection (1), sections 71 and 72 and subsection (1) apply in respect of the further consideration of the report in the same way as they apply in respect of the furnishing of the report.

## 74 Effect of the Minister's decision

The decision of the Minister under section 73 (1), other than a decision under section 73 (1) (d), shall be final and shall have effect as if it were a determination of the [Heritage](#) Council.

## Subdivision 2 Appeals in respect of prescribed applications

### 75 Definition

In this Subdivision, *appeal* includes objection or reference.

### 76 Appeal to Minister in respect of prescribed applications

If, under the *Environmental Planning and Assessment Act 1979*, any environmental planning instrument in force under that Act, the *Local Government Act 1993*, any instrument made under that Act, the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, an applicant has a right of appeal arising from the making of a prescribed application, that right is to be exercised by making that appeal to the Minister, despite those Acts or any such instrument.

### 77 Manner of determining appeal

- (1) Where an appeal is made to the Minister under section 76:
  - (a) if the Minister is of the opinion that the matter the subject of the appeal has special significance for the conservation of an item of the environmental [heritage](#), he or she shall determine that appeal, or
  - (b) if the Minister is not of that opinion, he or she shall remit that appeal for hearing and determination by the Court.
- (2) The Minister shall cause notice of his or her decision under subsection (1) to be given to the person making the appeal.

### 78 Appointment of Commissioner of Inquiry to furnish report to the Minister

If the Minister, pursuant to section 77 (1) (a), decides to determine an appeal, the Minister may appoint a Commissioner of Inquiry to furnish a report to the Minister with respect to the appeal containing:

- (a) a recommendation as to whether the appeal should, in the opinion of the Commissioner, be dismissed or allowed either unconditionally or subject to such conditions as may be specified in the report, and
- (b) the reasons for the recommendation.

### 79 Right of appearance

Before making a report under section 78, the Commissioner of Inquiry must, if a party, being:

- (a) the appellant, or
- (b) the [Heritage](#) Council, or
- (c) a person who has made representations to the [Heritage](#) Council under section 61 (3) with respect to the application for approval from the determination of which the appeal has been made, or
- (d) the consent authority from whose determination, or neglect or delay to make a determination, the appeal is made,

so desires, afford the party an opportunity of appearing personally or by an Australian legal practitioner or agent.

### 79A Minister's decision

- (1) The Minister, after considering such report as may be furnished to the Minister under section 78, may:



- (a) dismiss the appeal, or
- (b) allow the appeal either unconditionally or subject to such conditions as the Minister thinks proper to impose, or
- (c) if the appeal is against the imposition of conditions, refuse to approve the application for approval from the determination of which the appeal has been made, or
- (d) return the report to the Commissioner of Inquiry concerned and request further consideration of the report.

(2) If a report is returned under subsection (1), sections 78 and 79 and subsection (1) apply in respect of the further consideration of the report in the same way as they apply in respect of the furnishing of the report.

## 79B Effect of the Minister's decision

The decision of the Minister under section 79A (1), other than a decision under section 79A (1) (d), is final and has effect as if it were a decision of the consent authority from whose determination, or neglect or delay to make a determination, the appeal is made.

## Part 5 Environmental planning instruments affecting certain land

### 80 Definition

In this Part, *environmental planning instrument* has the meaning ascribed thereto by the *Environmental Planning and Assessment Act 1979*.

### 81 Application of Part

To the extent of any inconsistency between this Part and the *Environmental Planning and Assessment Act 1979*, this Part shall prevail.

### 82 ←Heritage→ Council may request preparation of an environmental planning instrument

- (1) The ←Heritage→ Council may, with the approval of the Minister, request the Director-General or a council to prepare a draft environmental planning instrument in respect of land within a precinct to which an interim← heritage→ order made by the Minister or listing on the State ←Heritage→ Register applies in accordance with proposals submitted by the ←Heritage→ Council with its request.
- (2) Upon receipt of a request referred to in subsection (1), the Director-General or the council, as the case may be, shall consider the request and inform the ←Heritage→ Council within 60 days whether the Director-General or the council is willing and able to comply with the request.
- (3) Where the Director-General or the council informs the ←Heritage→ Council that the Director-General or the council is so willing and able, the← Heritage→ Council shall assist the Director-General or the council, as the case may be, to prepare the draft environmental planning instrument.
- (4) Where the Director-General or council does not so inform the← Heritage→ Council or informs the ←Heritage→ Council that the Director-General or the council is not so willing and able, the ←Heritage→ Council may, with the approval of the Minister, prepare or cause to be prepared the draft environmental planning instrument as if it were the Director-General or the council, as the case may be, causing the instrument to be prepared.
- (5) A draft environmental planning instrument prepared in accordance with subsection (3) or (4) shall be deemed for the purposes of the *Environmental Planning and Assessment Act 1979* to be a draft environmental planning instrument to which the provisions of section 47 or 66, as the case may be, of that Act apply.
- (6) The draft environmental planning instrument referred to in subsection (5) may be dealt with in accordance with the relevant provisions of Part 3 of the *Environmental Planning and Assessment Act 1979* succeeding the sections mentioned in subsection (5) and where an environmental planning instrument in respect of that draft is made by the Minister under the *Environmental Planning and Assessment Act 1979* that instrument shall, for the



purposes of that Act, be deemed to be made in accordance with that Act.

### **83** ←Heritage→ Council to be consulted in preparation of certain environmental planning instruments

- (1) A draft environmental planning instrument shall not make a provision in respect of or affecting land to which an interim ←heritage→ order made by the Minister or listing on the State ←Heritage→ Register applies unless the ←Heritage→ Council has proposed or been first consulted in respect of the provision.
- (2) In considering whether to make an environmental planning instrument containing a provision referred to in subsection (1), the Minister shall seek and have regard to the opinion of the ←Heritage→ Council as to whether that provision should be made, and may make the instrument with that provision included.
- (3) Subsection (2) does not apply to an environmental planning instrument referred to in section 82.

### **84 Guidelines for preparation of EPIs**

- (1) When a council prepares a local environmental plan under the *Environmental Planning and Assessment Act 1979* that will apply to land on which a building, work or relic is situated, or that comprises a place or precinct, that is an item of the environmental ←heritage→, the council must ensure that the plan (or some other local environmental plan being amended by the plan) contains provisions to facilitate the conservation of the building, work, relic, place or precinct.
- (2) The ←Heritage→ Council may from time to time issue guidelines to councils as to how councils are to exercise their functions in connection with the preparation of local environmental plans for the purpose of facilitating the identification of items of the environmental ←heritage→ of local ←heritage→ significance and their conservation and management by means of the inclusion of appropriate provisions in those instruments.
- (3) The guidelines may require the inclusion in an environmental planning instrument for the purposes of subsection (1) of model provisions formulated and notified by the ←Heritage→ Council.
- (4) Councils must comply with the ←Heritage→ Council's guidelines.

### **85–100 (Repealed)**

## **Part 6 Other measures for the conservation of the environmental ←heritage→**

### **Division 1 Preliminary**

#### **101 Definitions**

In this Part:

*corporation* means the corporation constituted by section 102.

*Fund* means the ←Heritage→ Conservation Fund established under section 103.

#### **102 Minister to be corporation sole for certain purposes**

- (1) The Minister is, for the purpose of exercising those functions expressed to be conferred or imposed on the corporation under this Part, hereby incorporated as a corporation sole with the corporate name "Minister administering the ←Heritage→ Act 1977".
- (2) The corporation:
  - (a) has perpetual succession,
  - (b) shall have an official seal,
  - (c) may take proceedings, and be proceeded against, in its corporate name,

(d) may do and suffer all other things that a body corporate generally may, by law, do and suffer and that are necessary for or incidental to the purposes for which the corporation is constituted, and

(e) is, for the purpose of any Act, a statutory body representing the Crown.

(3) The seal of the corporation shall not be affixed to any instrument or document except in the presence of the Minister, or a person authorised by the Minister, who shall attest by his or her signature the fact and date of the affixing of the seal.

(4) All courts and persons acting judicially:

(a) shall take judicial notice of the seal of the corporation that has been affixed to any instrument or document, and

(b) shall, until the contrary is proved, presume that the seal was properly affixed.

(5) Financial statements need not be prepared for the **←Heritage→** Office in respect of any matters that the financial statements of the corporation contain or provide for.

## Division 2 Finance

### 103 **←Heritage→** Conservation Fund

There shall be established in the Special Deposits Account in the Treasury a **←Heritage→** Conservation Fund.

### 104 Payments into the Fund

(1) There shall be paid into the Fund:

(a) any money appropriated by Parliament for the purposes of the Fund,

(b) money borrowed by the corporation,

(c) all money received in respect of:

(i) fees and charges under this Act or the regulations,

(ii) penalties recovered pursuant to this Act or the regulations, and

(iii) policies of insurance under which money is paid to the corporation with respect to any property in the custody or under the control of the corporation,

(d) any money acquired by the corporation pursuant to section 115,

(e) any money received by the corporation pursuant to section 116, and

(f) any other money received in connection with the administration of this Act, other than money received in such circumstances as may be prescribed.

(2) Where any money acquired by the corporation pursuant to section 115 is subject to any condition to which it has agreed, the money shall be carried to a separate account in the Fund and shall be applied in accordance with the condition.

(3) Any money referred to in subsection (2) may, pending application in accordance with the condition so referred to, be invested by the corporation with the Treasurer or in any manner in which trustees are for the time being authorised to invest trust funds.

### 105 Payments out of the Fund

(1) There may be paid out of the Fund:

(a) all charges, costs and expenses incurred by the Minister and the corporation in exercising functions under this Act,

- (b) the remuneration payable to the members of the ◀Heritage▶ Council under this Act,
- (c) money required:
  - (i) to repay money borrowed under this Division,
  - (ii) to pay interest on money so borrowed, and
  - (iii) to pay the expenses of the corporation in borrowing money under this Division,
- (d) the cost of acquiring land under Division 3,
- (e) the cost of conserving any item of the environmental ◀heritage▶ vested in the corporation,
- (f) grants or loans for the purpose of promoting and assisting the conservation of items of the environmental ◀heritage▶,
- (g) money required for the purpose of discharging any liability of the corporation under a guarantee given by the corporation,
- (h) all money which the Minister directs shall be set aside to provide a reserve for insurance, and
- (i) all costs incurred under sections 115 and 116.

(2) Any money set aside, as referred to in subsection (1) (h), may be invested by the corporation with the Treasurer or in any manner in which trustees are for the time being authorised to invest trust funds.

(3) Where:

- (a) any lands are purchased under section 112 out of money wholly or partly appropriated by Parliament for the purposes of the Fund, and
- (b) those lands, or any part of those lands, are sold under section 116,

there shall be paid from the Fund to the Treasurer, out of the proceeds of sale referred to in paragraph (b), such amounts as the Treasurer may determine.

### 105A ◀Heritage▶ Incentive Fund

- (1) There is to be a Fund called the ◀Heritage▶ Incentive Fund, which is to be administered by the Minister.
- (2) There is to be paid into the ◀Heritage▶ Incentive Fund any money appropriated by Parliament for the purposes of that Fund.
- (3) There may be paid out of the ◀Heritage▶ Incentive Fund money required to pay for the financial assistance provided or arranged by the Minister under section 45 (Financial and other assistance).

### 106 Making of loans and grants by the corporation

- (1) The corporation may, on the recommendation of the ◀Heritage▶ Council, make a grant or loan for the purpose of promoting and assisting the conservation of an item of the environmental ◀heritage▶.
- (2) Subject to section 107, the corporation may, in making a grant or loan, impose such conditions as, in its opinion, are appropriate to promote and assist the conservation of the item of the environmental ◀heritage▶ in respect of which the grant or loan is made.

### 107 Rates of interest on loans, and rental etc on leases by corporation

- (1) A loan made by the corporation shall be:
  - (a) at the rate of interest for the time being fixed by the Treasurer generally for the purposes of this Act, or

(b) if the Treasurer so approves:

- (i) at such rate of interest as may be fixed by the Treasurer in respect of that loan, or
- (ii) without interest.

(2) The rental or other consideration to be received by the corporation in respect of a lease of property acquired for the purposes of this Act shall be fixed by the corporation so as to produce an amount not less than such percentage as the Treasurer may direct, in respect of that lease, or of leases of the class to which that lease belongs, of the fair market value of the property leased.

## 108 Execution of guarantees

(1) The corporation may, with the concurrence of the Treasurer and subject to this section, execute a guarantee, either alone or jointly with some other person, in favour of a bank, building society, credit union or other person for the repayment of any money expended or to be expended on any one or more of the following:

- (a) the acquisition of an item of the environmental ◀ heritage ▶,
- (b) the conservation of an item of the environmental ◀ heritage ▶, or
- (c) the acquisition of personal property:
  - (i) which is associated with and contributes to the significance of an item of the environmental ◀ heritage ▶ as such an item, or
  - (ii) which is required for the purpose of furnishing or decorating an item of the environmental ◀ heritage ▶.

(2) The corporation may, in agreeing to execute a guarantee, impose such conditions as, in the opinion of the corporation, are appropriate.

(3) A guarantee executed by the corporation is not enforceable against the corporation until the creditor has exercised all his or her rights and remedies under all other securities held by or for the creditor in respect of the debt guaranteed, other than the guarantee.

(4) The corporation may, as a condition of a guarantee, require the creditor to obtain, take and hold, or retain and hold, such securities for the payment of the principal debt and interest thereon as the corporation requires.

(5) The corporation may execute a guarantee notwithstanding that it includes any interest (including compound interest), charges and expenses chargeable by the creditor against the principal debtor and the expenses of enforcing or obtaining or endeavouring to enforce or obtain payment of the debt guaranteed, that interest and those charges and expenses.

(6) Where the corporation executes a guarantee, any assignment or encumbrance of the guarantee by the creditor without the consent of the corporation has no force or effect.

(7) The corporation shall not execute a guarantee:

- (a) if the amount guaranteed would exceed 90 per centum of the estimated cost, ascertained as directed by the corporation, of:
  - (i) the acquisition of the item of the environmental ◀ heritage ▶,
  - (ii) the conservation of the item of the environmental ◀ heritage ▶, or
  - (iii) the acquisition of the personal property,
 as the case may be, or

(b) if the amount guaranteed would, together with the amounts of all other guarantees executed by the corporation and then in force, or agreed to by the corporation but not then executed, exceed such amount as may be determined from time to time by the Treasurer and notified to the corporation.

(8) The execution by the corporation of a guarantee referred to in this section is, in favour of the creditor, conclusive evidence that the requirements of this section with respect to the guarantee have been complied with.

## 109–111 (Repealed)

### Division 3 Acquisition and disposal of property

#### 112 Acquisition of land

- (1) The corporation may, for the purposes of this Act, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) For the purposes of the *Public Works Act 1912*, any such acquisition of land is taken to be for an authorised work and the corporation is, in relation to that authorised work, taken to be the Constructing Authority.
- (3) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply in respect of works constructed under this Act.

#### 113 (Repealed)

#### 114 Acquisition of personal property by corporation

The corporation may, in respect of an item of the environmental [←heritage→](#) vested in it, acquire, by lease, purchase or exchange, personal property:

- (a) which is associated with and contributes to the significance of that item as an item of the environmental [←heritage→](#), or
- (b) which is required for the purpose of restoring, enhancing, furnishing or decorating that item.

#### 115 Power of corporation to accept gifts etc

- (1) The corporation may acquire, by gift inter vivos, devise or bequest, any property for the purposes of this Act and may agree to the condition of any such gift, devise or bequest.
- (2) The rule of law against remoteness of vesting shall not apply to any such condition to which the corporation has agreed.
- (3) Where the corporation acquires property under subsection (1):
  - (a) neither an instrument that effects the acquisition nor any agreement pursuant to which the property is acquired is chargeable with duty under the *Stamp Duties Act 1920*, and
  - (b) the property, or the value of the property, shall not be included in the dutiable estate of the donor or testator for the purposes of assessing death duty under that Act.

#### 116 Disposal of lands, gifts etc

- (1) The corporation, except where it has otherwise agreed, may, in such manner and subject to such terms and conditions as in the opinion of the corporation are appropriate, sell, lease, exchange or otherwise deal with or dispose of any property that has been acquired by the corporation under this Division and grant easements or rights-of-way over any land or any part thereof that has been so acquired by the corporation.
- (2) The functions of the corporation under subsection (1) shall not be exercised in respect of an item of the environmental [←heritage→](#) except upon the recommendation of the [←Heritage→](#) Council.

### Division 4

#### 117 (Repealed)

## Division 5 Maintenance and repair

### 118 Minimum standards of maintenance and repair

The regulations may impose minimum standards with respect to the maintenance and repair of a building, work or relic that is listed or within a precinct that is listed on the State [Heritage](#) Register, but those standards can only relate to the following matters:

- (a) the protection of the building, work or relic from damage or deterioration due to weather (including such matters as the weatherproofing of roof, doors and windows),
- (b) the prevention of and the protection of the building, work or relic from damage or destruction by fire,
- (c) security (including fencing and surveillance measures to prevent vandalism),
- (d) essential maintenance and repair (being maintenance and repair necessary to prevent serious or irreparable damage or deterioration).

### 119 Offence of not maintaining and repairing in accordance with minimum standards

- (1) The owner of a building, work or relic listed or within a precinct listed on the State [Heritage](#) Register must ensure that the building, work or relic is maintained and repaired to standards that are not less than the minimum standards imposed by the regulations.
- (2) Proceedings for an offence against this Act in respect of a contravention of this section cannot be instituted without the written consent of the Minister.

### 120 Orders to remedy failure to maintain or repair

- (1) If the [Heritage](#) Council is satisfied that a building, work or relic listed or within a precinct listed on the State [Heritage](#) Register is not being maintained and repaired to standards that are at least the minimum standards imposed by the regulations, the [Heritage](#) Council may give the owner of the building, work or relic an order to do or refrain from doing such things as are specified in the order so as to ensure that the building, work or relic is maintained and repaired to those standards.
- (2) Before such an order is given, the procedures set out in this Division must be complied with. Compliance with those procedures is taken to be compliance with the rules of natural justice (the rules of procedural fairness).
- (3) An order can be given under this Division whether or not the owner of the building, work or relic has been prosecuted for or convicted of an offence in respect of the failure to maintain or repair concerned.

### 120A Notice to be given of proposed order

- (1) Before giving an order, the [Heritage](#) Council must give notice to the person to whom the order is proposed to be given of the intention to give the order, the terms of the proposed order and the period proposed to be specified as the period within which the order is to be complied with.
- (2) The notice must also indicate that the person to whom the order is proposed to be given may make written representations to the [Heritage](#) Council as to why the order should not be given or as to the terms of or period for compliance with the order.
- (3) The notice may provide that the representations are to be made to the [Heritage](#) Council on or before a specified date.

### 120B Making of representations

- (1) A person given notice of a proposed order may, in accordance with the notice, make representations concerning the proposed order.
- (2) The [Heritage](#) Council is required to consider any representations so made.

## 120C Procedure after consideration of representations

- (1) After considering any representations made concerning the proposed order, the ←Heritage→ Council may determine:
  - (a) to give an order in accordance with the proposed order, or
  - (b) to give an order in accordance with modifications made to the proposed order, or
  - (c) not to give an order.
- (2) If the determination is to give an order in accordance with modifications made to the proposed order, notice under this Division of the proposed order as so modified is not required to be given.

## 120D Reasons for orders to be given

- (1) The ←Heritage→ Council must give the person to whom the order is directed the reasons for the order.
- (2) The reasons may be given in the order or in a separate instrument.
- (3) The reasons must be given when the order is given, except in the case of an emergency (in which case the reasons may be given the next working day).

## 120E Period for compliance with order

- (1) An order must specify a reasonable period within which the terms of the order are to be complied with, subject to this section.
- (2) An order may require immediate compliance with its terms in circumstances that the ←Heritage→ Council believes constitute a serious risk to the building, work or relic concerned.

## 120F Notice of right to appeal against order

Notice of the giving of an order must:

- (a) state that the owner of the building, work or relic may appeal to the Court against the order or a specified part of the order, and
- (b) specify the period within which an appeal may be made.

## 120G Giving and taking effect of orders

- (1) An order is given by serving a copy of the order on the person to whom it is addressed. The order takes effect from the time of service or a later time specified in the order.
- (2) If a building, work or relic is owned by more than one person:
  - (a) an order in respect of the building, work or relic is not invalid merely because it was not given to all of the owners, and
  - (b) any of the owners may comply with such an order without affecting the liability of the other owners to pay for or contribute towards the cost of complying with the order.
- (3) This Division does not affect the right of an owner to recover from any other person all or any of the expenses incurred by the owner in complying with an order under this Division.
- (4) This Division does not entitle a person to recover from the ←Heritage→ Council any of the expenses incurred by the owner in complying with an order under this Division.

## 120H Order binds successors in title

An order given to a person binds any person claiming through or under or in trust for or in succession to the person or



who is a subsequent owner to the person, as if the order had been given to that person.

### **120I Occupier of land may be required to permit owner to carry out work**

- (1) The **Heritage** Council may order the occupier of any land to permit the owner of a building, work or relic to carry out such work on the building, work or relic as is specified in the order (being work that is, in the owner's opinion, necessary to enable the requirements of an order given to the owner to be complied with).
- (2) An occupier of land on whom such an order is served must, within 2 days after the order is served, permit the owner to carry out the work specified in the order.
- (3) The owner of the building, work or relic is not guilty of an offence arising from his or her failure to comply with the requirements of an order given to the owner if, while an order under this section is in force, the occupier of the land refuses to permit the owner to carry out the work specified in the order. This subsection applies only if the owner of the building, work or relic satisfies the Court that the owner has, in good faith, tried to comply with the requirements concerned.

### **120J Modification and revocation of orders**

- (1) The **Heritage** Council may, at any time, modify an order it has given to a person (including a modification of the period specified for compliance with the order) if the person to whom the order is given agrees to that modification.
- (2) An order may be revoked by the **Heritage** Council at any time.

### **120K Failure to comply with order—carrying out of work by **Heritage** Council**

- (1) If a person fails to comply with the terms of an order given to the person under this Division, the **Heritage** Council may do all such things as are necessary or convenient to give effect to the terms of the order, including the carrying out of any work required by the order.
- (2) Any expenses incurred under this section by the **Heritage** Council together with all associated costs may be recovered by the **Heritage** Council in any court of competent jurisdiction as a debt due to the **Heritage** Council by the person required to comply with the order.
- (3) This section does not affect the owner's right to recover any amount from any lessee or other person liable for the expenses of repairs.
- (4) A reference in this section to costs is a reference to costs incurred by the **Heritage** Council in seeking to recover the expenses otherwise than by proceedings in a court, but this section does not prevent the **Heritage** Council from receiving costs as between party and party in respect of those proceedings.
- (5) The **Heritage** Council may exercise its functions under this section irrespective of whether the person required to comply with the order has been prosecuted for an offence against this Act.

### **120L Appeals concerning orders**

- (1) A person on whom an order is served may appeal against the order to the Court.
- (2) The appeal must be made within 28 days after the service of the order on the person.
- (3) On hearing an appeal, the Court may:
  - (a) revoke the order, or
  - (b) modify the order, or
  - (c) substitute for the order any other order that the **Heritage** Council could have made, or
  - (d) find that the order is sufficiently complied with, or



- (e) make such order with respect to compliance with the order as the Court thinks fit, or
  - (f) make any other order with respect to the order as the Court thinks fit.
- (4) An appeal to the Court against an order does not operate to stay the order.
- (5) This Division does not limit a power of the Court under the *Land and Environment Court Act 1979*.

## 120M Certificate as to orders

- (1) A person may apply to the ←Heritage→ Council for a certificate as to whether there are:
- (a) any outstanding notices of intention to give an order under this Division in respect of a particular building, work or relic, and
  - (b) any orders in force under this Division in respect of a particular building, work or relic.
- (2) The application must be in the form determined by the ←Heritage→ Council and must be accompanied by the fee determined by the ←Heritage→ Council.
- (3) The ←Heritage→ Council is to issue a certificate to the applicant stating:
- (a) whether or not a notice is outstanding or an order is in force in respect of the building, work or relic as at the date of the certificate and, if so, the terms of any such notice or order, and
  - (b) any action proposed to be taken or that may be taken by the ←Heritage→ Council or any other person in relation to any such notice or order.
- (4) The production of the certificate is taken for all purposes to be conclusive proof of the existence or otherwise of any outstanding notices and any orders in force.

## 120N Chairperson to have ←Heritage→ Council functions

- (1) The Chairperson has the same functions as the ←Heritage→ Council under this Division and for that purpose a reference in this Division to the ←Heritage→ Council includes a reference to the Chairperson.
- (2) It is permissible for the Chairperson and the ←Heritage→ Council to share functions under this Division in respect of any particular building, work or relic, so as to enable the Chairperson to exercise some functions and the ←Heritage→ Council to exercise others in respect of that building, work or relic.

## 121 Failure to comply with order

- (1) Where an owner on whom an order under section 120 is served fails to comply with that order within the period specified in that order or any extension, granted by the ←Heritage→ Council on application of that owner, of that period:
- (a) the corporation may, in pursuance of section 113, resume or appropriate the land on which the building or work the subject of that order is situated, or
  - (b) the Minister may, by order published in the Gazette, direct that no development or use of that land, other than the conservation of that building or work, shall be carried out or made during such period, not exceeding 10 years, as is specified in the order, or
  - (c) the Minister may, by order published in the Gazette, direct that no development or use of that land is to be carried out other than development or use of the building envelope (that is, the three dimensional space) occupied by the building or work at the time that the order under section 120 was served.
- (2) In determining the amount of compensation payable in respect of a resumption or an appropriation of land by the corporation under subsection (1) (a), the value of that land shall be:
- (a) the value determined in accordance with section 147, or

(b) the value determined on the assumption that no approval may be given under this Act in respect of the building or work situated on that land other than to restore that building or work to a reasonable state of repair, whichever is the lesser.

(3) The Minister may, by order published in the Gazette, at any time at which an order made by the Minister under subsection (1) (b) or (c) remains in force, revoke, alter or vary that order.

(4) An order made by the Minister under subsection (1) (b) or (c) or (3) shall take effect on and from the date of publication of that order in the Gazette.

(5) The Minister shall cause notice of an order made by the Minister under subsection (1) (b) or (c) or (3) to be served, as soon as practicable after the date of publication of that order in the Gazette, on:

- (a) the owner or occupier of the land subject to that order,
- (b) the **Heritage** Council,
- (c) the Director-General, and
- (d) the council of the area, if any, in which that land is situated.

## 122 Failure to comply with order under section 121 (1) (b) or (c)

A person shall not fail to comply with an order made by the Minister under section 121 (1) (b) or (c), or that order as altered or varied by the Minister under section 121 (3), while that order is in force.

## Division 6 Rating and taxing

### 123 Definitions

In this Division:

**Heritage valuation**, in relation to land, means a valuation of that land obtained by adding to or by deducting from a valuation for rating or taxing purposes of that land any allowance determined as a consequence of making the following assumptions with respect to that land, namely:

- (a) that that land may be used only for the purpose, if any, for which it was used at the relevant date,
- (b) that all improvements on that land as at the relevant date may be continued and maintained in order that the use of that land as referred to in paragraph (a) may be continued, and
- (c) that no improvements, other than those referred to in paragraph (b), may be made to or on that land.

**land** includes stratum within the meaning of the *Valuation of Land Act 1916*.

**rating or taxing authority** means:

- (a) a council,
- (b) a county council established under the *Local Government Act 1993*,
- (c) the Sydney Water Corporation referred to in the *Water Board (Corporatisation) Act 1994*,
- (d) the Hunter Water Corporation referred to in the *Hunter Water Board (Corporatisation) Act 1991*,
- (e) a water supply authority within the meaning of the *Water Management Act 2000*,
- (f) the Commissioner of Land Tax.

**relevant date**, in relation to a **Heritage** valuation, means:

- (a) where that ◀heritage▶ valuation is made pursuant to a request made by the Minister under section 124 (1)—the date determined in accordance with section 124 (1) (a) or (b), or
- (b) where that ◀heritage▶ valuation is made pursuant to section 125—the date on which that ◀heritage▶ valuation is made.

**valuation for rating or taxing purposes**, in relation to land, means a valuation of that land made under a valuing law and which is the valuation on which a rate is made and levied or a tax is levied in respect of that land by a rating or taxing authority.

**valuing law** means the *Valuation of Land Act 1916*.

## 124 Request to make ◀heritage▶ valuations

- (1) As soon as practicable after the date on which a listing on the State ◀Heritage▶ Register takes effect with respect to land, the Minister shall, by instrument in writing, request each person by whom a valuation for rating or taxing purposes of that land has been made or caused to be made to make or cause to be made a ◀heritage▶ valuation or ◀heritage▶ valuations of that land as at:
- (a) except as provided by paragraph (b)—the date on which that listing on the State ◀Heritage▶ Register took effect with respect to that land, or
- (b) where, immediately before that date, that land was subject to an interim ◀heritage▶ order—the date on which that interim ◀heritage▶ order took effect with respect to that land.
- (2) Where, immediately before the date on which a listing on the State ◀Heritage▶ Register took effect with respect to land the subject of a request by the Minister under subsection (1) that land was subject to an interim ◀heritage▶ order, the Minister shall notify the person to whom that request is made that that land was subject to an interim ◀heritage▶ order and of the date on which that interim ◀heritage▶ order took effect with respect to that land.
- (3) A person to whom a request under subsection (1) is made shall comply with that request as soon as practicable after its receipt.

## 125 Making of ◀heritage▶ valuations with other valuations

Whenever, pursuant to a valuing law, a person makes or causes to be made a valuation for rating or taxing purposes of land, the person shall, in addition, where that land is subject to a listing on the State ◀Heritage▶ Register, make or cause to be made a ◀heritage▶ valuation or ◀heritage▶ valuations of that land.

## 126 Application of valuing laws to ◀heritage▶ valuations

Except to the extent of any inconsistency with this Division:

- (a) the *Valuation of Land Act 1916*, applies to a ◀heritage▶ valuation derived from a valuation for rating or taxing purposes made under that Act in the same way as it applies to that valuation for rating or taxing purposes,
- (b), (c) (Repealed)
- (d) the *Water Board (Corporatisation) Act 1994*, applies to a ◀heritage▶ valuation derived from a valuation for rating or taxing purposes made under that Act in the same way as it applies to that valuation for rating or taxing purposes,
- (e) (Repealed)
- (f) the *Broken Hill Water and Sewerage Act 1938*, applies to a ◀heritage▶ valuation derived from a valuation for rating or taxing purposes made under that Act in the same way as it applies to that valuation for rating or taxing purposes, and
- (g) the *Land Tax Management Act 1956*, applies to a ◀heritage▶ valuation derived from a valuation for rating or

taxing purposes made under that Act in the same way as it applies to that valuation for rating or taxing purposes.

## 127 Payment of rates and taxes

- (1) Where land is subject to a listing on the State ◀Heritage▶ Register, a rating or taxing authority which would, but for this Act, make and levy a rate or levy a tax on a valuation for rating or taxing purposes of that land shall make and levy that rate or levy that tax on the ◀heritage▶ valuation of that land derived from that valuation for rating or taxing purposes.
- (2) Where a ◀heritage▶ valuation is made with respect to land pursuant to a request made by the Minister under section 124 (1), the amount of any rates or taxes payable in respect of that land shall be redetermined on the basis of that ◀heritage▶ valuation as from the date determined in accordance with section 124 (1) (a) or (b), as the case may be, of that ◀heritage▶ valuation and any amount paid in excess shall be refunded and any amount short-paid shall be recoverable as arrears.
- (3) Where land ceases to be subject to a listing on the State ◀Heritage▶ Register, the amount of any rates or taxes levied in respect of that land shall, as from the date on which that land ceases to be subject to that listing on the State ◀Heritage▶ Register, be redetermined on the basis of the valuation for rating or taxing purposes of that land and any amount paid in excess shall be refunded and any amount short-paid shall be recoverable as arrears.

## 128 Calculation of land tax

- (1) Notwithstanding the *Land Tax Management Act 1956*, where a person is the owner, within the meaning of that Act, of two or more parcels of land, one or more of which is subject to a listing on the State ◀Heritage▶ Register, the amount of land tax, within the meaning of that Act, payable by that person shall, in respect only of such land as is subject to a listing on the State ◀Heritage▶ Register, be:
  - (a) calculated separately in respect of each parcel of that land that is not exempt from taxation, and
  - (b) so calculated in the case of each such parcel as if it were the only land owned by that person.
- (2) This section applies only in respect of land that was subject to a permanent conservation order immediately before the commencement of this subsection (as inserted by the ◀Heritage▶ Amendment Act 1998). This section does not apply to the calculation of land tax payable for any land tax year after the 2003 land tax year.

## Division 7 Curtailment or modification of laws affecting the environmental ◀heritage▶

### 129 Making of orders to curtail or modify other laws

- (1) In this section, *instrument* means any Act (other than this Act), rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made.
- (2) Where the conservation of an item to which an interim ◀heritage▶ order made by the Minister or listing on the State ◀Heritage▶ Register applies is regulated, restricted or prohibited by an instrument, the Minister, if he or she is of the opinion that the conservation of that item is so necessary as to warrant it, may, by order published in the Gazette, declare that the instrument or such part of that instrument as is specified in the order shall not apply to or in respect of that item or shall apply to or in respect of that item subject to such modifications as are so specified in such circumstances, if any, as are so specified.
- (3) Where a Minister is responsible for the administration of an instrument referred to in subsection (2), the Minister shall not make an order with respect to that instrument under that subsection except with the prior concurrence in writing of the first-mentioned Minister.
- (4) The Minister may, by order published in the Gazette, at any time at which an order made by the Minister under subsection (2) remains in force, revoke that order in whole or in part.
- (5) An order made by the Minister under subsection (2) or (4) shall take effect on and from the date of publication of that order in the Gazette.

## Division 8 Controlling and restricting harm to buildings, works, relics and places not subject to

## interim ◀Heritage▶ orders or State◀ Heritage▶ Register listing

**129A–135 (Repealed)****136 Order restricting harm to buildings etc**

- (1) Where the Minister or the Chairperson of the ◀Heritage▶ Council is of the opinion that a building, work, relic or place (not being a building, work, relic or place the subject of an interim ◀heritage▶ order or listing on the State ◀Heritage▶ Register) is being or is about to be harmed, he or she may order that any work being carried out with respect to that building, work, relic or place shall cease and that no work, other than such work as may be specified in his or her order, shall be carried out with respect to that building, work, relic or place within a period of 40 days after the date of his or her order.
- (2) An order made by the Minister or the Chairperson of the ◀Heritage▶ Council under subsection (1) shall take effect on and from the date on which a copy of that order is affixed to the building, work, relic or place the subject of that order.
- (3) Where the Minister makes an order under subsection (1), the Minister shall immediately request the ◀Heritage▶ Council to furnish to him or her, within the period of 40 days after the date of that order, advice with respect to the making of an interim ◀heritage▶ order in respect of the building, work, relic or place the subject of his or her order.
- (4) The ◀Heritage▶ Council shall comply with the Minister's request.
- (5) Where the Chairperson of the ◀Heritage▶ Council makes an order under subsection (1), he or she shall take all such steps as are necessary to enable the ◀Heritage▶ Council to furnish to the Minister, within the period of 40 days after the date of that order, advice with respect to the making of an interim ◀heritage▶ order in respect of the building, work, relic or place the subject of his or her order.
- (6) The Minister may revoke an order made under subsection (1) at any time after the Minister has received the advice or recommendation of the ◀Heritage▶ Council under subsection (3) or (5) but only during the period of 40 days after the date of that order.

**137 Unlawful work**

A person shall not, while an order made by the Minister or the Chairperson of the ◀Heritage▶ Council under section 136 (1) is in force, carry out any work, other than such work as may be specified in that order, with respect to the building, work, relic or place the subject of that order.

**137A Conflicting orders void**

- (1) If an interim ◀heritage▶ order or order under section 136 (1) is in force in relation to a building, work, relic or place, a notice or order (whether made or issued before or after the interim ◀heritage▶ order or order under section 136 (1)) under any other Act which requires or permits the building, work, relic or place to be harmed, other than:
  - (a) an order of the kind referred to in Order No 6 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*, or
  - (b) a notice or order which is prescribed for the purposes of this section,
 is void.
- (2) On and from the date on which an interim ◀heritage▶ order ceases to have effect in relation to a building, work, relic or place, whether by lapsing, revocation or otherwise, any notice or order that is void under subsection (1) because of the interim ◀heritage▶ order comes back into force in relation to that building, work, relic or place.
- (3) On and from the date on which an approval is granted by an approval body under Division 3 of Part 4 in relation to a building, work, relic or place to which an interim ◀heritage▶ order applies, any notice or order that is void under subsection (1) because of the interim ◀heritage▶ order comes back into force in relation to that

building, work, relic or place, but only to the extent to which it is consistent with the terms of the approval.

## Division 9 Protection of certain relics

### 138 Definitions

*excavation permit* means an excavation permit referred to in section 139.

*historic shipwreck* has the same meaning as it has in Part 3C.

*historic shipwrecks permit* means a historic shipwrecks permit referred to in section 51.

*permit* means an excavation permit or historic shipwrecks permit.

*relic* includes a historic shipwreck.

### 139 Excavation permit required in certain cases

- (1) A person must not disturb or excavate any land knowing or having reasonable cause to suspect that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed unless the disturbance or excavation is carried out in accordance with an excavation permit.
- (2) A person must not disturb or excavate any land on which the person has discovered or exposed a relic except in accordance with an excavation permit.
- (3) This section does not apply to a relic that is subject to an interim [←Heritage→](#) order made by the Minister or a listing on the State [←Heritage→](#) Register.
- (4) The [←Heritage→](#) Council may by order published in the Gazette create exceptions to this section, either unconditionally or subject to conditions, in respect of any of the following:
  - (a) any relic of a specified kind or description,
  - (b) any disturbance or excavation of a specified kind or description,
  - (c) any disturbance or excavation of land in a specified location or having specified features or attributes,
  - (d) any disturbance or excavation of land in respect of which an archaeological assessment approved by the [←Heritage→](#) Council indicates:
    - (i) that there is little likelihood of there being any relics in the land, or
    - (ii) that any relics in the land are unlikely to have State or local [← heritage→](#) significance.
- (5) This section does not prevent a person from disturbing or excavating land in which a historic shipwreck is situated in accordance with a historic shipwrecks permit in force in respect of that shipwreck.

### 140 Application for permit

- (1) A person may make an application to the [←Heritage→](#) Council for the issue to the person of a permit.
- (2) The application shall be in the approved form and shall be accompanied by such fee as may be prescribed.

### 141 Determination of application

- (1) The [←Heritage→](#) Council may determine an application for a permit:
  - (a) by issuing a permit, either unconditionally or subject to such conditions as it thinks proper to impose, or
  - (b) by refusing to issue a permit.
- (2) Where the [←Heritage→](#) Council fails to determine an application for a permit within 21 days after the date of that application, it shall, for the purpose only of section 142, be deemed to have determined that application by



refusing to issue a permit.

## 142 Appeals arising from applications for permits

An applicant dissatisfied with a determination of the [Heritage](#) Council with respect to his or her application for a permit may appeal to the Minister.

## 143 Minister's decision

- (1) The Minister may, with respect to an appeal made under section 142:
  - (a) dismiss the appeal,
  - (b) allow the appeal, either unconditionally or subject to such conditions as the Minister thinks proper to impose, or
  - (c) where the appeal is against the imposition of conditions, refuse to approve the application for a permit from the determination of which the appeal has been made.
- (2) The decision of the Minister under subsection (1) shall be final and shall have effect as if it were a determination of the [Heritage](#) Council.

## 144 Variation or revocation of permit

The [Heritage](#) Council may, by notice in writing to the holder of a permit:

- (a) where that permit has been issued unconditionally, impose conditions to which that permit shall be subject,
- (b) where that permit has been issued subject to conditions, vary the conditions of that permit, or
- (c) revoke that permit.

## 145 Appeals arising from variation or revocation of permits

- (1) The holder of a permit dissatisfied with the variation or revocation of that permit may appeal to the Minister.
- (2) Section 143, section 143 (1) (c) excepted, applies in respect of an appeal made under subsection (1) in the same way as it applies in respect of an appeal made under section 142.

## 146 Notification of discovery of relic

A person who is aware or believes that he or she has discovered or located a relic (in any circumstances, and whether or not the person has been issued with a permit) must:

- (a) within a reasonable time after he or she first becomes aware or believes that he or she has discovered or located that relic, notify the [Heritage](#) Council of the location of the relic, unless he or she believes on reasonable grounds that the [Heritage](#) Council is aware of the location of the relic, and
- (b) within the period required by the [Heritage](#) Council, furnish the [Heritage](#) Council with such information concerning the relic as the [Heritage](#) Council may reasonably require.

### 146A Disposition of certain relics

- (1) As soon as practicable after a relic is obtained from an excavation carried out by the holder of a permit, the holder shall notify the Minister of the existence of the relic.
- (2) The holder shall furnish the Minister with such information concerning the relic as the Minister may reasonably require.

### 146B Minister may direct that relic be given to museum or other conservation body

- (1) The Minister may, by notice in writing, direct any person:

(a) who is or has been the holder of a permit, or

(b) who, in the Minister's opinion, has obtained a historic shipwreck as a consequence of having removed the relic without a historic shipwrecks permit, in contravention of section 51, or

(c) who, in the Minister's opinion, has obtained a relic as a consequence of having excavated land without an excavation permit, in contravention of section 139,

to deliver the relic to a specified person or body (such as a museum) who in the opinion of the Minister has the facilities and expertise to conserve the relic.

(2) Such a direction may be given on the ground that the person has obtained the relic as a consequence of:

(a) having removed the relic without a historic shipwrecks permit, in contravention of section 51, or

(b) having excavated land without an excavation permit, in contravention of section 139,

whether or not the person has been prosecuted or convicted of an offence in respect of the alleged contravention.

### 146C Forfeiture of certain relics

(1) A relic the subject of a direction under section 146B shall be forfeited to the Crown.

(2) No compensation is payable to any person as a consequence of the forfeiture of a relic under this section.

## Part 7 Implementation and enforcement

### Division 1 General

#### 147 Value of land compulsorily acquired

(1) Where land the subject of an interim **←heritage→** order or listing on the State **←Heritage→** Register is:

(a) resumed or appropriated under this Act, or

(b) resumed or appropriated under any other Act for a public purpose,

the value of that land shall be determined as if that land were not the subject of that interim **←heritage→** order or listing on the State **←Heritage→** Register.

(2) (Repealed)

#### 148 Entry and inspection

(1) Subject to subsection (2) the Minister may authorise a person to carry out inspections, for the purposes of this Act, of buildings, works, relics, moveable objects and places and a person so authorised shall be provided by the Minister with a certificate of his or her authority in the prescribed form.

(2) Where a person authorised under subsection (1) believes on reasonable grounds that a building, work, relic, moveable object or place, is or contains an item of the environmental **←heritage→**, the person may:

(a) at any reasonable time after giving reasonable notice of his or her intention to do so to the person apparently in charge of or having the custody of that building, work, relic, moveable object or place, or

(b) at any time with the consent of the person referred to in paragraph (a),

carry out an inspection of that building, work, relic, moveable object or place.

(3) A person authorised under subsection (1), in exercising his or her functions under this section in respect of a building, work, relic, moveable object or place, shall, if so required by a person apparently in charge of that building, work, relic, moveable object or place, produce the certificate of his or her authority to that person.



## 149 Obstruction of authorised person

A person shall not obstruct, hinder, prevent or interfere with a person authorised under section 148 (1) in the exercise of his or her functions under section 148.

## 150 Notices

- (1) Where under this Act any notice or other document is required to be given to or served upon any person, the notice or other document may be given or served:
- (a) in the case of an individual:
    - (i) by delivering it to the person, or
    - (ii) by sending it by prepaid post addressed to the person at the address, if any, specified by the person for the giving of notices or service of documents under this Act, or, where no such address is specified, at his or her usual or last known place of abode or his or her last known place of business, or
  - (b) in the case of a person not being an individual:
    - (i) by leaving it at that person's place of business, or, if that person is a corporation, at the registered office of that corporation, with a person apparently not less than 16 years of age and apparently in the service of the person to whom the notice or other document is required to be given or on whom the notice or other document is required to be served, or
    - (ii) by sending it by prepaid post addressed to that person at the address, if any, specified by that person for the giving of notices or service of documents under this Act, or, where no such address is specified, at that person's last known place of business.
- (2) A notice or other document shall, in respect of a notice or other document sent by prepaid post in accordance with subsection (1) (a) (ii) or (b) (ii), be deemed to have been given or served at the time at which the notice or other document would be delivered in the ordinary course of post.
- (3) A notice or other document required to be given to or served upon any person by the ◀Heritage▶ Council may be given or served by the Secretary of the ◀Heritage▶ Council.
- (4) A notice or other document required to be given to or served upon the ◀Heritage▶ Council may be given to or served upon the Secretary of the ◀Heritage▶ Council.

## 151 Evidence

- (1) A document purporting to be an interim ◀heritage▶ order is admissible in evidence in any legal proceedings and is prima facie evidence of the due making of that order and the contents thereof if it purports to be printed by the Government Printer or by the authority of the Government.
- (1A) The ◀Heritage▶ Council may issue a certificate certifying that a particular item or particular land is or is not the subject of a listing on the State ◀Heritage▶ Register, or was or was not the subject of a listing on the State ◀Heritage▶ Register on a particular date or during a particular period. Such a certificate is prima facie evidence of the matters certified. A certificate purporting to have been issued by the ◀Heritage▶ Council under this section is presumed, unless the contrary is established, to have been so issued.
- (2) A document purporting to be a copy or extract of any document, map or plan embodied, incorporated or referred to in an interim ◀heritage▶ order or a listing on the State ◀Heritage▶ Register is admissible in evidence in any legal proceedings if:
- (a) it purports to be printed by the Government Printer or by the authority of the Government, or
  - (b) it purports to be certified, where the original document, map or plan is in the custody of the ◀Heritage▶ Office, under the hand of the Chief Administrative Officer or other prescribed officer of the ◀Heritage▶ Office.
- (3) Where the original document, map or plan is in the custody of the ◀Heritage▶ Office, the ◀Heritage▶ Office

shall furnish the certified copy or extract to the person applying for it upon payment of such fee as is determined by the [←Heritage→](#) Office.

(4) For the purposes of this section, a copy or extract of a map or plan may be to the same scale as the original or may be an enlarged or reduced copy.

## Division 2 Orders of the Court

### 152 Definitions

In this Division:

- (a) a reference to a breach of this Act is a reference to:
  - (i) a contravention of or failure to comply with this Act, and
  - (ii) a threatened or an apprehended contravention of or a threatened or an apprehended failure to comply with this Act, and
- (b) a reference to this Act includes a reference to an approval given under this Act and a condition of any such approval.

### 153 Restraint etc of breaches of this Act

- (1) Any person may bring proceedings in the Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been infringed by or as a consequence of that breach.
- (2) Proceedings brought under subsection (1) shall be brought in accordance with the rules of Court.

### 154 Order of the Court

- (1) Where the Court is satisfied that a breach of this Act has been committed or that a breach of this Act will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.
- (2) Without limiting the powers of the Court under subsection (1), an order made under that subsection may:
  - (a) where the breach of this Act comprises a use of a building or work or of land—restrain that use, or
  - (b) where the breach of this Act comprises the erection of a building or the carrying out of a work—require the demolition or removal of the building or work, or
  - (c) where the breach of this Act has the effect of altering the appearance of a building or work or the state of land—require the restoration of the building or work or the reinstatement, so far as is practicable, of the land to the condition the building, work or land was in immediately before the breach was committed, or
  - (d) where the breach of this Act comprises the demolition of the whole or part of a building—require the rebuilding of the building, as it was immediately before the breach was committed, in accordance with plans and specifications approved by the [←Heritage→](#) Council.
- (3) (Repealed)

### 155 Application of Division

The functions of the Court under this Division are in addition to and not in derogation from any other function of the Court.

## Division 3 Offences

### 156 Offences against this Act and the regulations

- (1) Where any matter or thing is by or under this Act, other than by or under the regulations, directed or forbidden

to be done, or where the Minister, the **←Heritage→** Council or any other person or body is authorised by or under this Act, other than by or under the regulations, to direct any matter or thing to be done, or to forbid any matter or thing to be done, and that matter or thing if so directed to be done remains undone, or if so forbidden to be done is done, a person offending against that direction or prohibition shall be guilty of an offence against this Act.

(2) Where any matter or thing is by or under the regulations directed or forbidden to be done, or where the Minister, the **←Heritage→** Council or any other person or body is authorised by the regulations to direct any matter or thing to be done, or to forbid any matter or thing to be done, and that matter or thing if so directed to be done remains undone, or if so forbidden to be done is done, a person offending against that direction or prohibition shall be guilty of an offence against the regulations.

(3) Nothing in subsection (1) or (2) applies in respect of a direction given under this Act by the Minister to the **←Heritage→** Council.

## 157 Penalties

(1) A person guilty of an offence against this Act shall be liable to a penalty not exceeding 10,000 penalty units or imprisonment for a period not exceeding 6 months, or both.

(2) A person guilty of an offence against the regulations shall be liable to a penalty not exceeding 50 penalty units.

## 158 Proceedings for offences

(1) Proceedings for an offence against this Act may be taken before a Local Court constituted by a Magistrate sitting alone or before the Court in its summary jurisdiction.

(2) Proceedings for an offence against the regulations may be taken before a Local Court constituted by a Magistrate sitting alone.

(3) Proceedings for an offence against this Act shall not be instituted in the Court in its summary jurisdiction without the written consent of the Minister or of such prescribed person or person of a class or description of persons prescribed for the purposes of this section.

(4) If proceedings for an offence against this Act are brought in a Local Court constituted by a Magistrate, the maximum penalty that the court may impose is, notwithstanding any other provision of this Act, 200 penalty units or imprisonment for a period not exceeding 3 months, or both.

(5) If proceedings for an offence against this Act are brought in the Court in its summary jurisdiction, the maximum penalty that the Court may impose is 10,000 penalty units or imprisonment for a period not exceeding 6 months, or both.

(6) (Repealed)

### 158A Time within which proceedings for offences to be brought

(1) Proceedings for an offence against this Act or the regulations may be commenced within, but not later than, 12 months after the date of the alleged commission of the offence.

(2) Proceedings for an offence against this Act or the regulations may also be commenced within, but not later than, 12 months after the date on which evidence of the alleged offence first came to the attention of an authorised person.

(3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the information must contain particulars of the date on which evidence of the alleged offence first came to the attention of an authorised person and need not contain particulars of the date on which the offence was committed.

(4) The date on which evidence first came to the attention of an authorised person is the date specified in the information, unless the contrary is established.

(5) This section applies despite anything in the *Justices Act 1902* or any other Act.

(6) In this section:

**authorised person** means a person authorised to exercise functions under section 148 (1).

**evidence** of an offence means evidence of any act or omission constituting the offence.

## 159 Offences by corporations

A person who is a director or an employee of a corporation which commits an offence against this Act or the regulations is guilty of the same offence, and liable to be punished as an individual guilty of that offence, unless the person satisfies the court that:

- (a) the offence committed by the corporation was committed without his or her knowledge,
- (b) the person was not in a position to influence the conduct of the corporation in relation to the commission of the offence by it, or
- (c) the person, being in such a position, used all due diligence to prevent the commission of the offence by the corporation.

## 160 Notices to show cause why certain restrictions on development etc should not be imposed

(1) If the owner of an item is convicted of an offence against this Act involving the demolition, damaging or despoliation of that item, the Minister may serve written notice on that owner requiring the owner to show cause, within 21 days after the date of that notice, why the Minister should not make one of the following orders (without the need to specify which order is contemplated):

- (a) an order directing that no development or use of the land on which that item is or was situated, or, where that item is a place, that place, is to be carried out during such period, not exceeding 10 years, as is specified in the notice other than development or use of that land or place for the purpose of restoring that item to the condition it was in before the demolition, damaging or despoliation took place,
- (b) an order directing that no development or use of the land on which that item is or was situated is to be carried out other than development or use of the building envelope (that is, the three dimensional space) occupied by the item before the demolition, damaging or despoliation took place.

(2) A notice referred to in subsection (1) shall inform an owner on whom it is served of the provisions of sections 161 and 162.

## 161 Orders restricting development etc

(1) If an owner of an item on whom a notice is served under section 160 (1) with respect to that item fails to show cause as referred to in section 160 (1), the Minister may, by order published in the Gazette, direct either of the following:

- (a) that no development or use of the land on which that item is or was situated, or, where that item is a place, that place, is to be carried out during such period, not exceeding 10 years, as is specified in the order other than development or use of that land or place for the purpose of restoring that item to the condition it was in before the demolition, damaging or despoliation took place,
- (b) that no development or use of the land on which that item is or was situated is to be carried out other than development or use of the building envelope (that is, the three dimensional space) occupied by the item before the demolition, damaging or despoliation took place.

(2) An order made by the Minister under subsection (1) shall take effect on and from the date of publication of that order in the Gazette.

## 162 Notice of order under sec 161 (1)

The Minister shall, as soon as practicable after the date of publication in the Gazette of an order made under section

161 (1), cause notice of that order to be served on:

- (a) the owner of the land or place the subject of that order, and
- (b) the **Heritage** Council.

### 163 Revocation of order under sec 161 (1)

- (1) The Minister may, at any time during which an order made under section 161 (1) remains in force, revoke that order by notice of revocation.
- (2) A notice of revocation shall take effect on the date of publication of that notice in the Gazette.
- (3) The Minister shall, as soon as practicable after the date of publication in the Gazette of a notice of revocation of an order made under section 161 (1), cause notice of the revocation to be given to the persons referred to in section 162 (a) and (b).

### 164 Failure to comply with order under sec 161 (1)

A person shall not fail to comply with an order made by the Minister under section 161 (1) while that order is in force.

## Division 4 Regulations

### 165 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may be made so as to apply differently according to such factors as may be specified in the regulation.
- (3) A regulation may be made so as to authorise any matter or thing to be from time to time determined, applied or regulated by any person or body specified in the regulation.

## Part 8 Miscellaneous

### 166 Submissions by councils to the **Heritage** Council

- (1) A council may submit to the **Heritage** Council particulars of a building, work, relic or place which, in the opinion of the council, is an item of the environmental **heritage** and worthy of conservation in accordance with this Act.
- (2) The **Heritage** Council shall consider a submission made to it under subsection (1) and may recommend to the Minister the taking of such action under this Act with respect to that submission as it thinks fit.
- (3) The **Heritage** Council shall notify the council of any recommendation made by it with respect to the council's submission.

### 166A **Heritage** Council fees for services

- (1) The regulations may make provision for or with respect to the fees that may be charged for the services provided by the **Heritage** Council.
- (2) The services in respect of which such regulations may be made include the following:
  - (a) the supply of a service, product or commodity,
  - (b) the review of a conservation management plan,
  - (c) the provision of a service in connection with the exercise of the **Heritage** Council's functions with respect to applications under this Act (including the carrying out of inspections).

## 167 Certificates

- (1) A person may, on payment of the prescribed fee, apply to the ◀Heritage▶ Council for a certificate under this section with respect to land or a relic specified or described in the application.
- (2) The ◀Heritage▶ Council may issue a certificate that on the date specified in the certificate:
  - (a) land or a relic specified or described in the certificate is:
    - (i) land or a relic to which an interim ◀heritage▶ order or listing on the State ◀Heritage▶ Register applies or is not land or a relic to which an interim ◀heritage▶ order or listing on the State ◀Heritage▶ Register applies, or
    - (ii) land or a relic to which an order made under this Act applies or is not land or a relic to which an order made under this Act applies, and
  - (b) a building, work, relic or place specified or described in the certificate is a building, work, relic or place in respect of which a notice has been served under this Act or is not a building, work, relic or place in respect of which a notice has been served under this Act.
- (3) A certificate issued under subsection (2) shall specify such other matters as may be prescribed.
- (4) For the purpose of any proceedings for an offence against this Act or the regulations taken against a person who has obtained a certificate under this section, that certificate shall, in favour of that person, be conclusively presumed to be true and correct.

## 168 Liability of members of ◀Heritage▶ Council etc

- (1) No matter or thing done by the ◀Heritage▶ Council or a person, being a member of the ◀Heritage▶ Council, a person acting under the direction of the ◀Heritage▶ Council or a person acting as a delegate under section 169, shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the person to any action, liability, claim or demand.
- (2) A person aggrieved as a consequence of the issue to the person of a certificate under section 167 shall be deemed to be a person deeming himself or herself to have a just claim or demand against the Crown within the meaning of the *Crown Proceedings Act 1988*.

## 169 Delegation of functions

- (1) The Minister may delegate to a person the exercise of any of the Minister's functions, other than this power of delegation.
- (2) The corporation constituted by section 102 may delegate to a person the exercise of any of the corporation's functions, other than this power of delegation.
- (3) The ◀Heritage▶ Council may, with the consent of the Minister, delegate to a person, or to a committee established by the ◀Heritage▶ Council, the exercise of any of the ◀Heritage▶ Council's functions, other than this power of delegation.
- (4) The Chairperson of the ◀Heritage▶ Council may:
  - (a) with the consent of the Minister, delegate to a person the exercise of any of the Chairperson's functions, other than this power of delegation, and
  - (b) delegate to a person the exercise of any of the functions delegated to the Chairperson by the Minister or the ◀Heritage▶ Council, unless the Minister or the ◀Heritage▶ Council, as the case requires, otherwise provides in the instrument of delegation to the Chairperson.
- (5) A delegation:
  - (a) may specify the delegate by name or may designate a particular officer, or the holder of a particular office,

as the delegate by reference to the title of the office concerned,

(b) may be general or limited,

(c) shall be in, or be evidenced by, writing signed by the delegator or, if the delegator is a body, by a person authorised by the body for that purpose, and

(d) may be revoked, wholly or partly, by the delegator.

(6) A delegated function may be exercised only in accordance with any conditions to which the delegation is subject.

(7) A delegate may, in the exercise of a delegated function, exercise any other function that is incidental to the delegated function.

(8) A delegated function that purports to have been exercised by a delegate shall, until the contrary is proved, be taken to have been duly exercised by the delegate.

(9) A delegated function that is duly exercised by a delegate shall be taken to have been exercised by the delegator.

(10) If:

(a) the exercise of a function by a person or body is, by or under this Act, dependent on the opinion, belief or state of mind of the person or body in relation to any matter, and

(b) the person or body has delegated the function to some other person or body,

the function may be exercised by the delegate on the opinion, belief or state of mind of the delegate in relation to any such matter.

(11) If a function is delegated to a particular officer or the holder of a particular office:

(a) the delegation does not cease to have effect merely because the person who was the particular officer or the holder of the particular office when the function was delegated ceases to be that officer or the holder of that office, and

(b) the function may be exercised (or, in the case of a duty, shall be performed) by the person for the time being occupying or acting in the office concerned.

(12) A function that has been delegated may, notwithstanding the delegation, be exercised by the delegator.

## 170 ◀Heritage▶ and Conservation Register

(1) (Repealed)

(2) Words and expressions used in this section which are defined in the *Annual Reports (Statutory Bodies) Act 1984* or the *Annual Reports (Departments) Act 1985* have the same meanings as in the Act in which they are defined.

(3) A government instrumentality shall establish and keep a register entitled the “◀Heritage▶ and Conservation Register”.

(4) A government instrumentality shall enter in the register details of each item of the environmental ◀heritage▶:

(a) which:

(i) is subject to an interim ◀heritage▶ order or listing on the State◀ Heritage▶ Register, or

(ia) is listed in an environmental planning instrument under the *Environmental Planning and Assessment Act 1979* as an item of the environmental ◀heritage▶, or



(ii) could, in accordance with guidelines issued from time to time by the ◀Heritage▶ Council, be subject to an interim ◀heritage▶ order or listing on the State ◀Heritage▶ Register, and

(b) which:

(i) in the case of a statutory body, is owned or occupied by the statutory body, or

(ii) in the case of a Department Head, is vested in or owned or occupied by, or subject to the control of, the appropriate Minister or the relevant Department.

(5) A government instrumentality shall review and, if necessary, amend its register not less than once each year.

(6) A government instrumentality shall furnish a copy of its register and of any amendments to its register to the ◀Heritage▶ Council in accordance with such directions as may be given by the ◀Heritage▶ Council.

(7) A person may inspect a government instrumentality's register or a copy of the register at the office, or principal office, of the government instrumentality or the ◀Heritage▶ Council during the ordinary office hours of the government instrumentality or the ◀Heritage▶ Council.

(8) A register or copy may be inspected free of charge but a fee may be charged for the making of a copy or an extract.

### 170A ◀Heritage▶ management by government instrumentalities

(1) A government instrumentality must give the ◀Heritage▶ Council not less than 14 days written notice before the government instrumentality:

(a) removes any item from its register under section 170, or

(b) transfers ownership of any item entered in its register, or

(c) ceases to occupy or demolishes any place, building or work entered in its register.

(2) Each government instrumentality is responsible for ensuring that the items entered on its register under section 170 and items and land to which a listing on the State ◀Heritage▶ Register applies that are under its care, control or management are maintained with due diligence in accordance with State Owned ◀Heritage▶ Management Principles approved by the Minister on the advice of the ◀Heritage▶ Council and notified by the Minister to government instrumentalities from time to time.

(3) The ◀Heritage▶ Council can from time to time issue ◀heritage▶ asset management guidelines to government instrumentalities, being guidelines with respect to the conservation of the items entered on registers under section 170 and items and land to which a listing on the State ◀Heritage▶ Register applies that are under the care, control or management of the government instrumentality. The guidelines can relate to (but are not limited to) such matters as maintenance, repair, alteration, transfer of ownership and demolition. A government instrumentality must comply with the guidelines.

(4) The annual report of a government instrumentality is to include the following:

(a) such information with respect to the government instrumentality's register under section 170 and compliance by the government instrumentality with the guidelines under this section as the ◀Heritage▶ Council may direct by notice in writing to government instrumentalities from time to time,

(b) a statement on the condition of the items entered on the government instrumentality's register under section 170 and items and land to which a listing on the State ◀Heritage▶ Register applies that are under the care, control or management of the government instrumentality.

## 171 Savings and transitional provisions

Schedule 1 has effect.

### Schedule 1 Savings and transitional provisions



## Part 1 Preliminary

### 1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

←Heritage→ *Amendment Act 1996*

←Heritage→ *Amendment Act 1998*

←Heritage→ *Amendment Act 2001*

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 1A Provisions consequent on enactment of ←Heritage→ (Amendment) Act 1987

#### 1A Application of amendments

(1) Sections 146A–146C, as inserted by the amending Act, do not apply to or in respect of a relic obtained from an excavation carried out pursuant to an excavation permit issued before 3 April 1987.

(2) This clause is taken to have commenced on 3 April 1987 (the date of commencement of the amending Act).

(3) Subclause (1) re-enacts (with minor modifications) clause 4 of Schedule 5 to the amending Act. Subclause (1) is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

(4) In this clause:

*amending Act* means the ←Heritage→ (Amendment) Act 1987.

### Part 2 Provisions consequent on enactment of ←Heritage→ Amendment Act 1996

#### 2 Members of ←Heritage→ Council

(1) A person holding office as a member or alternate member of the ←Heritage→ Council appointed by the Minister under section 8 (2) or section 13 (as in force immediately before the amendment of those sections by the ←Heritage→ Amendment Act 1996) ceases to hold that office on that commencement.

(2) A person who ceases to hold office by virtue of this clause is not entitled to any remuneration or compensation in respect of ceasing to hold office but is eligible (if otherwise qualified) for re-appointment to the ←Heritage→ Council.

### Part 3 Provisions consequent on enactment of ←Heritage→ Amendment Act 1998

#### 3 Existing interim conservation orders and section 130 orders

(1) An interim conservation order in force under Part 3 immediately before the commencement of this clause is taken to be an interim ←heritage→ order made by the Minister that took effect on the date the interim conservation order took effect. The order continues in force accordingly, subject to this Act.

(2) This Act continues to apply (as if it had not been amended by the [Heritage Amendment Act 1998](#)) to and in respect of an order in force under section 130 immediately before the repeal of that section by that Act. This subclause ceases to have effect 3 years after the repeal of section 130, at which time any order under that section still in force ceases to have effect.

(3) In any instrument, a reference to an interim conservation order under this Act is taken to be a reference to an interim [heritage](#) order under this Act.

#### 4 Pending objections under section 29A

(1) When an objection is pending under section 29A immediately before the repeal of that section:

(a) sections 29A–29D and 35A continue to apply in respect of the interim conservation order to which the objection relates as if those sections had not been repealed, and

(b) clause 5 applies in respect of any permanent conservation order made under section 35A (as applying under this clause) as if the permanent conservation order had been made immediately before the commencement of clause 5.

(2) This clause does not apply if the objection is withdrawn within 30 days after the commencement of this clause. An objection cannot be withdrawn after a commission of inquiry is appointed under section 29B in respect of the objection.

#### 5 Permanent conservation orders become listings on State [Heritage](#) Register

(1) Any item or land that is the subject of a permanent conservation order in force under Part 3 immediately before the commencement of this clause is taken to be listed on the State [Heritage](#) Register, and the [Heritage](#) Council is to list the item or land accordingly. A listing pursuant to this clause does not prevent the removal of the listing from the State [Heritage](#) Register in accordance with this Act.

(2) In any instrument, a reference to an item or land being subject to a permanent conservation order is taken to be a reference to an item or land being subject to a listing on the State [Heritage](#) Register.

#### 6 Transfer of items on [Heritage](#) and Conservation Register to State [Heritage](#) Register

(1) As soon as possible after the commencement of this clause, the [Heritage](#) Council is to list on the State [Heritage](#) Register each item that is entered in a register kept under section 170 ([Heritage](#) and Conservation Register) as at that commencement if the [Heritage](#) Council:

(a) considers that the item is of State [heritage](#) significance, and

(b) considers that the item should be listed on the State [Heritage](#) Register, and

(c) is satisfied that the item is owned by a government instrumentality and the government instrumentality has determined that the item is of State [heritage](#) significance.

(2) The listing of an item pursuant to this clause does not prevent the removal of the listing in accordance with this Act.

(3) For the purposes of this clause, a register of items of the environmental [heritage](#) kept by a State owned corporation immediately before the commencement of this clause is taken to be a register kept under section 170.

#### 7 Savings for existing exemptions under section 57

An exemption in force under section 57 (2) on the commencement of this clause has effect on and from that commencement subject to the following:

(a) a reference to an interim conservation order is to be read as a reference to an interim [heritage](#) order,

(b) a reference to a building, work, relic, place or land being subject to a permanent conservation order is to be read as a reference to its being listed on the State [Heritage](#) Register.

## 8 Rating and taxing

(1) A reference in Division 6 (Rating and taxing) of Part 6, as amended by the [Heritage Amendment Act 1998](#), to listing on the State [Heritage](#) Register includes a reference to a permanent conservation order under this Act as in force before the amendments made by that Act.

(2) A reference in Division 6 (Rating and taxing) of Part 6, as amended by the [Heritage Amendment Act 1998](#), to an interim [heritage](#) order made by the Minister includes a reference to an interim conservation order under this Act as in force before the amendments made by that Act.

## Part 4 Provisions consequent on enactment of [Heritage Amendment Act 2001](#)

## 9 Definitions

In this Part:

*2001 amending Act* means the [Heritage Amendment Act 2001](#).

*amended Act* means this Act, as amended by the 2001 amending Act.

## 10 Demolition of buildings and works in [heritage](#) areas

Section 63 of the amended Act extends to any application for an approval made before the commencement of the amendments to that section made by the 2001 amending Act.

## 11 Deferred commencement and partial and conditional approvals

(1) Section 63A of the amended Act extends to any application for an approval made before the commencement of that section.

(2) Section 63B of the amended Act extends to any application for an approval made before the commencement of that section.

## 12 Modification of approvals

Section 65A of the amended Act extends to any approval granted before the commencement of that section.

## 13 Commencement of criminal proceedings

Section 158A does not apply to any offence that is alleged to have been committed before the commencement of that section.

## Schedule 2 (Repealed)

## Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	No	number	Schs	Schedules
Cl	clause	p	page	Sec	section
Cll	clauses	pp	pages	Secs	sections
Div	Division	Reg	Regulation	Subdiv	Subdivision
Divs	Divisions	Regs	Regulations	Subdivs	Subdivisions
GG	Government Gazette	Rep	repealed	Subst	substituted
Ins	inserted	Sch	Schedule		

See also [Heritage](#) (Elizabeth Farm) Amendment Act 1985, sec 4 and Sch 2.

## Table of amending instruments

[←Heritage→ Act 1977 No 136](#). Assented to 21.12.1977. Date of commencement of secs 3–168, 14.4.1978, sec 2 (2) and GG No 41 of 14.4.1978, p 1190; date of commencement of sec 169 and Sch 1, 23.6.1978, sec 2 (2) and GG No 73 of 23.6.1978, p 2380. This Act has been amended as follows:

- 1979** No 206 [←Heritage→](#) (Amendment) Act 1979. Assented to 21.12.1979.  
Date of commencement of Sch 1, 1.9.1980, sec 2 (2) and GG No 91 of 4.7.1980, p 3366.
- 1981** No 83 Miscellaneous Acts (Financial Accommodation) Amendment Act 1981. Assented to 9.6.1981.  
A proclamation was published in Gazette No 79 of 12.6.1981, p 3097, specifying 11.6.1981 as the date of commencement of Sch 1. The amendments were taken to have commenced on 12.6.1981.
- 1984** No 153 Statute Law (Miscellaneous Amendments) Act 1984. Assented to 10.12.1984.
- 1985** No 144 [←Heritage→](#) (Elizabeth Farm) Amendment Act 1985. Assented to 25.11.1985.
- 1986** No 132 Miscellaneous Acts (Residential Flat Buildings) Repeal and Amendment Act 1986. Assented to 4.12.1986.  
Date of commencement of Sch 1, 19.12.1986, sec 2 (2) and GG No 195 of 19.12.1986, p 6189.
- No 220 Miscellaneous Acts (Leasehold Strata Schemes) Amendment Act 1986. Assented to 23.12.1986.  
Date of commencement of Sch 1, 1.3.1989, sec 2 (2) and GG No 21 of 10.2.1989, p 911.
- 1987** No 11 [←Heritage→](#) (Amendment) Act 1987. Assented to 3.4.1987.  
Amended by Statute Law (Miscellaneous Provisions) Act (No 2) 1987 No 209. Assented to 9.12.1987. Date of commencement of the provision of Sch 44 relating to the [←Heritage→](#) (Amendment) Act 1987, assent, sec 2 (1).
- No 48 Statute Law (Miscellaneous Provisions) Act (No 1) 1987. Assented to 28.5.1987.
- No 209 Statute Law (Miscellaneous Provisions) Act (No 2) 1987. Assented to 9.12.1987.  
Date of commencement of the provision of Sch 44 relating to the [←Heritage→ Act 1977](#), assent, sec 2 (1).
- 1988** No 70 Crown Proceedings Act 1988. Assented to 23.11.1988.  
Date of commencement, 1.2.1989, sec 2 and GG No 10 of 27.1.1989, p 406.
- 1991** No 53 Hunter Water Board (Corporatisation) Act 1991. Assented to 11.12.1991.  
Date of commencement of Sch 1, 1.1.1992, sec 2 and GG No 180 of 20.12.1991, p 10554.
- 1992** No 34 Statute Law (Miscellaneous Provisions) Act 1992. Assented to 18.5.1992.  
Date of commencement of the provision of Sch 2 relating to the [←Heritage→ Act 1977](#), assent, Sch 2.
- No 112 Statute Law (Penalties) Act 1992. Assented to 8.12.1992.  
Date of commencement, assent, sec 2.
- 1994** No 88 Water Board (Corporatisation) Act 1994. Assented to 12.12.1994.  
Date of commencement of Sch 7, 1.1.1995, sec 2 and GG No 170 of 16.12.1994, p 7400.
- 1995** No 11 Statute Law Revision (Local Government) Act 1995. Assented to 9.6.1995.  
Date of commencement of Sch 1.57, 23.6.1995, sec 2 (1) and GG No 77 of 23.6.1995, p 3279.
- 1996** No 24 Financial Institutions (Miscellaneous Amendments) Act 1996. Assented to 21.6.1996.  
Date of commencement, 12.7.1996, sec 2 and GG No 84 of 12.7.1996, p 3984.
- No 129 [←Heritage→](#) Amendment Act 1996. Assented to 4.12.1996.  
Date of commencement, 8.8.1997, sec 2 and GG No 88 of 8.8.1997, p 6088.
- No 139 Strata Schemes Management (Miscellaneous Amendments) Act 1996. Assented to 16.12.1996.  
Date of commencement, 1.7.1997, sec 2 and GG No 68 of 27.6.1997, p 4770. Amended by Statute Law (Miscellaneous Provisions) Act 1997 No 55. Assented to 2.7.1997. Date of commencement of Sch 2.18, assent, sec 2 (2).
- 1997** No 147 Statute Law (Miscellaneous Provisions) Act (No 2) 1997. Assented to 17.12.1997.  
Date of commencement of Sch 3, 3 months after assent, sec 2 (3).
- No 152 Environmental Planning and Assessment Amendment Act 1997. Assented to 19.12.1997.  
Date of commencement, 1.7.1998, sec 2 and GG No 101 of 1.7.1998, p 5119.
- 1998** No 54 Statute Law (Miscellaneous Provisions) Act 1998. Assented to 30.6.1998.  
Date of commencement of Sch 2.19, 1.7.1998, Sch 2.19 and GG No 101 of 1.7.1998, p 5119.
- No 138 [←Heritage→](#) Amendment Act 1998. Assented to 8.12.1998.  
Date of commencement, 2.4.1999, sec 2 and GG No 27 of 5.3.1999, p 1546.
- No 145 Water Legislation Amendment (Drinking Water and Corporate Structure) Act 1998. Assented to 8.12.1998.  
Date of commencement, 1.1.1999, sec 2 and GG No 176 of 18.12.1998, p 9726.
- 1999** No 31 Statute Law (Miscellaneous Provisions) Act 1999. Assented to 7.7.1999.  
Date of commencement of Sch 4, assent, sec 2 (1).
- No 94 Crimes Legislation Amendment (Sentencing) Act 1999. Assented to 8.12.1999.  
Date of commencement of Sch 4.115, 1.1.2000, sec 2 (1) and GG No 144 of 24.12.1999, p 12184.
- 2000** No 53 Statute Law (Miscellaneous Provisions) Act 2000. Assented to 29.6.2000.  
Date of commencement of Sch 1.11, assent, sec 2 (2).

No 93	<u>Statute Law (Miscellaneous Provisions) Act (No 2) 2000</u> . Assented to 8.12.2000. Date of commencement of Sch 2.21, assent, sec 2 (2).
No 102	<u>Australian Inland Energy Water Infrastructure Act 2000</u> . Assented to 13.12.2000. Date of commencement, 15.12.2000, sec 2 and GG No 162 of 15.12.2000, p 13169.
No 106	<u>Valuation of Land Amendment Act 2000</u> . Assented to 13.12.2000. Date of commencement of Sch 4.2, 31.12.2000, sec 2 and GG No 168 of 22.12.2000, p 13468.
<b>2001</b> No 65	 <u>Heritage Amendment Act 2001</u> . Assented to 11.10.2001. Date of commencement, 3.12.2001, sec 2 and GG No 180 of 23.11.2001, p 9335.
No 112	<u>Statute Law (Miscellaneous Provisions) Act (No 2) 2001</u> . Assented to 14.12.2001. Date of commencement of Sch 4, assent, sec 2 (1).
<b>2002</b> No 53	<u>Statute Law (Miscellaneous Provisions) Act 2002</u> . Assented to 4.7.2002. Date of commencement of Sch 2.16, assent, sec 2 (2). Amended by <u>Statute Law (Miscellaneous Provisions) Act (No 2) 2002 No 112</u> . Assented to 29.11.2002. Date of commencement of Sch 2.22, assent, sec 2 (3).
<b>2004</b> No 40	<u>State Water Corporation Act 2004</u> . Assented to 30.6.2004. Date of commencement of Sch 3.6, 1.7.2004, sec 2 and GG No 110 of 1.7.2004, p 4983.
No 91	<u>Statute Law (Miscellaneous Provisions) Act (No 2) 2004</u> . Assented to 10.12.2004. Date of commencement of Sch 1.18, assent, sec 2 (2).
<b>2005</b> No 43	<u>Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005</u> . Assented to 16.6.2005. Date of commencement of Sch 7.6, 1.8.2005, sec 2 and GG No 96 of 29.7.2005, p 4031.
No 64	<u>Statute Law (Miscellaneous Provisions) Act 2005</u> . Assented to 1.7.2005. Date of commencement of Sch 2.22, assent, sec 2 (2).
No 98	<u>Statute Law (Miscellaneous Provisions) Act (No 2) 2005</u> . Assented to 24.11.2005. Date of commencement of Sch 3, assent, sec 2 (2).

## Table of amendments

No reference is made to certain amendments made by Schedule 3 (amendments replacing gender-specific language) to the Statute Law (Miscellaneous Provisions) Act (No 2) 1997.

Sec 3	Am 1979 No 206, Schs 1 (1), 2 (1); 1981 No 83, Sch 1. Rep 1984 No 153, Sch 16.
Sec 4	Am 1979 No 206, Sch 1 (2); 1986 No 132, Sch 1; 1986 No 220, Sch 1; 1987 No 11, Schs 1 (1), 4 (1); 1995 No 11, Sch 1.57 [1] [2]; 1996 No 129, Sch 1 [1]; 1996 No 139, Sch 2.16 [1]–[3] (am 1997 No 55, Sch 2.18 [1] [2]); 1997 No 152, Sch 4.13 [1] [2]; 1998 No 138, Sch 1 [1]–[3]; 2000 No 53, Sch 1.11 [1]–[3]; 2001 No 65, Sch 1 [1] [2]; 2004 No 91, Sch 1.18 [1].
Sec 4A	Ins 1998 No 138, Sch 1 [4].
Sec 6	Am 1996 No 129, Sch 1 [2]; 1998 No 138, Sch 1 [5].
Sec 8	Am 1979 No 206, Sch 1 (3); 1987 No 11, Sch 4 (2). Subst 1996 No 129, Sch 1 [3]. Am 2000 No 53, Sch 1.11 [4]–[6]; 2004 No 91, Sch 1.18 [2]–[7]; 2005 No 64, Sch 2.22.
Sec 9	Subst 1996 No 129, Sch 1 [4]. Am 2004 No 91, Sch 1.18 [8] [9].
Sec 11	Am 1996 No 129, Sch 1 [5] [6]; 1999 No 94, Sch 4.115; 2000 No 53, Sch 1.11 [7]; 2000 No 93, Sch 2.21; 2004 No 91, Sch 1.18 [10].
Sec 13	Am 1996 No 129, Sch 1 [7] [8].
Sec 14	Subst 1996 No 129, Sch 1 [9]. Am 1998 No 138, Sch 1 [6].
Sec 14A	Ins 1996 No 129, Sch 1 [9]. Am 1998 No 138, Sch 1 [7].
Sec 15	Subst 1996 No 129, Sch 1 [10].
Sec 16	Am 1996 No 129, Sch 1 [11].
Sec 17	Am 1987 No 11, Sch 4 (3); 1996 No 129, Sch 1 [12].
Sec 21	Am 1987 No 11, Sch 4 (4); 1998 No 138, Sch 1 [8].
Sec 21A	Ins 1998 No 138, Sch 1 [9].
Sec 22	Subst 1998 No 138, Sch 1 [10].
Sec 23	Am 1998 No 138, Sch 1 [11] [12]; 2001 No 65, Sch 1 [3].
Part 3 (secs 24–30)	Ins 1998 No 138, Sch 1 [13]. For information concerning this Part before the commencement of 1998 No 138, Sch 1 [13], see the Historical table of amendments below.
Part 3A	Ins 1998 No 138, Sch 1 [13].
Secs 31–35	Ins 1998 No 138, Sch 1 [13].

Sec 36	Ins 1998 No 138, Sch 1 [13]. Am 2000 No 53, Sch 1.11 [8]; 2005 No 98, Sch 3.31 [1].
Secs 37, 38	Ins 1998 No 138, Sch 1 [13].
Part 3B (secs 39–46)	Ins 1998 No 138, Sch 1 [13].
Part 3C, Divs 1–3 (secs 47–52)	Ins 2001 No 65, Sch 1 [4].
Part 4, heading	Subst 1998 No 138, Sch 1 [14].
Sec 56	Am 1979 No 206, Sch 1 (12); 1986 No 132, Sch 1; 1986 No 220, Sch 1; 1995 No 11, Sch 1.57 [3] [4]; 1996 No 139, Sch 2.16 [4] [5] (am 1997 No 55, Sch 2.18 [1] [2]). Subst 1997 No 152, Sch 4.13 [3]. Am 1998 No 138, Sch 1 [15]; 2005 No 43, Sch 7.6 [1].
Sec 57	Am 1987 No 11, Sch 3 (1); 1998 No 138, Sch 1 [16]–[18]; 2001 No 65, Sch 1 [5].
Sec 59	Am 1998 No 138, Sch 1 [19] [20].
Sec 60	Am 1998 No 138, Sch 1 [21]; 2000 No 53, Sch 1.11 [9].
Sec 61	Am 1997 No 152, Sch 4.13 [4]; 1998 No 138, Sch 1 [21].
Sec 62	Am 1998 No 138, Sch 1 [21]–[24].
Sec 63	Am 1987 No 11, Sch 3 (2); 1997 No 152, Sch 4.13 [5]; 1998 No 54, Sch 2.19 [1]; 1998 No 138, Sch 1 [21]; 2001 No 65, Sch 1 [6].
Secs 63A, 63B	Ins 2001 No 65, Sch 1 [7].
Sec 64	Am 1998 No 138, Sch 1 [21].
Sec 65	Am 1997 No 152, Sch 4.13 [6]; 1998 No 138, Sch 1 [21].
Sec 65A	Ins 2001 No 65, Sch 1 [8].
Part 4, Div 3, Subdiv 2, heading	Am 1979 No 206, Sch 1 (13).
Sec 66	Am 1979 No 206, Sch 1 (14); 1986 No 132, Sch 1; 1986 No 220, Sch 1; 1995 No 11, Sch 1.57 [5]; 1996 No 139, Sch 2.16 [6] (am 1997 No 55, Sch 2.18 [1] [2]). Subst 1997 No 152, Sch 4.13 [7]. Am 1998 No 54, Sch 2.19 [2]; 2005 No 43, Sch 7.6 [2].
Secs 67–69	Am 1979 No 206, Sch 1 (15). Subst 1987 No 11, Sch 3 (3).
Part 4, Div 4, Subdiv 1, heading	Am 1979 No 206, Sch 1 (16) (a).
Sec 70	Am 1987 No 11, Sch 3 (4); 1997 No 152, Sch 4.13 [8] [9]; 2001 No 65, Sch 1 [9]–[11].
Sec 70A	Ins 1998 No 138, Sch 1 [25]. Am 2001 No 65, Sch 1 [12]–[14].
Sec 71	Am 1987 No 11, Sch 4 (6).
Sec 72	Am 1987 No 11, Sch 4 (7); 2005 No 98, Sch 3.31 [2].
Sec 73	Am 1987 No 11, Sch 4 (8).
Part 4, Div 4, Subdiv 2, heading	Am 1979 No 206, Sch 1 (16) (b).
Sec 76	Am 1979 No 206, Sch 1 (17); 1986 No 220, Sch 1; 1987 No 209, Sch 44; 1995 No 11, Sch 1.57 [6]; 1996 No 139, Sch 2.16 [7] (am 1997 No 55, Sch 2.18 [1] [2]). Subst 1997 No 152, Sch 4.13 [10].
Sec 77	Am 1979 No 206, Sch 1 (18).
Sec 78	Subst 1997 No 152, Sch 4.13 [11].
Sec 79	Rep 1979 No 206, Sch 1 (19). Ins 1997 No 152, Sch 4.13 [11]. Am 2005 No 98, Sch 3.31 [2].
Secs 79A, 79B	Ins 1997 No 152, Sch 4.13 [11].
Part 5, heading	Subst 1979 No 206, Sch 1 (20).
Secs 80, 81	Subst 1979 No 206, Sch 1 (20).
Sec 82	Subst 1979 No 206, Sch 1 (20). Am 1998 No 138, Sch 1 [26]; 2000 No 53, Sch 1.11 [10]; 2004 No 91, Sch 1.18 [2].
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Sec 84	Rep 1979 No 206, Sch 1 (20). Ins 1998 No 138, Sch 1 [28].
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Sec 101	Am 1979 No 206, Sch 2 (2); 1987 No 48, Sch 31.
Sec 102	Am 1987 No 11, Sch 4 (9); 1998 No 138, Sch 1 [29].
Sec 105A	Ins 1998 No 138, Sch 1 [30].
Sec 108	Am 1996 No 24, Sch 1.
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Sec 111	Subst 1979 No 206, Sch 2 (3). Rep 1981 No 83, Sch 1.

Sec 112	Subst 1992 No 34, Sch 2.
Sec 113	Rep 1992 No 34, Sch 2.
Part 6, Div 4 (sec 117)	Rep 1998 No 138, Sch 1 [31].
Part 6, Div 5, heading	Subst 1998 No 138, Sch 1 [32].
Secs 118, 119	Subst 1998 No 138, Sch 1 [33].
Sec 120	Am 1979 No 206, Sch 1 (21). Subst 1998 No 138, Sch 1 [33].
Secs 120A–120N	Ins 1998 No 138, Sch 1 [33].
Sec 121	Am 1979 No 206, Sch 1 (22); 1987 No 11, Sch 4 (10); 1998 No 138, Sch 1 [34]–[36]; 2000 No 53, Sch 1.11 [11]; 2004 No 91, Sch 1.18 [2].
Sec 122	Am 1998 No 138, Sch 1 [37].
Sec 123	Am 1991 No 53, Sch 1; 1994 No 88, Sch 7; 1995 No 11, Sch 1.57 [7] [8]; 1998 No 145, Sch 5.8 [1] [2]; 2000 No 102, Sch 3.5 [1] [2]; 2000 No 106, Sch 4.2; 2004 No 40, Sch 3.6.
Sec 124	Am 1979 No 206, Sch 1 (23); 1998 No 138, Sch 1 [38] [39].
Sec 125	Am 1979 No 206, Sch 1 (24); 1998 No 138, Sch 1 [39].
Sec 126	Am 1991 No 53, Sch 1; 1994 No 88, Sch 7; 1995 No 11, Sch 1.57 [9].
Sec 127	Am 1979 No 206, Sch 1 (25); 1998 No 138, Sch 1 [39].
Sec 128	Am 1979 No 206, Sch 1 (26); 1998 No 138, Sch 1 [39] [40].
Sec 129	Am 1998 No 138, Sch 1 [41].
Part 6, Div 8, heading	Am 1987 No 11, Sch 2 (1); 1998 No 138, Sch 1 [42].
Sec 129A	Ins 1987 No 11, Sch 2 (2). Rep 1998 No 138, Sch 1 [43].
Sec 130	Am 1987 No 11, Sch 2 (3). Rep 1998 No 138, Sch 1 [43].
Sec 131	Am 1979 No 206, Sch 1 (27); 1987 No 11, Sch 2 (4). Rep 1998 No 138, Sch 1 [43].
Sec 132	Am 1987 No 11, Sch 2 (5). Rep 1998 No 138, Sch 1 [43].
Sec 133	Am 1987 No 11, Sch 2 (6). Rep 1998 No 138, Sch 1 [43].
Sec 134	Rep 1998 No 138, Sch 1 [43].
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Sec 138	Subst 2001 No 65, Sch 1 [17].
Sec 139	Subst 1998 No 138, Sch 1 [50]. Am 2001 No 65, Sch 1 [18]–[20].
Sec 140	Am 2000 No 53, Sch 1.11 [13]; 2001 No 65, Sch 1 [21].
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Sec 148	Am 1998 No 138, Sch 1 [55] [56].
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Sec 158A	Ins 2001 No 65, Sch 1 [24].
Sec 160	Am 1998 No 138, Sch 1 [68].
Sec 161	Am 1998 No 138, Sch 1 [69].
Sec 166A	Ins 2001 No 65, Sch 1 [25].
Sec 167	Am 1979 No 206, Sch 1 (36); 1987 No 11, Schs 1 (21), 2 (11); 1998 No 138, Sch 1 [70].
Sec 168	Subst 1987 No 11, Sch 4 (14). Am 1988 No 70, Sch 1.
Sec 169	Rep 1985 No 144, Sch 1 (1). Ins 1987 No 11, Sch 4 (14). Am 1996 No 129, Sch 1 [13] [14]; 1998 No 138, Sch 1 [71].
Sec 170	Ins 1987 No 11, Sch 4 (14). Am 1998 No 138, Sch 1 [72]–[74]; 2004 No 91, Sch 1.18 [11].
Sec 170A	Ins 1998 No 138, Sch 1 [75]. Am 2002 No 53, Sch 2.16 [1] (am 2002 No 112, Sch 2.22).
Sec 171	Ins 1996 No 129, Sch 1 [15].
Sch 1	Rep 1985 No 144, Sch 1 (2). Ins 1996 No 129, Sch 1 [16]. Am 1998 No 138, Sch 1 [76]; 2000 No 53, Sch 1.11 [15]; 2001 No 65, Sch 1 [26] [27]; 2001 No 112, Sch 4.1; 2002 No 53, Sch 2.16 [2].
Sch 2	Ins 1979 No 206, Sch 2 (4). Rep 1984 No 153, Sch 16.

## Historical table of amendments

Information concerning Part 3 before the commencement of 1998 No 138, Sch 1 [13]:

Part 3	Rep 1998 No 138, Sch 1 [13].
Part 3, Div 1, heading	Rep 1998 No 138, Sch 1 [13].
Sec 24	Am 1979 No 206, Sch 1 (4); 1987 No 11, Sch 1 (2). Rep 1998 No 138, Sch 1 [13].
Secs 25–28	Rep 1998 No 138, Sch 1 [13].
Sec 29	Am 1979 No 206, Sch 1 (5); 1987 No 11, Sch 1 (3). Rep 1998 No 138, Sch 1 [13].
Secs 29A–29D	Ins 1987 No 11, Sch 1 (4). Rep 1998 No 138, Sch 1 [13].
Sec 30	Am 1979 No 206, Sch 1 (6); 1987 No 11, Sch 1 (5). Rep 1998 No 138, Sch 1 [13].
Sec 31	Am 1979 No 206, Sch 1 (7). Subst 1987 No 11, Sch 1 (6). Rep 1998 No 138, Sch 1 [13].
Secs 32, 33	Rep 1998 No 138, Sch 1 [13].
Sec 34	Am 1987 No 11, Sch 1 (7). Rep 1998 No 138, Sch 1 [13].
Sec 35	Rep 1987 No 11, Sch 4 (5).
Part 3, Div 2, heading	Rep 1998 No 138, Sch 1 [13].
Sec 35A	Ins 1987 No 11, Sch 1 (8). Rep 1998 No 138, Sch 1 [13].
Sec 36	Am 1987 No 11, Sch 1 (9). Rep 1998 No 138, Sch 1 [13].
Sec 37	Am 1987 No 11, Sch 1 (10). Rep 1998 No 138, Sch 1 [13].
Sec 38	Rep 1998 No 138, Sch 1 [13].
Sec 39	Am 1979 No 206, Sch 1 (8); 1987 No 11, Sch 1 (11) (12). Rep 1998 No 138, Sch 1 [13].
Sec 40	Am 1987 No 11, Sch 1 (12). Rep 1998 No 138, Sch 1 [13].
Sec 41	Am 1987 No 11, Sch 1 (12) (13). Rep 1998 No 138, Sch 1 [13].
Sec 42	Am 1987 No 11, Sch 1 (14). Rep 1998 No 138, Sch 1 [13].
Sec 43	Am 1987 No 11, Sch 1 (15). Rep 1998 No 138, Sch 1 [13].
Sec 44	Am 1987 No 11, Sch 1 (12) (16). Rep 1998 No 138, Sch 1 [13].
Sec 45	Rep 1998 No 138, Sch 1 [13].
Sec 46	Am 1979 No 206, Sch 1 (9); 1987 No 11, Sch 1 (17). Rep 1998 No 138, Sch 1 [13].
Sec 47	Rep 1979 No 206, Sch 1 (10).
Secs 48, 49	Rep 1998 No 138, Sch 1 [13].
Sec 50	Am 1979 No 206, Sch 1 (11); 1987 No 11, Sch 1 (12) (18). Rep 1998 No 138, Sch 1 [13].
Sec 51	Am 1987 No 11, Sch 1 (12). Rep 1998 No 138, Sch 1 [13].
Sec 52	Am 1987 No 11, Sch 1 (12) (19) (am 1987 No 209, Sch 44). Rep 1998 No 138, Sch 1 [13].
Sec 53	Am 1987 No 11, Sch 1 (14). Rep 1998 No 138, Sch 1 [13].
Sec 54	Am 1987 No 11, Sch 1 (15). Rep 1998 No 138, Sch 1 [13].
Sec 55	Am 1987 No 11, Sch 1 (12). Rep 1998 No 138, Sch 1 [13].
Part 3, Div 3	Ins 1987 No 11, Sch 1 (20). Rep 1998 No 138, Sch 1 [13].
Sec 55A	Ins 1987 No 11, Sch 1 (20). Rep 1998 No 138, Sch 1 [13].



Sec 55B

Ins 1987 No 11, Sch 1 (20). Am 1992 No 112, Sch 1. Rep 1998 No 138, Sch 1 [13].

As a result of the substitution of Part 3 and the insertion of Parts 3A and 3B, secs 47–55B have been repealed.

SYDNEY  
OPERA HOUSE



# SYDNEY OPERA HOUSE

A PLAN FOR THE CONSERVATION OF  
THE SYDNEY OPERA HOUSE AND ITS SITE

JAMES SEMPLE KERR

THIRD EDITION



THIRD EDITION

# SYDNEY OPERA HOUSE

A REVISED PLAN FOR THE CONSERVATION OF THE SYDNEY OPERA HOUSE AND ITS SITE

JAMES SEMPLE KERR

SYDNEY OPERA HOUSE TRUST

## **Author's preface and acknowledgments**

The policies in this third edition of the Sydney Opera House conservation plan have been substantially rewritten. Most of the difficult issues concerned the appropriate treatment of the work of Utzon and Hall – particularly during the process of change. It called for a rational and co-ordinated approach and this is set out in the section 'Utzon, Hall and the approach to change'. Its six policies guide the program that follows.

Since the first edition there have been successes and failures in managing the heritage aspects of the Opera House and its site. These have been drawn upon for the last section 'Managing the process of change'.

Both assessments and policies passed through draft stages and were amended on the advice of a working group of: Dennis Watkins, Trustee, Sydney Opera House; John McWhinney, Director, Facilities, Sydney Opera House; and Richard Johnson, of Johnson Pilton Walker.

Richard Johnson was the informal link for the transmission of ideas from Jørn Utzon, and Utzon and Joan Domicelj made written comments on the second edition of the plan. In addition, Joe Horacek, Director, People and Strategy, and David Hughes, Project Director, Venue Improvement Plan, both of the Sydney Opera House, provided background information. Also Joan Kerr helped give clarity to some of the more difficult passages.

The agreed draft then passed to the Conservation Council appointed by the Sydney Opera House Trust and the Council's suggestions were incorporated before being submitted to the Trust. Trustee and management scrutiny resulted in a further series of minor adjustments. These gave a more accurate appreciation of Trust intentions and actions without losing the impact of the policies.

This third edition was finally adopted by the Sydney Opera House Trust on 23 June 2003.

### **Note on captions**

Identification and dating of photographs in captions are shown in two ways:

- year, film and negative number, e.g. 2002.1.3; and
- actual date the photograph was taken, e.g. 24.2.2002.

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## INTRODUCTION

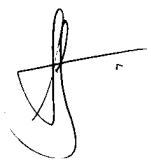
The Sydney Opera House is one of the world's most remarkable performing arts venues. It is also one of the great monuments of twentieth century architecture superbly matched to its setting. Now, however in the twenty-first century its functional adequacy and technical virtuosity is beginning to show both its age and the disjointed nature of its development history. Its success as an icon has also created usage patterns not envisaged in its original design brief.

With the support of the Premier, Bob Carr, and its newly appointed architect, Richard Johnson, the Sydney Opera House Trust negotiated the return of Jørn Utzon to document his original design intentions for posterity and to advise on future work. The re-engagement was formalised in August 1999 and, in May 2002, the Premier released Utzon's *Design Principles*, accompanied by the Sydney Opera House Trust's *Venue Improvement Plan*. The NSW Government allocated \$69.3 million to this plan as the first stage of a long term program to keep the Sydney Opera House up to the current standards expected of this type of venue.

In order to allow the program to be accomplished without the loss of the heritage significance of the Sydney Opera House and its relationship with the site, the Sydney Opera House Trust re-engaged James Semple Kerr to prepare a revised edition of his *Conservation Plan*. The new policies draw on the principles enunciated by Utzon and on the experience of the Trust in managing the building over the past decade. As well as providing for present and future care, the revision incorporates principles with which there is the flexibility necessary for functional improvement and future development of the building and its surrounds. It also provides a rational basis for the progressive treatment of its disparate parts.

The Trust commissioned the *Design Principles* and the *Conservation Plan* as an essential part of its custodianship of one of the world's great heritage buildings, which has the structural characteristics to serve its purpose for centuries to come, and has to be sensitively managed so as to preserve its core values.

The plan was prepared in close co-ordination with Richard Johnson and recommended for adoption by the Conservation Council appointed by the Trust. It was adopted by the Sydney Opera House Trust on 23 June 2003.

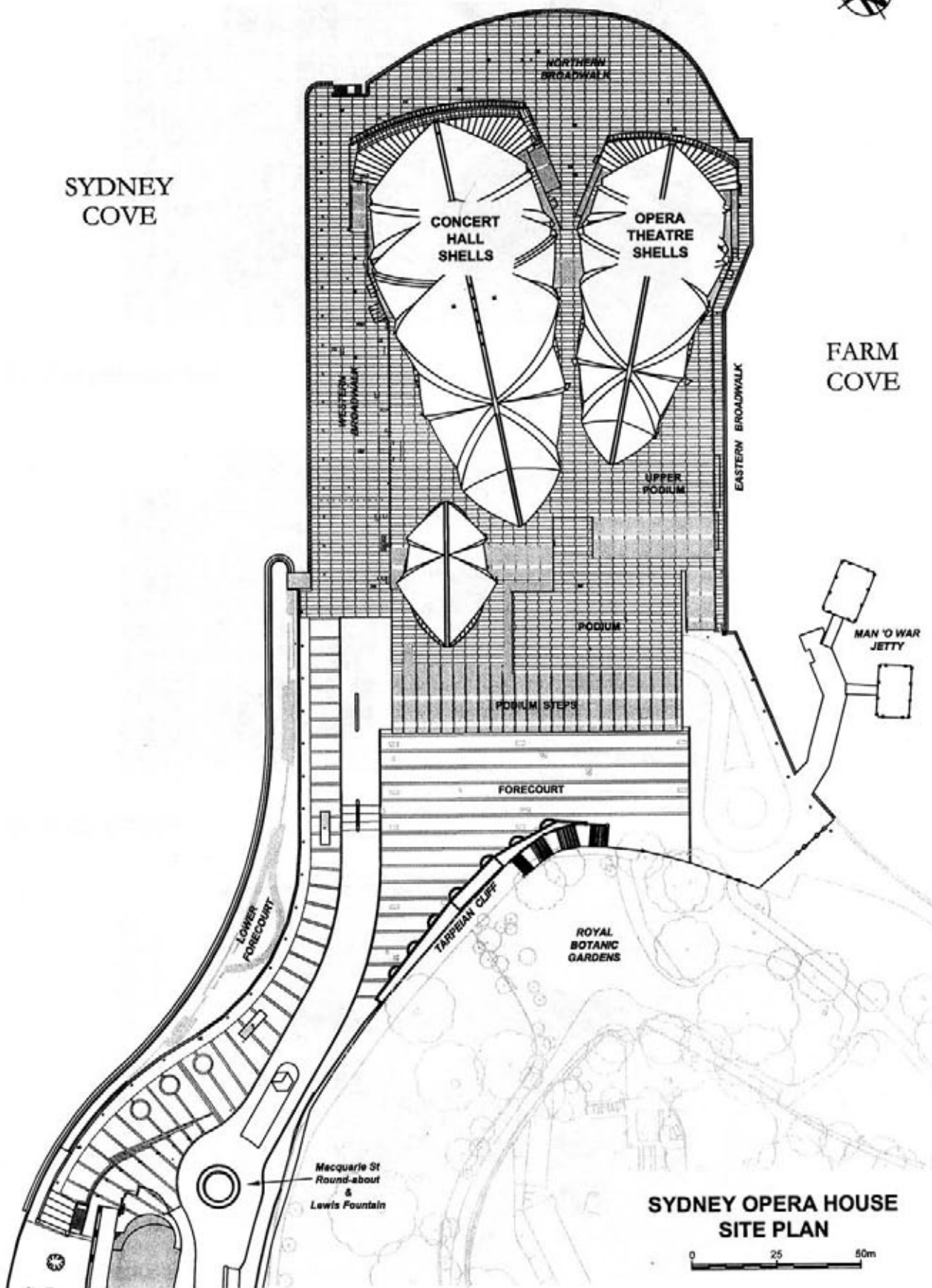


Joseph Skrzyński, AM  
Chairman  
23 June 2003



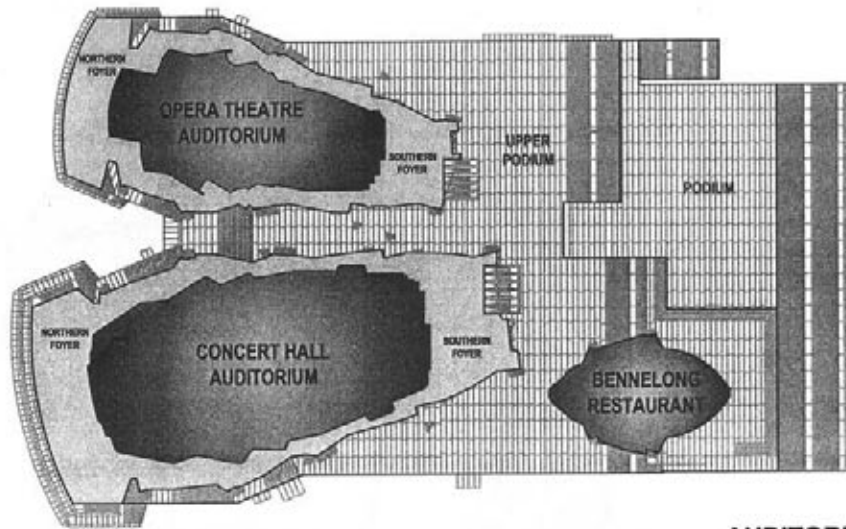
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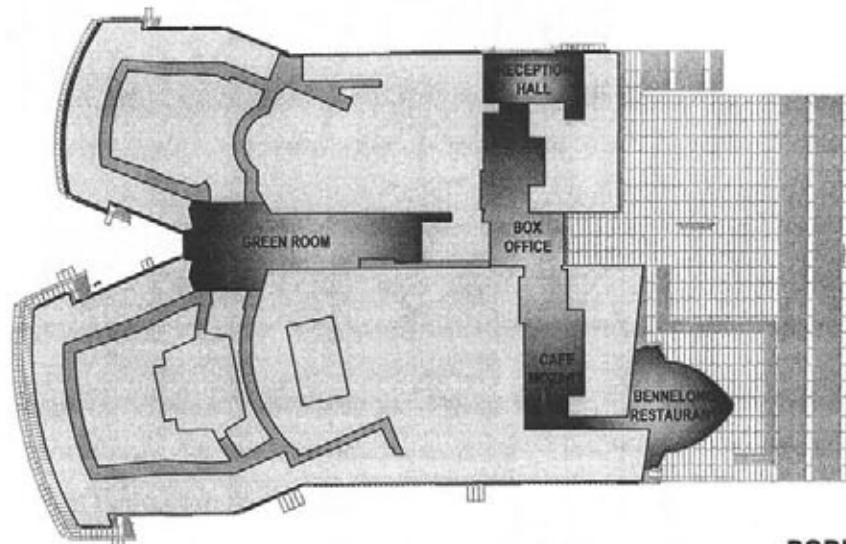


**SYDNEY OPERA HOUSE  
SITE PLAN**

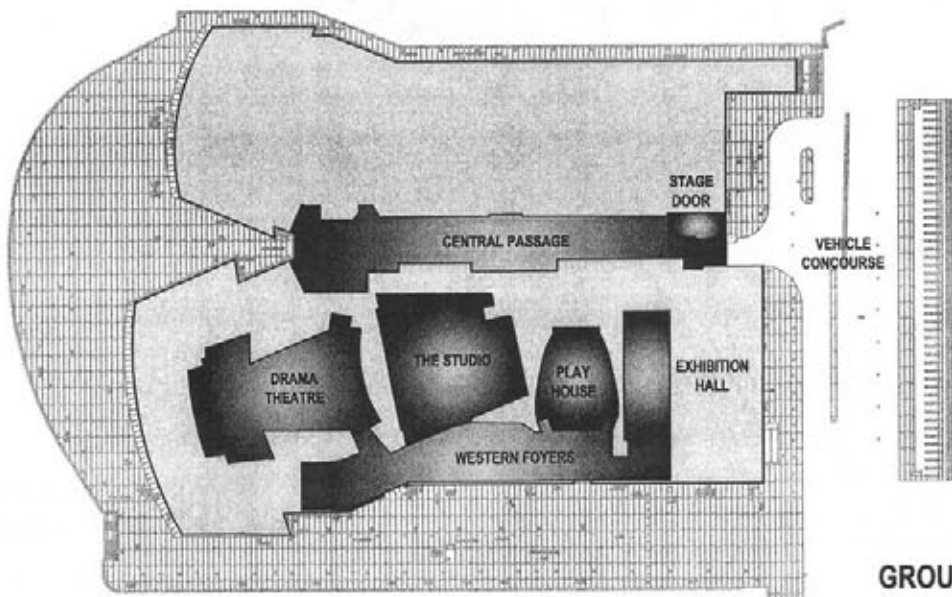
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AUDITORIUM LEVEL +61'



PODIUM LEVEL +30'



GROUND LEVEL +12'



## UNDERSTANDING THE PLACE

### Bennelong Point, 1788–1795

Following Governor Arthur Phillip's decision to locate the settlement at Sydney Cove, the first ship to arrive from Botany Bay was HMS *Supply*, with Phillip on board. The *Supply* anchored at nightfall on Friday 25 January 1788—about a cable's length from what was later to be known as Bennelong Point. The rest of the fleet arrived the following day.

The government cattle and horses were landed on the point the following Monday and it received the immediate but unofficial name of cattle point (Collins, I, 5; Stephenson and Kennedy, 94). Being a headland it made the beasts easier to contain. Such large and novel mammals would have made the point a place of particular interest to the Guringai people but there are only incidental European references to their visits to the place (Bradley, 84; Collins, I, 27). The livestock remained until they had cropped what little pasture the point provided and they were then removed to a spot at the head of the cove to the east where a government farm was established (Collins, I, 5).

Isabel McBryde notes that the peninsula was known to the Aboriginals as 'Tyubow-gule' (McBryde, 17), but most early correspondents simply referred to the place as 'the east point of the cove' and in common usage it became East Point. Its permanent name, however, arose indirectly from Phillip's attempts to understand and come to terms with the local Aboriginal people. In November 1789, because of his limited success, he took the drastic step of seizing two men: Coleby and Bennelong (Bradley, 181). Coleby soon escaped but Phillip spent considerable time endeavouring by 'kind treatment' to 'reconcile' Bennelong to the Europeans (HRNSW, I, part 2, 300).

Relaxed surveillance allowed Bennelong to decamp in May the following year (1790) but he appears to have retained some affection for Phillip. When the two met farther down the harbour in September, Bennelong made an ill-fated attempt to introduce Phillip to his compatriots. Phillip was speared in the shoulder by 'Wil-le-mer-ring', probably because he interpreted Phillip's advance to shake hands as an attempt to capture him (Collins, I, 110–112).

Despite this, Bennelong subsequently re-appeared at government house with three companions. David Collins, the judge advocate of the settlement, reported:

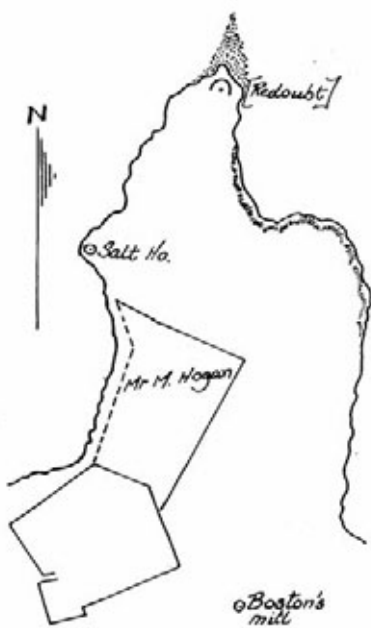
The welcome reception they met... inspired the strangers with such a confidence in us, that the visit was soon repeated; and at length Bennelong solicited the government to build him a hut at the extremity of the eastern point of the cove. This, the governor, who was very desirous of preserving the friendly intercourse which seemed to have taken place, readily promised, and gave the necessary directions for its being built (Collins, I, 113).

The hut was built of brick, twelve feet square and was roofed with tiles (fig.1). Bennelong chose the site and took possession of it about the middle of November 1790 (Collins, I, 117 & Tench, 200).



1. Thomas Watling, detail of 'View taken from the Rocks' showing Bennelong's hut on the east point of Sydney Cove, 1793–95. Dixson Gallery.

All contemporary sketches show the house in splendid and exposed isolation on the point and from this time the headland was increasingly known as Bennelong's Point—initially with almost as many spellings as there are letters in the name. There is no evidence to suggest that Bennelong spent much time in the dwelling; when in the vicinity he preferred to sleep at government house and seems to have regarded his own house more as a symbol of his importance than a place of residence. The place did, however, have occasional use as a social centre for those Aborigines that were about the settlement (McBryde, 17). William Bradley gives an account of an evening 'entertainment' in March 1791 provided by Bennelong at his house for the governor and his party. At it twenty-four men, women and children danced to the accompaniment of beating sticks and hands (Bradley, 231).



2. Detail of Charles Grimes' 'Plan of Sydney' showing the semicircular redoubt, the Salt House and Boston's Mill in 1800. HRNSW.V.f.p.837.

Much to the distress of relatives and friends, Bennelong and a young compatriot 'Yem-mer-ra-wan-nie' agreed to return to England with Phillip. They left in December 1792. Of the two Aborigines, only Bennelong survived the trip and it was not until 1795 that, homesick and unwell, he was able to return with the new governor, John Hunter (Collins, I, 211, 296, 331, 572). Bennelong left no record of what he thought of his meetings with England's erratic and unprepossessing monarch, George III. The trip and his European connections helped unsettle a volatile character and he found himself alienated from both Aboriginal and European cultures. This was exacerbated by bouts of intoxication whenever he could gain access to liquor. According to the *Sydney Gazette*, Bennelong died at Kissing Point in 1813 (ADB, I, 85).

During Bennelong's English trip the house was hardly used (McBryde, 17), and in March 1793 it was lent to the visiting Spanish expedition of Don Alexandro Malaspina. The expedition made astronomical observations from the point and used the structure for the safe-keeping of the instruments (Collins, I, 231). The house was demolished in 1795 and the bricks used elsewhere (McBryde, 17).

In 1795 there was a shortage of salt in the colony and Governor Hunter agreed to John Boston's proposal to make salt at Bennelong Point. He was allocated seven convicts and constructed a small works on the west side of the Point (ADB, I, 126; Collins, I, 355). Its location is confirmed by Grimes' plan of 1800 (fig.2) and by Charles-Alexandre Lesueur's engraved *Plan of Sydney* of 1802 in which the building is still known as the 'Saline' or salt works.

Boston was a free settler and staunch republican whose entrepreneurial spirit outran his competence. He only managed to produce 'three or four bushels of salt... in more than as many weeks' and the work was abandoned (ibid). The following year he turned his attention to brewing beer from corn, making soap and erecting a windmill on the ridge running south from Bennelong Point, approximately at the present location of the conservatorium of music. By June 1797 Hunter had come to the conclusion that Boston 'was one of those whom the colony will not derive any advantage from' (ibid, 127). In 1804 on a trading expedition Boston landed with seven others at Nukualofa. All were killed by the waiting Tongans as they stepped ashore (ADB, I, 127).

## Early defence works and visitors, 1788–1802

Bennelong Point became the site of the first defensive work commenced in the colony. In April 1788 Phillip appointed marine officer and part-time astronomer, William Dawes, to act as artillery and engineer officer (Collins, I, 20) and he was requested to construct a small redoubt on the east point. David Collins notes that, in July, Dawes' labour force was made up of recently active thieves of whose guilt there was 'little doubt, though no positive proof' (ibid, 28). The work was finished by the end of the year and on new year's day 1789 two guns were placed in position (Harvey, 2.0). The redoubt would have been just sufficiently back from the northern tip of the point to attain a modest elevation and some command of the surrounding water.

Before the work was completed Phillip was obliged to send HMS *Supply* on an urgent quest for flour and, in order to increase its capacity, he removed eight of its guns. These were landed on the west (Dawes') point and a small breast work thrown up round them (Collins, I, 33). Both batteries fell into decay and the Bennelong Point battery was abandoned by 1791 (Harvey, 2.0). In December 1798, the ship's company of the *Supply* under Lieutenant Kent completed a half-moon battery 'on the east point (fig.2), where stood the house built by Governor Phillip for Bennillong' (Collins, II, 97-98, 100). It was armed with some of the guns from the *Supply*.

In October 1800, Governor Philip Gidley King's newly-appointed engineer officer, Edward Abbott, reported that the 'Bennelong Point or East Battery... consists of 4 [6-pounder] guns and 6 embrasures formed of wattle, casks, and earth, in a total state of decay' (HRNSW, IV, 198). No attempt was made to repair or reconstruct the work and instead the point was to become a de facto hospitality area for visiting survey and expedition vessels.

Nicholas Baudin's French expedition spent five months in Sydney from June to November 1802 and it was on the tip of Bennelong Point, south of the battery site, that King permitted Baudin to establish his shore tents 'to facilitate the work of the astronomers'. Matthew Flinders' tents erected from the *Investigator* were already nearby (Bonnemains, 57; HRNSW, IV, 948). One of Baudin's artists, Charles-Alexandre Lesueur, left a fine collection of reasonably accurate pencil sketches of Sydney and Bennelong Point (Bonnemains, 101-106). The Baudin visit was marked by the nice balance of courtesy, hospitality and suspicion which subsisted between the English officials and the French visitors.

If, as Collins suggests, Bennelong chose the site of his house, why was it in such an exposed location on the tip of the point, overlooked by headlands and ridges and visible from the waters of the harbour in three directions? In the absence of records of the local people's attitude to the point, it seems likely that Bennelong chose to give maximum visibility to the very solid evidence of the esteem in which he was held by the European visitors. The value of such a highly visible symbol of white benevolent intentions would not have escaped Phillip. Perhaps he guided Bennelong in his choice. Whatever the reason, the topographical characteristics which made it attractive to Bennelong also

made the vicinity useful for temporary defensive works and, when they were derelict, as a shore camp for visiting foreign expeditions. On the point, the foreigners could be held at a not inconvenient arm's length and at the same time be kept under easy surveillance.

For the first quarter century of European settlement, then, practical considerations arising from the topography determined the use of the northern part of the point. In the second decade of the nineteenth century, however, a new dimension was added to the way in which the place was perceived and Bennelong Point and its spinal ridge became the focus of a new official aesthetic.

### **Bennelong Point and the Picturesque, 1810–1843**

The area now occupied by Bennelong Point, the gardens and Mrs Macquarie's Point was reserved for the crown by Phillip and was to continue as a government demesne free of leases or encroachments (Gilbert, 14–15). Under Hunter and King, however, a variety of leases and buildings were permitted. When Governor William Bligh took over in 1806 he would have none of such foolish or venal nonsense. He cancelled the leases and required the removal of the buildings (HRNSW, VI, 305). It was yet another act that failed to endear him to his 'mutinous' free subjects. Fortunately the next official governor, Lachlan Macquarie, reinforced and completed the clearance.



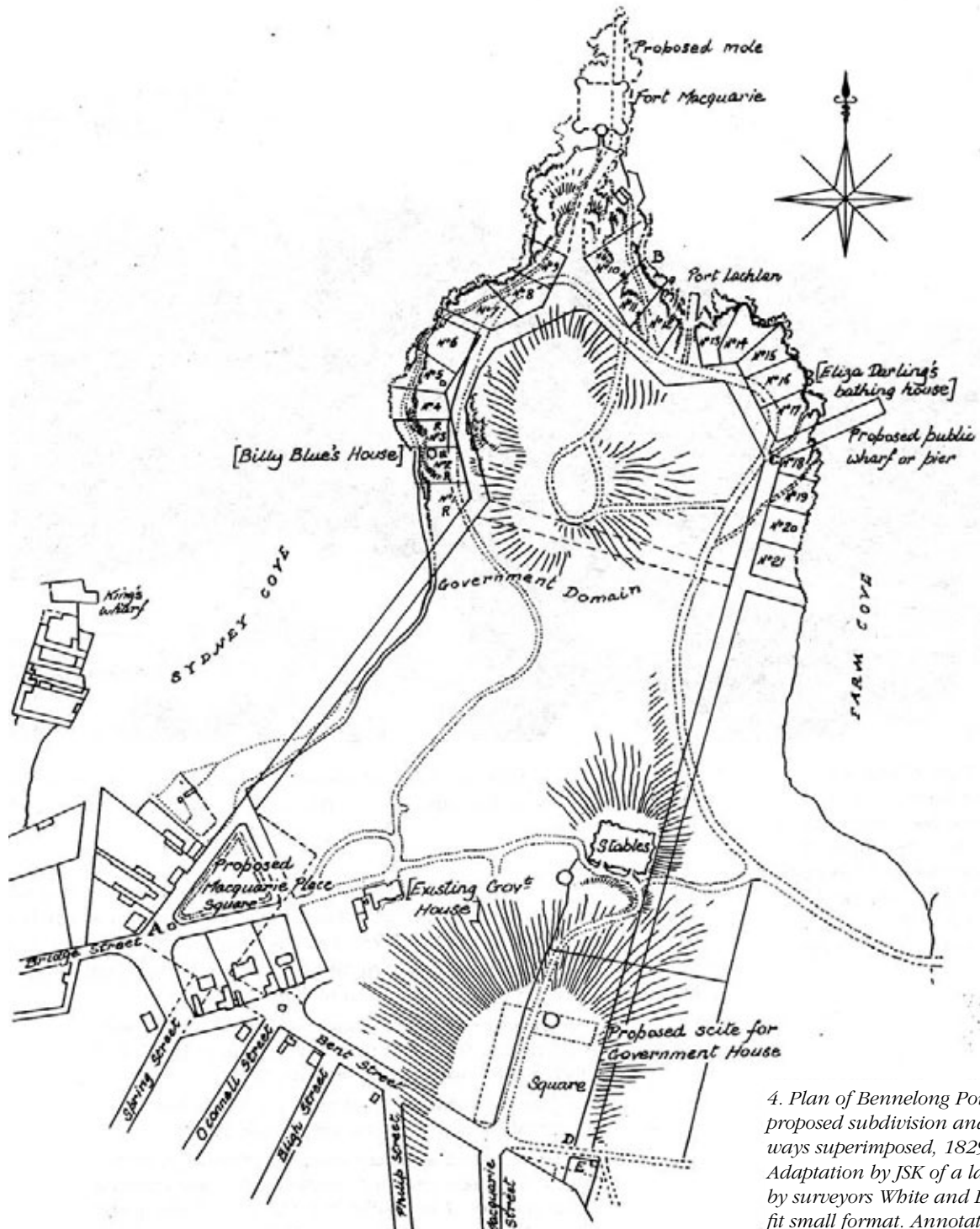
3. Billy Blue's house, detail of an engraving by S. Hall published in W.C. Wentworth's ... *Description of ... NSW, 1820.*

Macquarie and his wife Elizabeth did a lot more than return the government domain to its former shape: they also set out to embellish it. Elizabeth's taste for the Picturesque is now well documented (Kerr & Broadbent, chapter 3) and in Sydney she had one of the grandest water landscapes in the world to work on. Moreover she had a husband who shared her taste and was prepared to take responsibility for getting the work done.

The first fruit of the partnership on Bennelong Point was modest: a two-storey, vaguely castellated, octagonal cottage completed in 1812 on the west side of Bennelong Point (figs 3 & 4). It was built on Macquarie's orders as a dwelling for an eccentric black Jamaican known as Billy Blue. William Blue had been transported for stealing sugar and acted as a waterman, watchman and oyster seller. With his top hat and 'naval' uniform he was a highly visible member of Macquarie's marine menagerie (Ritchie, 165; Macle hose, 176–177).

In 1814 Macquarie received a never-to-be-repeated gift on the convict transport *General Hewitt*. It was the convicted forger, Francis Greenway, an architect capable of the stylish realisation of the Macquaries' dreams. Those dreams required castellated Gothic structures as embellishments of harbour views and these Greenway provided—although not without complaint at the occasional interference of his autocratic clients and the subversive activities of his military masters and convict craftsmen. The latter recognised his talent but couldn't stand his conceit.

Greenway clothed the Dawes Point Battery with a masonry screen and added a towered and castellated guard house, but his major defensive



4. Plan of Bennelong Point with proposed subdivision and roadways superimposed, 1829. Adaptation by JSK of a large plan by surveyors White and Benn to fit small format. Annotations in brackets have been added. (A/NSW Map SZ 454.)

work was to be commenced in 1818 across Sydney Cove on the tip of Bennelong Point. Macquarie had prepared a characteristic brief:

**Memorandum for Mr Greenway, Gov<sup>r</sup> Actg Civil Architect** 1st To draw out a Ground Plan and Elevation of a Neat Handsome Fort—intended to be erected, as soon as possible, on the lower part of Bennelong's Point, with Ten Embrasures, viz 4 in the North face, 4 in the East face and two in the West face; the South face of the Fort being the entrance and not requiring Embrasures. The Fort is to be entirely built of the best stone that can be procured near the spot. (ML, A1451, p1, Greenway Papers).



5. Detail from a Charles Bayliss photographic panorama of Sydney from the Garden Palace tower in 1879. Reading north along the Bennelong Point spine are the stables, government house and Fort Macquarie. National Library of Australia.

The fort was intended to prevent clandestine departures from Sydney Cove as well as repel ‘surprise... attacks from an enemy’ (ML, A3251, dispatch 25.3.1819).

The sixteenth of December 1817 was arguably the most satisfying day of Macquarie’s official life. Mr Commissioner Bigge had not yet arrived to blight his public works program, he had breakfasted with friends to celebrate the completion of Greenway’s South Head Light (named Macquarie Tower) and on his return he had stopped

at Bennelong’s Point where the ceremony was performed of laying the foundation stone of the new fort... and which was this day named Fort Macquarie.

At 3 p.m. this same day I also laid the foundation stone of the new stable for Government House, etc, etc,...

This being altogether a very interesting day and an auspicious one, I presented Mr Greenway... his emancipation dated this day, it being delivered to him at Macquarie Tower this morning before breakfast. (Ellis, 77, quoting Macquarie’s Journal, 16.12.1817).

The third and largest element to be placed on the Bennelong Point ridge was to be Macquarie’s government house. Fort, stables and house were to provide a grand Picturesque composition both from the harbour and from viewpoints on the walk earlier designed by Mrs Macquarie around Farm Cove to her ‘chair’ on Anson Point. The house was never built but Greenway cited the source of his design as Thornbury Castle, Gloucestershire (*Australian*, 4.4.1825). In 1803 Greenway had exhibited a work titled ‘Thornbury Castle restored...’ at the Royal Academy, so it is clear that he was familiar with the place (Kerr, Joan,

Designing a colonial church, Vol.1, 54–55). As the stables were to be stylistically consistent with the house it is not surprising that it too showed similarities to Thornbury. Even the tower of Fort Macquarie bore a family resemblance.

Governor Ralph Darling made a second attempt at achieving a new government house in 1827. He held a competition for a plan which his wife Eliza reputedly won. The project, like its predecessor, was stillborn but the Darlings did manage to erect a castellated bathing house with octagonal towers on the Farm Cove waterfront not far from Fort Macquarie (fig.4). Eliza Darling probably had a substantial hand in its design (Kerr & Broadbent, 47). Charles Rodius made an accurate pencil sketch of the bathing house and fort from Mrs Macquarie's Point in 1833.

Bennelong Point's romantic marine landscape was finally completed in 1843 when the present government house was finished. It was designed in England by Edward Blore for the site selected by



Macquarie but was actually built on the ridge halfway between the stables and Fort Macquarie (fig.5). The style was Late Gothic or Tudor. The 'genius' of the Point was still considered to be most peculiarly Gothic and a generation of artists, amateur and professional, never tired of depicting its elements (fig.6).

6. George Halsted's watercolour of Bennelong Point from the Rocks showing Government House, the Tarpeian Rock face, Fort Macquarie and Fort Denison in 1863. Mitchell Library.

The prosaic James Macle hose, in his 1839 guide to Sydney, ends his description of Fort Macquarie with the following:

the chief pride of this town is the excellent walks round the Domain, passing Fort Macquarie (Macle hose, 122).

A third of a century later Anthony Trollope added:

I despair of being able to convey to any reader my own idea of the beauty of Sydney Harbour. I have seen nothing to equal it... (Trollope, 30).

He particularly commended

a walk from the bottom of Macquarie Street... leading round by the fort, under the Governor's house, to the public gardens (Trollope, 33).

What the Macquaries had done (with prior help from Phillip and Bligh and some subsequent support from the Darlings and Bourke) was to create an environment which appealed to the Picturesque sensibilities of generations to come. It was enough to ward off the grosser demands for commercial and maritime developments which were sought throughout the nineteenth century.

Lionel Gilbert illustrates the point in his quote from William Charles Wentworth's 1819 lament that 'Government House and the adjoining

domain' denies 'facilities for the erection of warehouses and the various important purposes of commerce'. It was a plaint which was echoed by the 'political economist' (economic rationalist?) William Stanley Jevons in 1858:

... in the original laying out of Sydney a great mistake was made; a large extent of land surrounding Farm Cove extending thence to the high ridge of Hyde Park and including both the promontories of Fort Macquarie and Lady Macquarie's Chair were reserved for parks or other purposes. The whole of this would be extremely valuable as affording both wharves for marine trade and a good central position for the other trades... (Gilbert, 177; ADB, IV, 481).

Such developments (and subdivisions (fig.4)) continued to be substantially resisted, making the government domain a fine and relatively intact legacy for twentieth century Sydney.



7. Adaptation of George Barneys sketch of Port Jackson, August 1836. Public Record Office, London, WO55.852.

### Fort Macquarie and the use of the point, 1817–1901

While the landscape quality of Fort Macquarie with its Gothic towers was admired, its defensive capacity was not. The fort was a 130-foot square structure with circular bastions on the four corners. The bastions were each armed with a 24-pounder, smooth bore, muzzle-loading gun mounted *en barbette* on a traversing platform. This



enabled them to be discharged over the parapet with a wide field of fire. Other guns were mounted to fire through embrasures in the east, north and west parapets, three to each side. The fort was entered by a bridge over a dry moat and then through an octagonal Gothic guard tower. Similarly embellished towerlets sprouted from the east and west extremities of the counterscarp. A magazine capable of holding 350 barrels of gunpowder was built into the base of the tower and accommodation for an officer and twelve men was located in the upper part (Ellis, 104).

Most military observers regarded the fort as an ornamental and archaic toy. They were alarmed by the fact that its terreplein was only 22 feet above high water, thus unnecessarily exposing the gunners to enemy fire. They also objected to the tower which would become a source of flying splinters under bombardment. In 1836 the newly-arrived commanding royal engineer, George Barney, reported that both Dawes Point battery and Fort Macquarie were 'totally inadequate to the defence of Sydney Cove' (WO 55.852, f.75-77).

The subsequent life of the fort attests to the comparative soundness of its construction, but the process had been a painful one. At the time Greenway had a massive task of designing and supervising a range of public works in trying circumstances and each delay made his client more exigent. The artisan in charge of Fort Macquarie complained that Greenway had never given him a proper plan to follow and tended to change details while construction was underway (Kerr & Broadbent, 43). Greenway for his part became increasingly paranoid about the theft of his ideas and misuse of his plans by others and increasingly proceeded on a day-to-day 'need to know' basis (Havard, 168, quoting Bigge). It infuriated his builders. Despite the problems the fort was sufficiently completed to fire its first salute on the departure of Mr Commissioner Bigge in February 1821.

The arguments which occupied the next third of a century over the defence of Sydney and its harbour had little impact on Fort Macquarie and it continued to be used for drills and saluting, although without regular professional gunners. It was not until the Crimean war that Fort Macquarie was seriously reconsidered as a part of a defensive program. The imperial authorities had passed the title of the Sydney fortifications over to the colonial administration in 1851 (Kerr, *Fort Denison*, 18) largely to avoid the cost of long-overdue development. In 1856, however, the colony had a new (more or less) responsible government with a treasury swollen by the gold rushes, an active and pushful Barney in charge of harbour defence and a decisive royal engineer governor general, William Denison (*ibid*, 19-20). Works at Fort Denison, Mrs Macquarie's Point, Kirribilli Point, Dawes Point and Fort Macquarie were undertaken (LA, V&P, 1856-57, Vol.III, EC minute 56-60).



8. Fort Macquarie after the construction of the upper battery, sea wall and esplanade in the early 1860s. Unknown photographer about 1870. Private collection.

For an account of harbour defences in the period see J.S. Kerr, *Fort Denison*, 16-21.

In 1861 a five-gun (42-pounder?) battery was completed on the eastern escarpment of Bennelong Point above and immediately adjacent to Fort Macquarie (fig.8). The date is confirmed by the returns of mounted and serviceable guns at the fort.

31 Dec'r	42pr	24pr carronade	12pr	6pr	Notes
1860	-	11	1	6	5 dismantled 42pr brought in
1861	4	-	-	-	-
1862	5	4	1	-	-

(Statistical returns, NSW.)

It was also at this time that an esplanade was created round the fort by erecting an encircling sea wall and filling the area formerly covered by high tides (fig.8). Later in the 1860s the fort was upgraded by the addition of 32-pounder shot and 10-inch and 8-inch shell guns, probably for training purposes.

In 1854 Fort Macquarie had become the drill ground of the colonial volunteer artillery, formed hastily to repel the Russian bear (fig.9). It was also used by elements of 7 battalion, royal artillery, who had arrived in October 1856 and had their headquarters at the Dawes Point

battery, although much of their strength was despatched in 1858 and 1861 to fight in the Maori wars (Kerr, *Fort Denison*, 37). Late in the century the fort was occupied as a volunteer naval brigade depôt and lecture rooms and a drill shed were erected south of the guard tower (fig.10). The brigade and its more portable buildings were removed to Rushcutters Bay in 1900–1901 to make way for a tram depôt (PWD, AR, 1901).



9. Drill of the Artillery  
Volunteers at Fort Macquarie,  
From the Illustrated Sydney  
News, 30.9.1854, p.264.

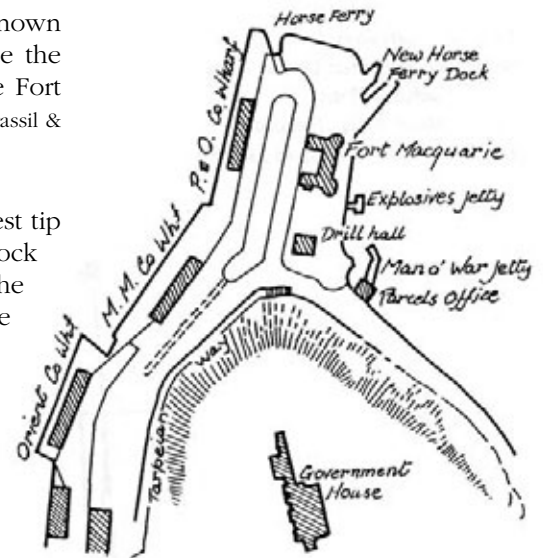
the new observatory. On 1 September it was altered to one o'clock and thereafter the government astronomer guaranteed that the timing was sufficiently accurate for the rating of ships' chronometers (Gov' Gazette, 1.6.1858 & 24.8.1858).

Two other nineteenth century uses of the point are of interest. On 3 June 1858 the fort commenced firing a noon-day gun on the drop of the time ball at

Two years later a Milsons Point vehicular steam ferry was established from the west side of Bennelong Point near the dry moat (Stephenson & Kennedy, 137). The double-fronted vessel with a central smoke stack can be seen in Halsted's 1863 watercolour (fig.6). The ferry landing was demolished in 1889, presumably to make way for the completion of major longshore wool, mail and passenger wharves which, during the

1880s, extended along the east side of Sydney Cove. The best known and longest established were the Orient Company's wharf beside the former site of Billy Blue's house and, at the northern end beside Fort Macquarie, the wharf of the Peninsular and Oriental Company (Brassil & Le Maistre, 13).

The west side ferry was replaced by a horse ferry on the north-west tip of the point and this was in turn superseded by an elaborate dock for a large ferry north-east of the fort in 1898 (PWD, AR, 30.6.1899). The opening of the Sydney Harbour Bridge in 1932 put an end to the vehicle ferries. An odd piece of barbarism of the late 1890s was the demolition of the western rampart of the fort—presumably to provide carriage access and space for the burgeoning P&O passenger trade on the mail run to the United Kingdom.



### The 'Fort Macquarie' tram shed, 1901–1958

From 1879 Sydney was progressively covered by a tramway network. Horse-drawn at first, it was later powered by steam and, finally, electricity. In 1901 a new single track electric tramway was constructed linking Belmore Park to the Quay via Pitt, Hay, Castlereagh, Bligh, Bent and Loftus Streets. It then ran as a double track at the back of the East Circular Quay wharves to a new tram-car house simultaneously built on the site of Fort Macquarie. A loop line ran round the 'house' to facilitate heavy holiday traffic and serviced the new wharf and jetties constructed on the east side of the point by the Sydney Harbour Trust. The jetties had berths for excursion ferries and charter boats and were known as the picnic jetties. It was a very lively place at the weekend (ibid, 14). The entire works were completed and opened in September 1902 (PWD, AR, 1902, 1903).

10. Bennelong Point wharves, based on an unidentified plan of about 1899 from the Dennis Wolanski Library.

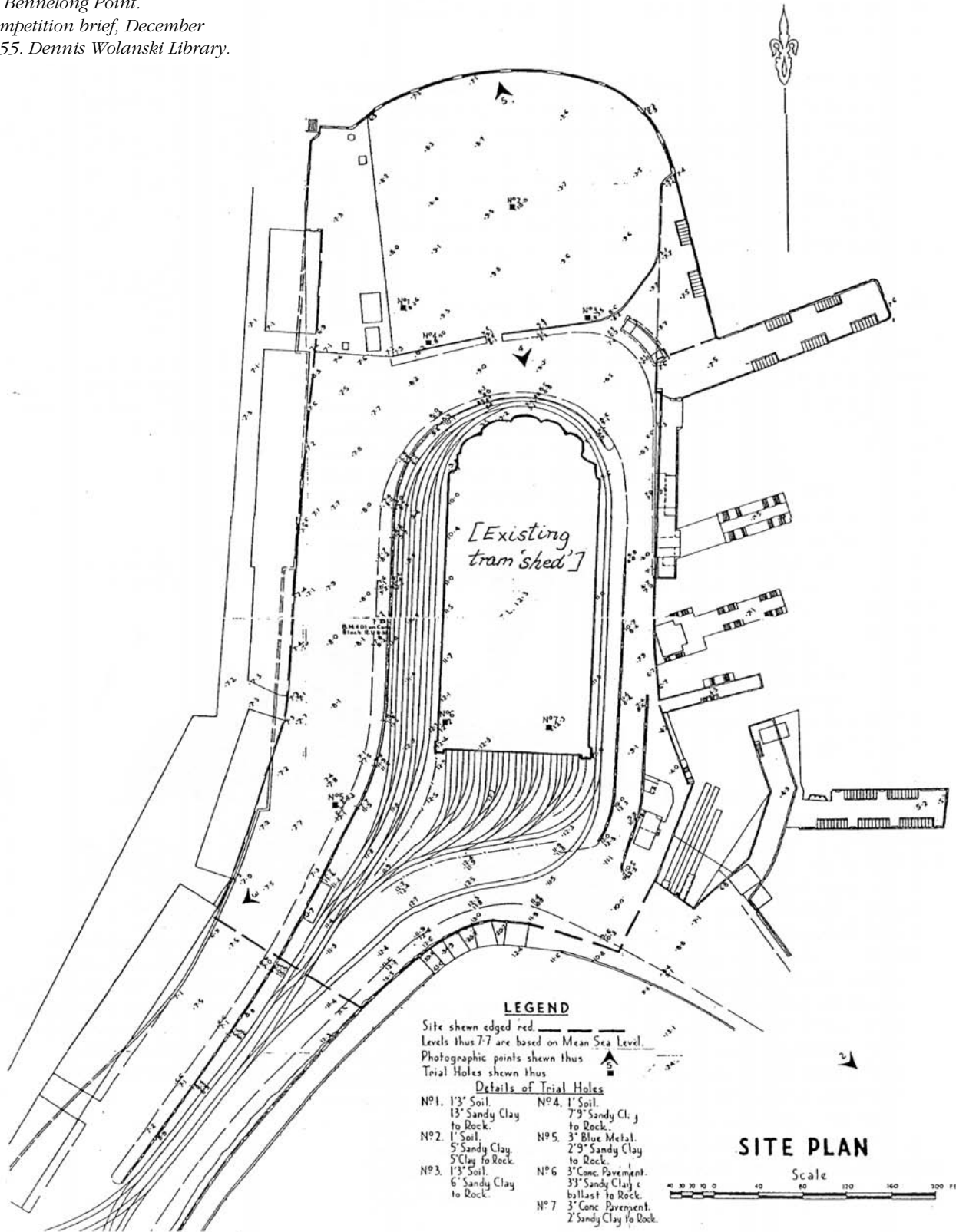
The car-house, or 'shed' as the public preferred to call it, was substantial. It was designed to hold 72 of the largest trams on twelve parallel tracks and provided 200x120 feet of pit accommodation for overhaul work. While the function of the site had changed dramatically, the appreciation of its Picturesque quality had not, so the outer shell was built of brick and sandstone in a fortified Gothic mode. The Department of Public Works reported that it was designed to harmonise with the surroundings and was 'similar in style to the residence of the governor general, which is not far off' (PWD, AR, 1902). Hence the industrial saw-tooth roof was concealed behind crenellated parapet walls and the office and staff facilities were located in a north end with five apses in echelon—in the manner of the thirteenth century High Gothic cathedrals of Amiens, Rheims and Beauvais. This surprising arrangement was surmounted by an asymmetrically placed tower in the government architect's best Neo-Gothic mode (fig.11).



11. Photograph of the northern apsidal elevation of the tram shed on Bennelong Point, about 1955, included in the competition brief. The 'shed' was designed by the NSW government architect. Dennis Wolanski Library.

12. Site boundary for a proposed National Opera House on Bennelong Point. Competition brief, December 1955. Dennis Wolanski Library.

# NATIONAL OPERA HOUSE,



## Genesis of the Opera House

The Fort Macquarie tram shed continued in use for over fifty years and finally became redundant during the 1950s when Sydney's trams were progressively phased out in favour of buses. Bennelong Point had already caught the attention of Eugene Goossens, the conductor of the Sydney Symphony Orchestra, as a splendid location for a performing arts centre. He was unhappy with the acoustics and facilities of the Sydney Town Hall and in October 1948 publicised a plan for an opera house on the site with an auditorium to accommodate 3,500 to 4,000 people (SOHIT quoting *SMH*, 7.10.1948).

It was not until 1952, however, that the idea gained political support in the person of the newly-elected Labor premier of NSW, John Joseph Cahill, who announced the need for an opera house. The following year Goossens and Cahill discussed the concept with the professor of architecture at Sydney University, Henry Ingham Ashworth. With only a slender parliamentary majority, Cahill had other preoccupations; nevertheless in November 1954 he convened a public meeting to appoint an opera house committee to advise government on ways to implement the government's intention to build an opera house.

The committee consisted of Goossens, Ashworth, Charles Moses (general manager of the ABC), Roy Hendy (Sydney City Council town clerk) and Stan Haviland (the head of the Department of Local Government) who served as chairman (SOHT, AR, 1961, Appendix). The committee recommended the Bennelong Point tram shed and park area as the site and an international competition to select the design (*ibid*).

## The competition, 1955–1957

In January 1956 the government announced an international competition for the design of a 'National Opera House' to be erected on Bennelong Point. Site boundaries were shown on an attached plan (fig.12) and competitors warned that designs which exceeded the boundaries would be disqualified (Competition brief, 7). The brief noted that 'ample parking space' could be found 'within easy walking distance of the site' (*ibid*, appendix 3) and that space for approximately 100 cars was required on site for musicians, some staff and invalids attending performances (*ibid*, appendix 4).

Appendix 5 set out two mandatory requirements for the building:

1. There shall be two halls—one large and one small hall. The large hall should seat between 3,000–3,500 persons. The small hall should seat approximately 1,200 persons.  
The large hall to be designed for use for the following purposes:—
  - (a) Symphony Concerts (including organ music and soloists).
  - (b) Large-scale Opera.
  - (c) Ballet and Dance.
  - (d) Choral.
  - (e) Pageants and Mass Meetings.

2. The small hall to be designed for use for the following purposes:
  - (a) Dramatic Presentations.
  - (b) Intimate Opera.
  - (c) Chamber Music.
  - (d) Concerts and Recitals.
  - (e) Lectures.

The requirements under 1 and 2 above, have been listed in order of priority with respect to the attention which should be given to their specialised building needs.

It is expected that ideal conditions will be provided as far as possible acoustically, visually and in connection with stage and orchestral facilities. Compromises which will prejudice the entirely satisfactory performance of a function with a higher priority in the above list should not be made (ibid, 24).

There was no limit placed on the estimated cost of the project, instead competitors were

allowed to use their discretion in submitting a design of the character and dignity associated with this type of building. At the same time they should bear in mind the necessity for sound judgment as to the financial implications (ibid, 6).

The assessors were Ashworth, John Leslie Martin (professor of architecture at Cambridge and a member of the design team for the Royal Festival Hall, London, and an Ashworth acquaintance from their Manchester days), Cobden Parkes (the NSW government architect) and Eero Saarinen (the renowned Finnish architect from Michigan, USA) (ibid, 4).

The combination of site and open brief proved irresistible: 933 competitors registered. They came from all over the world:

UK	220	Far East	28
Europe	219	Canada	25
Australia	193	New Zealand	20
USA	113	Eire	10
Middle East & Balkans	63	South America	6
South Africa	32	Other	4

(NLA, MS 4500, Ashworth papers, box 9).

Of these over 220 finally submitted entries. It was a competition which generated real international interest.

Judging took place in January 1957 and the entry of a Danish architect, Jørn Utzon, was the unanimous winner. Both the architectural fraternity and the public were amazed by the design. The *Architect's Journal* called it 'The epitome of romantic sculpture on the grand scale' (*AJ*, London, 14.2.1957). Most people found it a spectacular and appropriate development of the site.

There were a few dissenting voices: Cahill reacted with 'it looks like a bloody crocodile' but he was quickly pacified (Parsons, 342); the world-famous Italian engineer Pier Luigi Nervi, who had designed the interlace beams for Harry Seidler's Australia Square tower, objected to the evident lack of structural basis; Frank Lloyd Wright, grown somewhat crusty with age, demanded 'Australians are not going to let this

abomination happen, are they?' A more kindly and enigmatic Buckminster Fuller noted, 'it will give simple people pleasure' (Boyd, Now it can never be architecture). Second prize went to seven architects from Philadelphia, USA and third to Boissevan and Osmond of London, UK.

There are conflicting views of what took place during the jury's deliberations but all agree that Saarinen was a strong advocate of the winning design. His much quoted philosophy speaks for him: 'The only architecture which interests me is architecture as a fine art. That is what I want to pursue' (Jencks, 197). The Sydney Opera House design provided a splendid opportunity for that pursuit.

During public debate on a name for the building the following month, Paul Butz wrote to the *Sydney Morning Herald* (SOHIT, SMH, 19.2.1957) suggesting it be called Bennelong Hall and then abbreviated to Ben Hall, thus it 'would be in keeping with the bushranger prices that will no doubt be charged for admission'. It was exactly what Cahill feared and in August the same year, he promised:

the building when erected will be available for the use of every citizen, the average working family will be able to afford to go there just as well as people in more favourable economic circumstances, there will be nothing savouring even remotely of a class conscious barrier and the Opera House will, in fact, be a monument to democratic nationhood in the fullest sense (Report of Trustees of SOH, 30.6.1963).

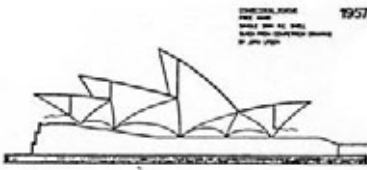
Utzon had arrived the previous month to see, for the first time, the site for which he had prepared the design. He charmed the natives and a sense of euphoria prevailed. The laconic entry in the chronology prepared for the Opera House library says it all:

7 August 1957: Fundraising meeting at the Sydney Town Hall. Utzon cheered, model unveiled for the first time. Premier overcome with emotion. Public waved banknotes and cheques (SOHIT).

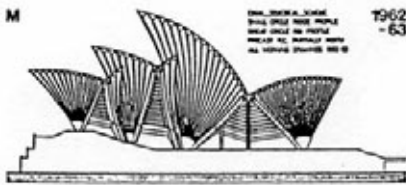
Utzon then returned to Denmark to work up his plans with the help of the engineering firm of Ove Arup and Partners of London. Arup was Utzon's choice but was responsible directly to the client. It was an arrangement suggested by Ashworth for the major consultants but it was later to contribute to the discord between architect and engineer (Baume, 12-13). A further recommendation by Ashworth to government which had unfortunate repercussions was that it was unnecessary for Utzon to work with an Australian architectural firm with local knowledge, as had been foreshadowed in the competition brief (Ashworth to Hall in conversation).

## **Utzon's evolving concept, 1957-1966**

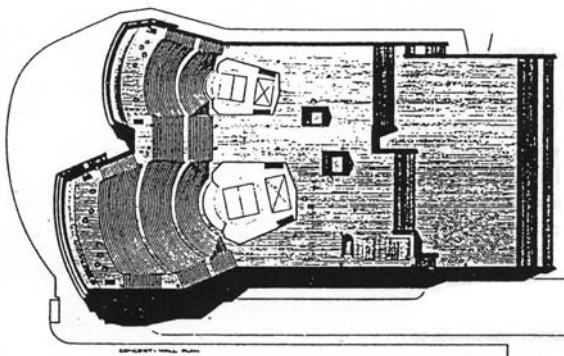
Greenway had designed a functional if somewhat old-fashioned fort for his client and embellished it with Picturesque borrowings from a Gothic past. Eighty-five years later the NSW government architect did the same for the tram shed. It was an approach which spanned the nineteenth and early twentieth centuries but, in the 1920s and '30s, was reviled and abandoned by followers of the Modern Movement. They



13. Utzon competition entry drawing, 1957. Arup & Zunz, SOH, 9.



14. Final roof scheme, 1962-63. Arup & Zunz, SOH, 9.



15. The platform or podium with steps and auditorium seating. Arup & Zunz, SOH, 6.

held, as an article of faith, that form must follow function. The tram shed almost outlasted the most puritanical phase of the Modern Movement in Australia and thus preserved the site for the work of a new generation of which Utzon, in his development of the Sydney Opera House, was the most expressive and dramatic exponent.

### The roof shells

Utzon, like the designers that preceded him on Bennelong Point, was inspired by the site. It was clear that the building would be viewed from all angles—from water, land and even air. It would be a focal point in a grand waterscape: hence the roof was of ‘major importance’. Utzon explained:

... instead of making a square form, I have made a sculpture—a sculpture covering the necessary functions... If you think of a Gothic church, you are closer to what I have been aiming at.

Looking at a Gothic church, you never get tired, you will never be finished with it—when you pass around it or see it against the sky... something new goes on all the time... together with the sun, the light and the clouds, it makes a living thing (Utzon, SOH, 49).

The austere line sketches Utzon prepared for the 1957 competition show a roof of relatively squat, free form, concrete shells (fig.13). These were concept diagrams and did not prove to be structurally practical. Over the next five years Utzon, in conjunction with the Arup firm, developed a ribbed shell system based on the geometry of a sphere (fig.14). This system permitted each rib to be built up of a number of standard segments cast at the site. The segments were then lifted into place between the previous rib and a supporting telescopic steel arch devised by the contractor, M.R. Hornibrook. The complete rib was then stressed and the process repeated.

The development of the roof shell design was a difficult and lengthy process. The final solution was not evolved until 1962-63. As with so much of the Sydney Opera House work, it extended skills and pushed technology to the limit. Utzon was proud of having combined an expressive freedom of form with the precise technology of the machine age in a job of such complexity (Utzon, SOH, 49).

### The platform

The past was not a foreign country to Utzon. He drew on it for inspiration—not in the nineteenth century way of recapturing styles by borrowing details but in the re-interpretation of long used ideas. One of these was the importance of the platform. In 1959 he wrote:

The platform as an architectural element is a fascinating feature. I first fell in love with it in Mexico on a study trip in 1949, where I found many variations both in size and idea of the platform... a great strength radiates from them (Giedion, Utzon, 41, quoting Utzon).



Subsequent travel reinforced Utzon's conviction that 'the horizontal plane—the platform—[is] 'the backbone of architectural compositions'' (ibid).

It is not surprising then that the shell structures of the Sydney Opera House are supported on a substantial, visually solid, platform or podium and that almost the entire south front is spanned by terraces of steps approximately 282 feet wide in the manner of Mayan temples. Giedion cites Yucatan as an example (Giedion, Utzon, 38-39). The major halls and public perambulation areas in the Opera House are placed upon the platform and the working parts of the complex are located underneath.

### The glass walls

By 1963 the problems of the platform (construction stage I) and the roof (construction stage II) had been resolved and the building design had arrived at the stage delightfully expressed by his earlier sketch of a Japanese house *sans* walls (fig.16). As the roof shells of the Opera House only touched the platform at certain springing points, the character of the infill between the platform and the roof had to be resolved. By 1964, Utzon wanted to glaze this in such a way that the glass appeared suspended from the shells, transparent and with no suggestion of a vertical load-bearing capacity (Utzon, SOH, 83). It was also to reflect something of the sculptural quality of the building and, most difficult, provide a link which would accommodate the very different geometry of the roof shells and the stepped platform. It was a problem finally left to the architects of stage III to solve.

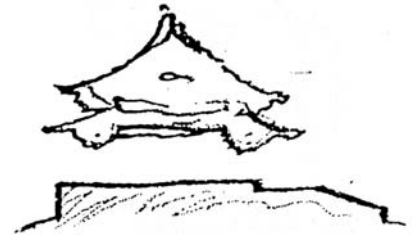
### Interior relationships

Utzon's plan set the two largest halls side by side upon the platform. It made possible his dramatic sculptural elevations but it was not without some functional cost. The main item was the loss of conventional side and backstage space. Instead, access was contrived from below and vehicle deliveries were effected via a broad spinal passage under the platform at ground level (fig.17). The halls had their stages set to the south. This maximised views of the harbour from the northern foyers and from the glass-walled passages as the public passed round to the northern end.

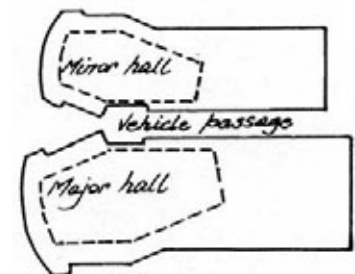
Those people who arrived by car would enter the austere, low-lit, linear spaces of the stairway and booking hall under concrete beams of unusual span and form. The ascent of the remaining steps to the platform level rendered a continuation of Utzon's cathedral analogy entirely appropriate. It was to be like passing from a low narthex or crypt to a grand Gothic cathedral—light, airy and with a tall sculptural rib vault above.

### Corridors

Utzon's vision of the building as a 'living thing' manufactured from simple mass-produced elements in a limited range of materials was to apply throughout the building. The intended design of the corridors under the platform was an off-beat example. The location and irregular



16. Utzon's sketch of a Japanese house with platform and roof elements only. *Zodiac*, 14, 40.



17. Diagram of vehicle access passage below halls.



18. Sketch of Utzon's corridors based on mock-up model.

form of the corridors were determined by the structural and functional requirements of the halls and superstructure above, but their internal treatment was cunningly devised to conceal their additional function of distributing electrical, hydraulic and mechanical services.

Standard 16" ply panels were to be developed as a part of an overall manufacturing process. They were to sit on a rail at floor level on one side of the corridor and cover the otherwise exposed services on the wall. At the top they were pivoted to a plywood slat which was anchored to a rail on the opposite wall thus forming an additional visual barrier to the services on the ceiling (fig.18). The barrier was increased by using a dark colour above the slats and high intensity lighting between. It was still possible, however, to carry out a casual inspection by looking directly up between the slats (Utzon, Narrative, 1965, 20).

The sculptural effect was created by Utzon's pivot and by the irregular form and width of some corridors. This resulted in the wall and ceiling slats connected by the pivot being progressively inclined from their vertical and horizontal planes (ibid). The effect would have been rather like passing along the somewhat quadrilateral alimentary canal of a giant recumbent serpent.

### **Toil and trouble**

In the early 1960s the architectural character of the proposed Sydney Opera House had already made it famous in professional circles. By the mid 1960s the controversy surrounding its time and cost overruns had spread that fame to almost all levels of society. In February 1966, with the roof structure more than half complete, Utzon 'resigned'. By April he had left Sydney and did not return. Like the building itself, the reasons for the Opera House troubles were complex and much discussed in a range of publications, some of which are listed in the bibliography.

A major factor was Premier Cahill's insistence on the building being commenced before the March 1959 election—long before the design for the shells and their supports had been resolved. With construction running ahead of design solutions, it set up a chain reaction which plagued all those concerned with the work during the fifteen year construction of the building. The most quoted example was the need to explode and reconstruct those foundations which were to bear the weight of the roof as finally designed. Cahill may have been right in insisting that the project would not have survived without an irrevocable early commitment, but it certainly proved a disastrous handicap to the building program.

A further problem lay in the committees appointed by Cahill in August 1957 to act for the client (SOHIT). They consisted of a large executive committee advised by two sub-committees: a music and drama panel and a technical advisory panel. The latter became the most relevant committee for the supervision of the building program. As with the other committees, the technical advisory panel was honorary and did not meet sufficiently frequently to give timely advice, so its chairman,

Ashworth, often made decisions. Indeed, he became the de facto client. In 1959 Arup wrote to Utzon, who was still working in Denmark:

...no-one can afford to wait until the Committee formally approves your latest plans for the major hall stage area. When your scheme is fully worked out you should send it to Professor Ashworth stressing that he must give immediate authority to go ahead. From past experience the full Committee cannot be summoned in time nor induced to give an opinion positive enough to allow work to proceed... (Baume, 68)

It was a role Ashworth would have found gratifying. He was one of those persons whom the English have often been pleased to export to the colonies. As professor of architecture at the University of Sydney he took full advantage of a residual cultural cringe among the natives to become a great committee man and arbiter of taste in Sydney commercial and professional circles. Inclined to pomposity and dependent on others for informed advice, he was not in a position to provide the astute guidance necessary if Utzon's method of working was to survive in an alien cultural environment. Instead he provided enthusiastic and uncritical support for Utzon's proposals and progress payments were authorised without question (Baume, 93-94). After the new Liberal government took office in May 1965, Utzon's sheep were replaced by wolves.

Utzon was a natural problem-solver, working up solutions in consultation with technical experts and artisans by a process of trial and error. He made his method clear in a letter to the new minister for public works in July 1965.

It was mutually agreed with the client [Ashworth's committee] that, every time a better solution was evolved on one point or another, it was necessary to incorporate the better solution. I have not compromised with either my previous client or the consultants in my search for perfection. This is what separates this building from any other—that it is being perfected at the same time as it is being built (Baume, 70, quoting Utzon to Hughes, 12.7.1965).

In his search for perfection Utzon was working to a very different agenda to that of the new government. He knew he could get there in the end, but in financial—and therefore political—terms it was not a process the government considered appropriate to jobs of the scale and complexity of the Sydney Opera House. Once the authorisation of fees was transferred from the executive committee to the minister for public works, Davis Hughes, in October 1965 (SOHIT) Utzon was in trouble. Utzon finally resigned in an oddly constructed letter in which he told Hughes that he had been 'forced... to leave the job' (Baume, 84, quoting Utzon to Hughes, 28.2.1966). The alacrity with which Hughes dispatched a formal acceptance of Utzon's 'resignation' belied the deep regret he expressed at receiving it (ibid, 84, Hughes to Utzon, 28.2.1966).

At the beginning of 1965 Ove Arup said:

Utzon is a very charming and genial genius, but unpromising... (Arup, Address, quoted in Baume, appendix 1).

In addition to this generally acknowledged charm and genius Utzon possessed that degree of artistic determination so necessary for the rigorous pursuit of an artistic ideal and this, combined with a distinct naivete in dealing with bureaucratic expectations, made conflict inevitable. Had he had a trusted Australian architectural firm to advise him on local culture as suggested in the competition brief, a show-down may have been averted.

There were a range of other factors, not least of which was the progressive breakdown of relations between Utzon and the Arup firm. Utzon believed that the firm's contact with the client should be only through him as architect. As Arups were directly engaged by the client this did not always happen. Utzon also came to believe that Arups arrogated to themselves too much credit for design solutions and he increasingly harboured dark thoughts about Arup's behaviour and intentions—thoughts which he finally expressed to Ove Arup in two letters written after his resignation (Baume, 41–43). In the later one he taxed Arup with not advising the client that his firm's services would be withdrawn unless Utzon was fully reinstated. Whatever the rights of the matter, it was fortunate for the project that Arups did in fact continue their work.

### **Completing the Opera House, 1966–1973**

In April 1966 Hughes announced the appointment of a panel of Sydney architects to complete the project. It consisted of Peter Hall from Public Works; Lionel Todd of Hanson, Todd and Partners; and David Littlemore of Rudder, Littlemore and Rudder. They became Hall Todd and Littlemore for the duration of the job. Hall was responsible for design (Yeomans, *Progress*, 1.7.1972). The fourth member was the government architect, Ted Farmer, who, by virtue of his office, acted as client.

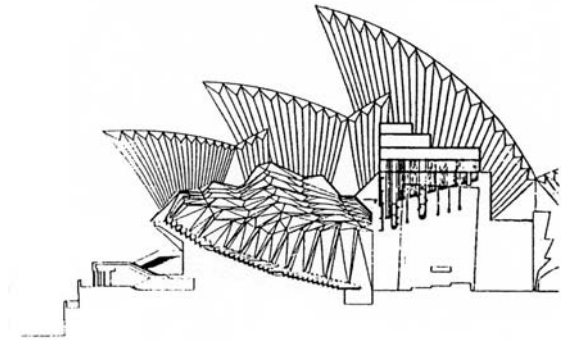
At the time, the structure of the podium was complete, the shells nearly so and the first tile lids were being placed on the shells. In May, following a partial resolution of a dispute over fees, Utzon handed over a batch of drawings relating to the proposed stage III. The drawings covered aspects of paving and cladding, glass walls, restaurant and major and minor halls. There were no schemes for the foyer spaces or louvre walls. Hall described the drawings as being without dimensions, identification of materials or indication of fixing points. They were, he said, 'not working drawings; they did not represent even a worked-out sketch scheme' (Hall, *Monument*, 2). While this made work difficult for Hall, Todd and Littlemore, it also emphasised the very different approaches of Utzon and his Australian successors. Utzon liked to work with consultants and contractors developing and adjusting three-dimensional prototypes, on the other hand the Australian tradition continued the primacy of the two-dimension drawing.

The recollections of the electrical consultant's man on the spot from 1963, Frank Matthews, provide an affectionate picture of Utzon at work. Matthews found him 'tremendously enthusiastic and a most inspiring person to work for'. He also noted:

Utzon was the sort of person who carried a great deal of the design in his head and didn't always record his ideas in formal ways, so Hall, Todd and Littlemore often had to rely on people like ourselves who remained on the site to fill in detail and help them fit the pieces of the puzzle together (Anderson & Cochrane, Julius, Poole & Gibson, 83&86).

It was apparent that, in the absence of communication between Utzon and the new team, the Opera House was not going to be finished as Utzon might have intended.

Two problems beset the major hall: seating capacity and acoustics, the resolution of which was to have far-reaching effects within the building. The hall was a proscenium type theatre with a large stage and with the necessary tower above it under the main shell (fig.19). Seven elevators would provide access from below for props and equipment. The hall was intended (as set out in the brief) for both concert and opera performances (ibid, 3).



19. Proposed configuration of major hall, 1962. Zodiac, 14, 43.

In June 1966, the Australian Broadcasting Commission, as the major commercial user of the space, produced a somewhat belated but specific set of requirements for the space. In precis they were:

- seating capacity of not less than 2,800 with comfortable seating and good sight lines;
- stage space for a large choir and orchestra in the same acoustical space as the audience;
- an organ of adequate proportions for concert work;
- acoustics suitable for symphonic concerts with 'a reverberation time at middle frequencies in the region of 2.0 seconds when fully occupied' without electronic assistance;
- character and diffusion of sound similar to that found in the Boston Symphony Hall, the Concertgebouw in Amsterdam, the old St Andrew's Hall, Glasgow and in the Grande Salle, Place des Arts in Montreal;
- quiet air conditioning;
- television, radio and announce control rooms;
- camera positions for television coverage.

In addition the ABC requested rehearsal, administrative and parking space (Duckmanton to Farmer, 7.6.1966).

The minister enjoined Hall, Todd and Littlemore to investigate the ABC's requirements and Hall set off on a tour of overseas performing arts centres and experts. This, together with a series of working groups later in the year, resulted in the presentation to the minister in January 1967 of a *First Review of Programme*. It was a nicely understated title for some dramatic recommendations. Hall later summarised those that affected the interior performing spaces:

- (a) The Major Hall should be made into a concert hall satisfying the ABC's criteria. It should no longer try

to be a multi-purpose hall. To gain the floor area needed for the increased seating and the volume needed to produce a reverberation time of about 2.0 seconds, the proscenium arch and the stage tower should be removed, allowing the ceiling to sweep uninterrupted from one end of the hall to the other.

- (b) To use the Major Hall for a concert hall was reasonable only if a satisfactory alternative theatre could be offered for opera and ballet. The Minor Hall at 1,100 seats with its tiny orchestra pit, would not do. Its capacity could, however, be increased to 1,500 by the addition of galleries and an enlargement of the pit to accommodate around 80 musicians. The advantages of having a large auditorium for concerts and a reasonable-sized separate theatre for opera made this alteration seem sensible.
- (c) The Drama Theatre (in the podium) should be designed as a proscenium theatre seating around 500, an excellent capacity for subsidised theatre.
- (d) The area below the stage in the Major Hall (stage machinery space) should become a large rehearsal/recording studio, not otherwise available in the building and very important to its use.
- (e) The set-changing area below and behind the Major Hall should become a fourth auditorium. We thought of a national film theatre, since film has developed into the major art of the century and is now often provided for in performing arts centres. (Hall, Monument, 6).

When the propositions were put to the Sydney Opera House Trust, the Elizabethan Theatre Trust and the ABC, a 'fierce and bitter' controversy erupted (ibid, 6). Bruce Petty produced a memorable image of heavily armed Wagnerian warriors, led by a redoubtable Brunhilde, furiously assailing enraged instrument-wielding members of the ABC's Sydney Symphony Orchestra (*The Australian*, 16.2.1967). The clash was brief and, despite the championship of H.C. 'Nugget' Coombes, the heavies of *The Ring* were defeated by the ABC's pocket stroke. General Manager Duckmanton made it clear that if the hall did not comply with concert performance requirements, the ABC would seek other venues.

To a government responsible for the viability of the Opera House, the loss of its major user would have been a financial nightmare. Cabinet decided to adopt the review recommendations and the director of public works advised the architects that:

- the major hall will be a special concert hall;
- the stage machinery designed and manufactured for that hall will not be installed;
- the minor hall will be designed to seat 1,500 and a careful examination of the orchestra pit and stage areas will be continued to ensure that the best practicable provisions are made therein for opera and ballet;
- the experimental theatre will be designed as a high standard drama theatre to seat 700–750 persons;

- provision will be made for a rehearsal hall for orchestra below the major hall stage area and, if practicable, it will also be designed as a recording studio for orchestra (Humphrey to Hall, Todd and Littlemore, 3.4.1967, included in Hall, SOH, 85).

Petty's last image was of Brunhilde, with her Elizabethan Theatre Trust banner, defiantly astride the peak of the major shell as the titanic bulk of the Opera House slid beneath the waters of the harbour (*The Australian*, 22.3.1967).

It was to be another eighteen months before Hall, Todd and Littlemore were able to present a 'detailed and estimated brief' to government for the formal approval of the stage III program (Hall, Monument, 6). When the third stage commenced early in 1969, it was ironical that Hughes, by then experienced in his portfolio, had agreed to a 'construction management' arrangement with the main contractor—the Hornibrook Group. Hornibrooks had shown themselves to be inventive and reliable in the stage II erection of the roof and had established working relationships with both the structure and its designers. In view of the problems yet to be solved, it was seen to be the most sensible arrangement although it was still to be the major cost of the project. H.R. 'Sam' Hoare, the Hornibrook director in charge of the project, provided the following approximations in 1973:

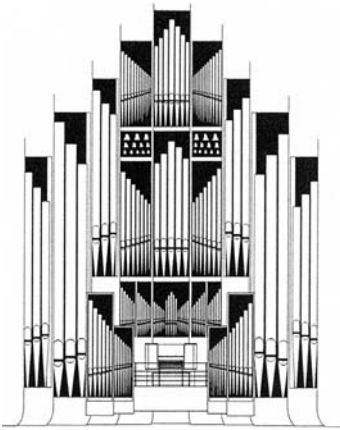
Stage I:	podium Civil & Civic P/L	approx \$5.5m
Stage II:	roof shells M.R. Hornibrook (NSW) P/L	approx. \$12.5m
Stage III:	completion The Hornibrook Group	\$56.5m
Separate contracts:	stage equipment, stage lighting and organ	\$9.0m
Fees and other costs		\$16.5m
		<u>\$100.0m</u>

(Hoare, SOH, 4).

Apart from the changes to the performing spaces, stage III involved a major upgrading of mechanical and electrical services. For example, the air conditioning program designed in Utzon's time was modest and could not service the major and minor halls simultaneously, nor was it intended to supply backstage and dressing room areas at all. The government therefore authorised the doubling of capacity to cover all theatres and backstage at the same time. The massive ducting requirements would have led to a series of extensive structural changes. The problem was reduced by the provision of 'over 70 separate air handling systems located in 24 plant rooms around the building and fed with heated and chilled water from a central refrigeration system' (Todd, *The end in sight*, 3; Hoare, SOH, 4, 14).

In 1968, state cabinet was prepared to allocate \$85 million as an all-up figure for the completion of the project. This led, in the words of Hall, to 'a healthy discipline in detail design that undoubtedly benefited the job' (Hall, SOH, 22). It also resulted in the establishment of a hierarchy of treatment which is reflected throughout the building:

1. exterior and external works;
2. main auditoria;
3. other public spaces;
4. administration and artists' areas;
5. services areas (ibid).



20. Elevation of organ supplied by Ronald Sharp.

It meant that 'quality where it counted most or was essential to performance was affordable' but that 'care was taken to economize where possible' (ibid). The schedule of interior finishes set out on pages 60–70 of David Littlemore's *Sydney Opera House* provides an account of what this meant in practice.

The major hall was always intended to be equipped with an organ although in its original proscenium configuration the placement of the organ remained a difficult acoustic problem. Once the decision was taken in 1967 to convert the major hall to a single space the problem was solved. The organ was simply placed in a traditional location, high on the axial southern wall where it presents a handsome face to the audience (fig.20). It was designed and built by Ronald Sharp of Sydney, assisted in the last months of construction by the Austrian organ-building firm of Gregor Hradetzky. Like the Opera House, the organ had a protracted and fraught construction history but it was finally completed in 1979 and, as well as being a comprehensive and flexible instrument, was probably the largest mechanical action organ in the world (Rowe & Hubble, *Organ*, 1 & 2; Sharp, *Organ*, 1).

In 1967 the target date for completion was December 1972 and in that month the first orchestral performance was given in the Concert Hall to test the acoustics. The Sydney Symphony Orchestra played to an audience of construction workers and invited guests. Work on the project was brought to a 'state of practical completion' on 31 August 1973 (Littlemore, *SOH*, 89). The first opera season began the following month, although the season had been preceded by a number of unofficially claimed 'first' performances at a variety of venues.

While Cahill did not live to see his project finished, it was his foresight in arranging a peculiarly Australian system of finance that ensured its success. His Opera House lotteries, announced in September 1957, contributed just over \$100,000,000 to the construction of the building. The wowsers may have hated the idea of a cultural monument built on gambling, but it proved a painless way of parting the people of NSW from their money for an endeavour which could be considered elitist. Cahill was only half right in his prediction that the building would be 'a monument to democratic nationhood'—on completion the 'average working family' could afford to go there as tourists but not as patrons. To help redress the situation the Sydney Opera House Trust have introduced schemes which provide free or cheap access to a variety of activities within the building.

### **The opening: white elephant or sacred cow, 1973**

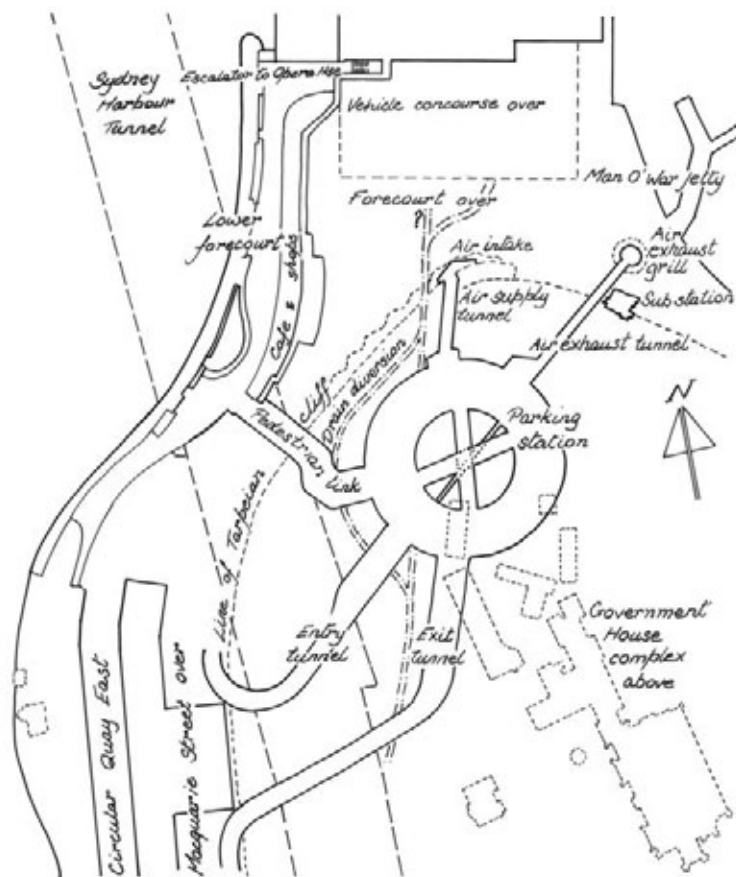
The first public performance in the house was given in the Opera Theatre on 28 September 1973 by the Australian Opera Company and the following night in the Concert Hall Charles Mackerras conducted the Sydney Symphony Orchestra with Birgit Nilsson as soloist. The Opera House was formally opened by the Queen on October 20 (SOHT, AR, 1973–74). During the inaugural period 300 journalists from all over



the world arrived to see if the Sydney Opera House was to be a white elephant or a sacred cow. Martin Bernheimer, the music critic of the *Los Angeles Times*, spoke for most when he wrote:

This, without question, must be the most innovative, the most daring, the most dramatic and in many ways, the most beautiful home constructed for the lyric and related muses in modern times (ibid).

By his own choice, Utzon was not at the opening nor did his name appear on the plaque in the entry concourse. Nevertheless from wherever the building is seen, harbour, city or air, it is remembered as Utzon's creation—a magical embellishment of one of the grand waterscapes of the world. Hall, Todd and Littlemore will be remembered for the difficult job of turning an incomplete aesthetic masterpiece into a performing arts centre with the full range of services required.



21. Sketch plan of proposed car park and its relationship to the lower forecourt, about 1990. Loosely based on an unidentified and undated plan supplied by NSW Public Works.

### Completing the setting, 1986–1993

Two jobs remained to be done: the construction of an appropriate land approach and forecourt treatment, and the provision of convenient parking (fig.21). The first was completed as a part of the NSW government's bicentennial refit of Macquarie Street and the public areas flanking Sydney Cove. It was designed under the general superintendence of Andrew Andersons (the work near the Opera House involved Peter Hall) and was completed for the royal visit on Australia Day 1988.

The second was the long-overdue parking station. A park-and-ride scheme had existed since 1973 using the city council's Domain parking station but it was neither convenient nor profitable. The new station was an ingenious solution to a complex problem. It was in the form of a double helical coil set underground behind the Tarpeian cliff face. The vehicle entry and exits were in Macquarie Street, the air intake grills were along the base of the cliff and the air exhaust was a feature in the centre of the vehicle roundabout to the east of the forecourt. During the work part of the 1858 Bennelong drain had to be relocated and the harbour tunnel avoided. The pedestrian tunnel linked directly to the 1988 lower forecourt which gave undercover access to the Opera House. While this gave wet weather protection and serviced the lower forecourt shops it bypassed Utzon's grand external approach to the Opera House.

### **The process of adaptation, 1973–2002**

Under the Sydney Opera House Trust Act the first and second clauses of the charter charges the Trust with:

- the administration, care, control, management and maintenance of the building and its site;
- the management of the Sydney Opera House as a performing arts and conference centre.

It is a dual function in which, in the long term, the performance of either one is dependent on the successful performance of the other.

At least in the early days of stewardship of the building, the Trust was anxious that the Opera House should be seen as 'Australia's premier performing arts centre and not the world's most expensive landmark' (SOHT, AR, 1973–74). The chairman of the day even noted that 'the Opera House's exterior beauty and uniqueness [would] continue to pose challenges to the activities of the theatres' (*ibid*). The spectacular success of the Opera House as a performing arts centre and in particular its ability to attract great artists from all over the world helped dispel these qualms but residual tensions between the care of the structure as a monument and its function as a performing arts centre will always exist. It is therefore important to emphasise the degree to which the quality of the building and its site and the popular and financial success of the events within it reinforce each other. Neither can be neglected.

During the first twenty years as a performing arts centre the Trust's approach to the building and its site was similar to the working up of any large complex. First came the contractual removal of defects arising from construction. The issue of defect lists for the Opera House began in mid-1973 and the last list appeared in February 1974 (Littlemore, SOH, 44). Bearing in mind the complexity of the work it was a fine achievement by all concerned. Next, cyclical maintenance was commenced. By 1976 the first repaint of the interior of the complex had been completed (SOHT, AR, 1975–76).

Right from the beginning the Sydney Opera House Trust started to adapt spaces, fabric and equipment. The work arose partly to rectify, or at least modify, perceived deficiencies (the enlargement of the Opera Theatre orchestra pit) and partly because of the increasingly flexible

role the performance spaces were called on to play (grand opera and pop concerts in the Concert Hall). Technological advances and fashion in lighting and sound amplification, particularly when combined with the requirements of hirers, added a further commercial imperative for change. For example, in 1985 the general manager reported:

In January, two winches were installed in the crown of the Concert Hall ceiling for the Australian Opera's production of Norma. In April, an American-style lighting grid was suspended on six points from the main girders above the Concert Hall ceiling for the visiting performer Phil Collins. A new centre speaker cluster in the same venue has increased the intelligibility of amplified sound... (SOHT, AR, 1985)

There will always be a demand for adaptations to a performing arts centre if it is to remain in commercial use. One of the roles of a conservation plan is to recommend the ways in which adaptations and additions may be controlled so that the cumulative effect does not degrade the building and its interiors, and to identify the thresholds at which change will have an adverse effect on the significance of the building. These matters will be addressed in the policy section.

### **Upgrade program**

In 1988, the Premier of NSW commissioned the NSW Public Works Department to carry out an upgrade program 'to restore the building to top condition' and to establish a system of asset management which would 'ensure the survival of the house for future generations' (SOHUP, Progress Report, 1993, 4-11).

Projects during the first decade of the program have included:

- conservation of the Concert Hall ceiling surfaces;
- excavation of additional facilities below the podium;
- resealing joints between roof tile lids;
- removing, renewing, waterproofing and reseating slabs on ceremonial stairs and parts of podium;
- resealing glass wall joints;
- refurbishing auditoria seating;
- further modification of Opera Theatre orchestra pit;
- development and adoption of a 'Total Asset Management Plan' (a complete preventative maintenance program for the building);
- major structural refurbishment of supports to the Broadwalk;
- upgrading of fire protection and suppression systems;
- installation of new winch control systems in the Drama and Opera Theatres and the Concert Hall;
- commencing development of new edge tiles for the roof shells.

The program was nearing completion in 1997 when it was estimated to cost \$117,000,000 over the ten years (SOHT, AR, 1997, p.50).

### **Redesign of catering facilities**

In September 1994, after a public tender process, an agreement was signed by the Trust with Gardner Merchant (Australia) for a new twelve year contract to operate the catering venues in the Opera House and the lower forecourt. An immediate consequence was the redesign of the Bennelong and Forecourt Restaurants and the Café Mozart. Some work was also done in the Harbour Restaurant and its adjacent takeaway facility was partitioned to create further dining accommodation and an enlarged kitchen.

### **Conservation Council**

The Trust established a Conservation Council as 'an advisory group to assist and advise the Trust with particular reference to the care, control and maintenance of the building' (SOHT, AR, 1996, p.24). Five of the seven members were ex officio appointments and the first meeting was held in March 1996. The Council's advice was to be given 'in relation to the spirit and intention of the [1993 interim] conservation plan' (ibid.). Matters considered by the Council include the conversion of the original Rehearsal and Recording Studio (under the Concert Hall stage) to a 'new music' venue and an assembly floor for orchestra members and the development of improved access, lighting and acoustics. The Council had its last meeting in November 1997. It was not convened again as, in 1998, the Trust began negotiations for the return of Jørn Utzon as an advisor and believed that a successful outcome could make Council recommendations redundant. It was to be five years (November 2002) before the reconstituted Council met again. See pages 96 to 98.

### **World Heritage nomination**

Following an agreement between the Commonwealth and NSW governments and the provision of a budget of \$200,000 by the Commonwealth, a nomination was prepared for the inscription of 'the Opera House in its harbour setting' on the World Heritage list. It was prepared under the supervision of Joan Domicelj and delivered to the Prime Minister and Premier ready for submission to UNESCO in June 1996. The Prime Minister did not forward the nomination. A revised nomination was prepared for submission in mid-1999 but it was not forwarded to UNESCO either. It is not known when, or if, the nomination will be made.

### **Heritage and the decision making process**

Partly as a result of the decade long upgrade program and partly following the wide dissemination of the first edition of this conservation plan, management in the mid-1990s was aware of, and incorporated, heritage requirements in the decision making processes. In speaking of the plan, the then General Manager, Lloyd Martin, remarked 'James Semple Kerr is our bible' (SMH, 10.2.1996, Spectrum, 1). While perhaps an extravagant acknowledgment, it did confirm that the plan was useful and used.

Since then, heritage consideration has become inconsistent and, occasionally, disregarded. Staff turnover has been one factor. Joseph

Skrzynski in his 'Report from the chair' noted how 'senior staff changes challenged the organisation's ability to provide continuity in high level leadership and service' (SOHTAR, 1998, 9). In the six years since late 1996 there have been four chief executive officers and two acting in that capacity. Other factors include the drive to reinvigorate the place as a lively performing arts centre, community and visitor gathering place and the need to increase revenue. While these are laudable they should not result in the loss of attention to heritage. After all, the first clause of the Sydney Opera House Act charges the Trust with care of the building and its site (see page 26) and everyone is well aware that the continuing success of both the building and its uses depends on achieving an equitable balance.

A new chief executive, Tim Jacobs, appointed in January 1997 wrote in his first annual report:

As chief executive appointed to lead the Sydney Opera House into the 21st Century, the challenge is to take the most recognisable building in the world and turn it into one of the great art centres...

Visitors and patrons expect to have a memorable experience and an exemplary standard of customer service. They deserve wider choices in quality retailing, tourism services, wining and dining. In terms of amenity, service, polish and smooth assurance, the building should feel and function like a six star hotel (SOHT annual report, 1997, p.10).

As Jacobs resigned within a year of his arrival he was not to lead the Opera House into the 21st Century but he did leave a legacy of impending change to the building. It was the development of a 'master plan' which 'set out a strategy for the building and site developments which will position the Sydney Opera House as one of the great arts centres of the world by the year 2000' (SOH Master Plan Report, 1997, p.1). The entire program was to be completed by 2007 at an estimated cost of \$76,790,000 (ibid., p.30&31).

The 'master plan report' was prepared by the Department of Public Works and Services and drew on a 'value management' conference and study of July 1997. Unfortunately, the plan that subsequently emerged, although described as a 'comprehensive integrated approach to the development of the building and site' (ibid., p.29), was actually a wish list of improvements to the place unaffected by consideration of heritage issues. While it was useful as a developed indication of functional desires and was used as a basis for funding requests, it was dangerous in that it was likely to achieve a degree of de facto acceptance without the significance of parts of the place, or the original architects' intentions, having been understood or accepted. In this form its proposals were released to the press in December 1997 and received wide publicity (for example SMH 8.12.1997, pages 1 and 4).

This one-sided approach had a potential to create future adversarial situations between seemingly established operational requirements and heritage needs. It has always been conventional wisdom as well as prudent practice for a master plan to embody a co-ordinated approach in which all relevant issues have been considered. If it is not done it is not a master plan. In one other respect the master plan report was useful. It revealed procedural defects in the existing system of developing

and approving proposals for work on the Sydney Opera House. This led to the restructuring of the 1993 'interim' conservation plan policies and the inclusion of a section on the management of change.

An instance of disregarding heritage issues concerns the ill-considered treatment of the setting arising from the need to maximise customer service, enliven the site and increase revenue. The 2001 annual report announced:

A range of new operators will be appointed throughout 2001–2002. By December 2002 all food and beverages on site will have been completely rejuvenated, delivering improved customer experiences as well as improved revenue to the Sydney Opera House (SOHTAR, 2001, 24).

The consequences included the letting of contracts for five ice-cream, coffee and food bars in the forecourt and the erection of a large venue for hire on the northern Broadwalk. See pages 47 to 48. Another example, at present under consideration and mentioned in the *Venue improvement plan* of May 2002, is the use of the forecourt as a performance venue. The duration, frequency and nature of the required infrastructure will be important heritage issues. If, for example, high opaque fences are to exclude public vision across the forecourt, the project would become unacceptable. See pages 48 to 49.

### **Alterations, improvements and investigations**

In 1998–1999 the conversion of the original Rehearsal and Recording Room (fig.57) took place. The top of the 'room' became an assembly area for the orchestra (fig.59) and below it 'The Studio' was created (fig.58) 'to present innovative and exciting new music and contemporary performing arts' (SOHTAR, 2001, 13). The work involved the removal of the plant between The Studio and the Broadwalk to the basement, and the opening up of a continuous foyer serving Playhouse, Studio and Drama Theatre. See pages 79 to 82.

As well as major construction works, substantial fabric replacement has been carried out over the last four years including:

- completion of the project to replace some 8,500 edge tiles;
- areas of pre-cast paving on the northern and western broadwalk, podium deck and steps.

Also, the external pre-cast wall panels were cleaned. Within the building there has been technical or control system work relating to lighting, airconditioning, hydraulics, fire and stage facilities, some of which became necessary to gain 'Place of Public Entertainment' certification. In addition, a series of acoustic studies of the Concert Hall has been carried out.

### **Richard Johnson of Denton Corker Marshall commissioned**

In September 1998 the Chairman of the Sydney Opera House Trust, Joseph Skrzyński, announced the appointment of Richard Johnson of Denton Corker Marshall to 'advise on any future development works

affecting the Opera House and its site' and to 'establish planning principles... which were consistent with the design principles of Jørn Utzon'. The work included a review of the 1997 Master Plan Report (Sydney Opera House media release, 1.9.1998). Skrzynski also referred to the engagement of James Semple Kerr to 'update the conservation plan'. Kerr's revised plan was completed in May 1999 but it was overtaken by negotiations for the return of Utzon to advise on the Opera House and a further revision of the conservation plan was commissioned in 2002.

### **Jørn Utzon re-engaged**

In August 1999 Utzon accepted the Premier's invitation to provide advice to the Sydney Opera House Trust. His commission included the preparation of a statement of design principles which, in his own words, was to 'be used as a permanent reference for the long-term conservation and management of the House and for any redevelopment of interiors as and when that becomes necessary.' He continued 'it is right that we should be looking forward to the future of the Sydney Opera House and not back to the past. For this reason, I believe Richard Johnson and future architects should have the freedom to use up-to-date technology to find solutions to the problems of today and tomorrow' (Utzon in the Sydney Opera House Trust Annual Report for 2000, pages 36-37).

### **A program developed**

For the Trust, the appointment was a 'key element in the process of developing a Strategic Building Plan for the House and its site'. The first public fruits of this process were the simultaneous release in May 2002 of the *Design Principles* and a six-part *Venue Improvement Plan* (developed for the Trust by Richard Johnson, now of Johnson Pilton Walker, in collaboration with Utzon) together with the Premier's announcement of an allocation of \$45,000,000 for major venue improvements (SOHT Press Release and Premier of NSW News Release, both of 29.5.2002; Skrzynski to Kerr, 3.6.2002). This was added to an earlier allocation of \$24,300,000 to make a total of \$69,300,000.

The proposed work covered the refurbishment of the Opera Theatre and alterations to make the orchestra pit habitable, the improvement of Concert Hall acoustics, the refurbishment of the Reception Hall, the partial opening of the western foyer at Broadwalk level to its harbour setting together with a covering loggia, and the development of the forecourt as a performance venue. The last is the only one that can create serious heritage problems and these are discussed on pages 48 and 49.

## ASSESSMENT OF SIGNIFICANCE

The general approach to assessing the nature of the significance of the Sydney Opera House and its site is adapted from that set out in the fifth edition of *The Conservation Plan* (2000). It relies on an understanding of the physical attributes and use of the building, its relationship with the setting and of the associations with and attitudes to both building and site.

### Statement of Significance

The Sydney Opera House is a dramatic expression of the genius of a then relatively unknown architect, Jørn Utzon (whose subsequent international fame was in part a result of the design of the building), of the high quality completion of the work by Hall, Todd and Littlemore, and of the technical support given throughout by the internationally renowned engineering firm of Ove Arup and Partners and finally by M.R. Hornibrook, the inventive contractor of stages two and three.

The Sydney Opera House is of exceptional significance because of:

- its spectacular quality as sculpture in the round both by day and night;
- its inspired design solution in response to its setting;
- the picturesque quality of the peninsula setting;
- the way in which its fabric reflects the contemporary philosophy of creating refined forms from machine-made components;
- the way in which the plastic arts, geometry and technology were drawn on to create a structure at the leading edge of endeavour;
- the majestic quality of its public spaces contained by powerful structural forms;
- the evidence of its fabric in expressing its place in twentieth century architecture (not excluding the troubled history of its construction);
- the seminal influence of some of its design and construction techniques;
- its function as a performing arts centre of world renown;
- its almost mythological status as a cultural icon (then and now) arising from all the



22. Aerial view of Opera House and bridge during the opening on 20 October 1973. Photograph supplied by NSW Public Works.

above, from the high public interest in its protracted and controversial development; and from its power to attract artists, patrons and tourists on a national and international level.

This significance is intensified by the extensive associations of the site and its structures, including:

Aboriginal and European contact (Bennelong and his house); scientific investigation (Flinders and Baudin); defence (Phillip's 1788 redoubt to Greenway's Fort Macquarie, 1817–1901); Picturesque planning (Macquarie to Utzon); marine and urban transport (overseas shipping and local ferry wharves, tram terminal and dépôt); popular recreation; and, finally, the nation's most famous cultural icon (The Opera House) and its legions of national and international performers.



## Levels of significance

The statement above explains the general nature of the significance of the Sydney Opera House. The assessment of levels of significance below helps justify a flexible approach to the treatment of the place: the greater the significance the greater the need for careful decision making. The corollary is also valid: the lesser the significance the more free may be its treatment—always provided that aspects of greater significance remain undamaged.



23. Vista of roof shells from Gloucester Walk, The Rocks. JSK photograph 93.7.8.

As these assessments are made without regard to conservation and management issues, there is no formal link between the level of significance and the subsequent policies. Significance is, however, the most important of the factors to be considered when developing policies.

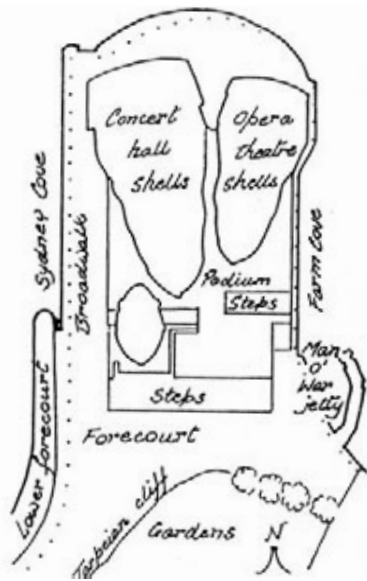
The hierarchy of levels chosen for the Sydney Opera House is best explained by a four-rung ladder. The top rung (A) is for items of exceptional significance in a broad context. The next rung (B) contains items of considerable significance which would warrant inclusion on any national or state register of places of significance. The second rung from the bottom (C) contains the threshold for entry onto such registers. Items on the bottom rung, as the designation implies, are of little significance. A capital letter indicates the level of significance of a major element or aspect (for example, Concert Hall: A) and a lower case letter shows the level of an item within it (organ pipes and case: a).

<b>A</b>	Exceptional significance	<i>e.g. Sydney Opera House Concert Hall; Sydney Opera House Forecourt.</i>	
<b>B</b>	Considerable significance	<i>e.g. Sydney Opera House Lower Forecourt;</i>	
<b>C</b>	Some significance	<i>e.g. Sydney Opera House Drama Theatre.</i>	Threshold for listing
<b>D</b>	Little significance	<i>e.g. Sydney Opera House Works Offices.</i>	

Assessment of levels of significance in the schedule on pages 34 to 39 have been made on the basis of the independent value of the element in question, tempered by consideration of the degree to which the element tends to reinforce or reduce the significance of the whole. For example, some items are visually intrusive and damage the character and spatial quality of the space. They are identified in the schedule as intrusive (int). The venue for hire on the northern Broadwalk, the containers parked in the forecourt and the ply partition in the vehicle concourse are (or were) examples (figs 32, 41 and 65). Intrusiveness and significance are not always mutually exclusive—occasionally a structure may be both intrusive and of significance. The treatment of intrusive items is set out on page 85.

## Schedule of levels of significance

These assessments have been amended by a working group of Dennis Watkins, John McWhinney, Richard Johnson and the author and have taken into account comments by Jørn Utzon.



24. Site sketch showing major external elements, JSK 1993.

### Topographical setting

- Unencumbered exposure to the harbour on three sides, permitting views to the Opera House from neighbouring ridges and headlands, particularly Dawes Point, Observatory Hill, Mrs Macquarie's Point, Garden Island, Bradley's Head, Cremorne Point, Kurraba Point, Kirribilli, Milson's Point and McMahon's Point; the waters of the harbour, city buildings and the harbour bridge; a
- open relationship with the Bennelong ridge, its garden landscape and the sandstone cliff face of the Tarpeian Rock; a
- vistas, progressively or suddenly enlarging to views, from The Rocks (fig.23), the northern end of Circular Quay, East Circular Quay, Macquarie Street, the Botanic Gardens and the harbour. a

### Forecourt

- Openness and freedom from impedimenta; a
- Tarpeian cliff face with stone steps and iron railings; a
- paving of fan pattern granite setts and strips of ashlar granite parallel to the podium steps (1988); b
- roadway paving of fan pattern granite setts; b
- remains of 1857 oviform masonry stormwater drain under the forecourt; b
- tramway cable fixings in Tarpeian cliff; c
- Sudan contingent plaques in Tarpeian cliff; c
- Lewis fountain (1988); c
- Lewis plaque on plinth; c (int)
- air intake grille at base of Tarpeian cliff and air exhaust feature in traffic roundabout (1993); d
- pair of polished granite entry pylons at the East Circular Quay entry to the site; int
- present security gatehouse; int
- 3 circular granite edge planter beds; int
- garden and dwarf granite walls at base of Tarpeian cliff; int
- flagpoles beside Macquarie Street roundabout and eastern harbour parapet; int
- ice-cream, coffee and food bars; int
- cat's eye reflectors and black and yellow speed humps on roadway; int
- impediments to pedestrian vision across and into forecourt. int
- advertising or announcement banners on the Tarpeian cliff or the palisade fence above int

See also external lighting and furniture.

### Lower forecourt (1988)

- Concealment of concourse and shops from forecourt level and from West Circular Quay; b
- unimpeded sheltered access to Opera House in wet weather; b
- sea wall incorporating wave guard and continuous seating; b
- paving, steps and walls of solid granite; b
- sea wall parapet of reconstituted granite; b
- sea wall footpath of granite setts clear of all impedimenta; b
- bronze rail system; b
- bronze framed poster vitrines; c
- concept of shops, toilets, passage to parking station and escalators to vehicle concourse and East Circular Quay; c
- floodlight pylon for the west surface of the concert hall and restaurant shells; d
- group of umbrellas, tables and chairs and stainless steel bollards; d
- any items (e.g. tables and chairs) on the pedestrian path beside the harbour parapet except in the widened and railed bays; int
- any items obscuring column bases. int

See also external lighting and furniture.



25. Broadwalk and lower forecourt from the steps of the western foyer of the Concert Hall. The concealed shopping precinct was a bicentennial addition. JSK photograph 93.7.27.

**Broadwalk** (See also external lighting and furniture)

- Open character of broadwalk surrounding the Opera House; a
- precast granite slab paving; a
- precast granite sea wall skirting panels; b
- *location* of outdoor eating area in north-east corner of broadwalk with tables, chairs, shades and trees in pots; b
- remains of 1862 and 1900 masonry sea walls under broadwalk; c
- supporting pile structure; d
- venue for hire in 2002. int

**Furniture of forecourts and broadwalk**

- 3 bronze drinking fountains (1973)—one missing; b
- plaque for Matthew Flinders, north-west skirting panels (1974); c
- white planter tubs, lower forecourt (1988);
- \* existing black cylindrical ash can pedestals (1973);
- \* Zaat's black steel bollards;
- white wire seating (1988 and modified later version);
- granite bollards;
- white fibreglass benches similar to 1973 originals;
- tall black poster and sign pylons (1973 concept but executed to a modified design in 1993);
- existing white rectilinear fibreglass rubbish bin containers (1973); int
- existing black rectilinear fibreglass rubbish bin containers (white ones painted black); int
- existing circular planter tubs, north-east broadwalk (1973); int
- existing white fibreglass seating (1973); int
- makeshift white painted service kiosk in forecourt. int

**External lighting**

- Character and level of floodlighting on shells just bright enough to be distinctive in the Sydney night sky; a
- weathered bronze lamp standards with polycarbonate globes individually numbered 1–51 (installed 1973 and known as Hall's Balls); b
- floor mounted illumination at southern end of vehicle concourse to delineate folded beams; b
- light fittings contained within bronze hand rails; b
- circular light fittings with downlights and louvred sides to ceiling of lower forecourt; b
- painted steel lamp standards similar to the standards above (1988) c
- soft floodlighting of Tarpeian cliff; c
- floodlighting pylons 1 – on lower forecourt for the west shells c
- 2 – on the Man o'War jetty for the east shells c
- 3 – on the southern boundary for the forecourt; c
- unnumbered weathered bronze lamp standards with polycarbonate globes on vehicle concourse; (installed 1973?) d
- black painted light bollards along the base of Tarpeian cliff; d
- fairy lights to hoods of entries on the western broadwalk; int
- *unshuttered* spotlights at peaks of western shells; int
- continuous fluorescent strip lighting in vehicle concourse; int
- spotlights fixed to the beams above the vehicle concourse. int

**Man o'War jetty**

Sandstone jetty in original nineteenth century configuration.

- Sandstone sea wall adjacent to jetty; b
- attached pontoons d

See also lighting.

**The form, fabric and structural systems of the Opera House, including:**

- roof shells with pedestals, ribs, boxed beams, warped surfaces, tile lids and lightning conductors;
- bronze louvre walls infilling shell ends;
- podium clad and paved with monumental precast granite;



c 26. Western Broadwalk looking north.  
d JSK photograph 98.7.3.

d  
d  
d  
d  
d  
int  
int  
int  
int



a 27. Bronze drinking fountain, Halls  
a Balls, flagpoles and Botanic Gardens  
a gates. JSK photograph 98.7.11.

a  
a  
a

- folded beams throughout the building; a
- reinforced radial cranked beams in northern foyers; a
- glass walls and supporting structures; b
- surface treatment of exterior pedestal feet. int

**Podium exterior** **A**

- Solid character of side walls with precast granite slabs of monumental size, including hoods to openings; a
- use of large scale precast granite slabs for paving and steps; a
- uninterrupted sweep of steps from bottom to top and from side to side; a
- open character bronze railing on podium edge and at the extremities of the steps; a
- access steps and balconies on the northern walls of the podium; a
- bronze vehicle doors to the central passage and Bennelong dock; b
- existing pedestrian entries off the western broadwalk; b
- design of picket additions to fence at the northern lip of the podium; int
- design of radial palisade fencing introduced where the northern ends of the podium decks meet the suicide steps; int
- large black sign pylon with strong silhouette and comic hammer head (security camera) on landing of monumental steps. int

See also external lighting and furniture.

**Original concept of sequential experiences on arrival, entry and circulation** **A**

- Forecourt, podium steps, podium deck, box office foyer, stairways, level 30 foyers, auditoria a
- Vehicle concourse, stairways to box office foyer, box office foyer, stairways, level 30 foyers, auditoria a

**Vehicle concourse** **A**

- Open-ended spatial character dominated by the form of the unpainted concrete folded beams overhead; a
- precast granite cladding and paving including tilted panels; a
- four bronze entrance doors to stairways including back-lit cut out signs; c
- poster displays on wall cladding (see page 91); c
- 1973 dedication applied to cladding; c
- bitumen roadway; d
- existing method of fixing posters; int
- glazed shop added beside Reception Hall entry (1973); int
- any proposal that obscures the folded beams. int

See also exterior lighting and furniture.

**Four stairways from vehicle concourse to Box Office** **A**

- Folded unpainted concrete beams; a
- linear ascents flanked by pre-cast granite walling concealing lighting intended to illuminate and emphasise beams; b
- bronze handrails with concealed lighting; b
- temporary control for experimental optical fibre lighting system; int
- temporary portable floodlights clipped to walls; int
- makeshift emergency exit signs. int

**Box Office foyer** **A**

- Folded unpainted concrete beams; a
- low east-west rectilinear space with precast granite paving and cladding; a
- low general light levels in relation to southern foyers; a
- ticket sales counter; c
- lettering commemorating opening by HM Queen Elizabeth II (1973); c
- poster display; c
- blue and white box signs; d
- cloak area fitout; d
- information desk; d
- program seller's booth; d
- treatment of details for Cafe Mozart; d
- coffee bar beside cloak area d
- location of Cafe Mozart; int

- method of fixing posters; int
- partitioned-off section for shop, and storage and service areas for reception hall; int
- retail display at information desk. int

**Foyers surrounding the major auditoria**

- Upper termination of folded beams forming canopies to stairs from Box Office to southern foyers; a
- cathedral character of space under soaring rib vaults; a
- unpainted off-form concrete vaults with fan-shaped pedestals; a
- precast granite paving; a
- unpainted off form concrete radial cranked beams in the northern foyers; a
- stairs from Box Office foyer to southern foyers; a
- glass wall system with steel mullions and bronze fittings and a non-reflecting zone; b
- Olsen's and Jagamara's murals in the northern foyers; b
- square section bronze rails at base of glass walls (1973); b
- bronze and black leather bench seats (1973); c
- small circular bronze based tables (1973); c
- circular bar counter and lighting tree (1973); c
- bust of Eugene Goosens; c
- black leather lounges in northern foyers; c
- mobile bar; d
- colour-coded box signs (1973); d
- brush box cladding to auditoria carcass (form and vertical extent); d
- foyer light fittings; d
- program seller's booth; d
- circular drink tables with terrazzo base; d
- relationship of major auditoria carcasses above brush box walls to the interior of the roof shells; int
- relationship of carpets to northern foyers; int
- bronze rails in side foyers, after 1973; int
- ad hoc supplementary lighting (fig.47); int
- advertising banners for sponsors (fig.58); int
- debris and fixings remaining from past activities; int
- carpet-clad additions in northern foyers to provide storage; int
- carpet cladding to columns. int

**Concert Hall**

- Entire uninterrupted space and form of hall; A
- moulded white birch veneer ply ceiling with lighting, air conditioning and acoustic housings; a
- laminated brush box walling, doors, floors and stage; a
- bronze fittings; a
- character and quality as a concert hall; a
- organ pipes and case; a
- seating of white birch and cerise upholstery; a
- acoustic reflector rings ('doughnuts' or 'clouds'); b
- bells associated with the organ (Whitechapel Foundry, UK) b
- existing backstage space; d
- steel structure supporting ceiling; d
- microphones and counterweights suspended from ceiling on cables; int
- nest of speakers suspended above stage; int
- lighting battens and banks of lights. int

**Opera Theatre**

- Seating of white birch and red upholstery; C
- entire uninterrupted space on the auditorium side of the proscenium; b
- form of ceiling and walls and original housings for services; b
- unpainted precast concrete surfaces of circle balustrade and box fronts; b
- floors of laminated brush box; b
- proscenium configuration; b
- Wagner-Biro designed and installed stage machinery including revolve and elevator platforms; b



28. Western foyer beside the Concert Hall looking north—a bizarre and important space between the ribbed shells and the carcass of the hall. JSK photograph 93.7.23.

- Coburn's *Curtain of the Sun* (removed); b
- sur-title screen; d
- stage, backstage and storage space. d

**Interior of minor south-west shells (Bennelong restaurant) A**

- Undivided interior space with fully exposed rib vaults overhead together with reconstituted granite paving; a
- glass walls; b
- current decor of Bennelong Restaurant; c
- kitchen to Bennelong Restaurant (within podium). d

**Reception hall B**

- Unpainted concrete beams; a
- fine space with eastern view; b
- white birch ply panelling (wobblies); c
- wobbly partition concealing descent of beams at southern end. c (int)

**Performers' and staff areas (see page 70-71, Wobbly Land) B-C**

- Character of white painted off-form concrete with services concealed by moulded white birch panels (wobblies) in front of wall and/or below ceiling—the latter with light strips and sprinklers set between them. Smaller spaces may be treated with unmoulded white birch veneer to selected surfaces. b

The following wobbly spaces are individually assessed:

**Green Room B**

- A linear space on the north-south axis of the building extending from the cafeteria kitchen to the north window, pierced by roof piers; b
- off-form concrete walls and wobbly ceiling system; b
- kitchen area and fitout (1992-93); d
- boxing-in of roof piers. int

**Main rehearsal room level 30. c**

**Management corridors and suites north of the curved east-west passage on level 30 (includes boardroom and chief executive's suite). B**

- inserted partitions. d

**Level 30 corridors fitted with white birch wobbly regime B**

- from Green Room west to Concert Hall shell support piers and east to Opera Theatre support piers; b
- loop corridors from the above servicing the northern parts of level 30; b
- partitions masking western piers. int

**Original administration reception area, corridor and suites with wobbly treatment on level 12 north of the Drama Theatre C**

- wobbly treatment; b
- inserted partitions. int

**Lavatories, locker rooms and dressing rooms.**

- all 1973 joinery, fittings, fixtures and furniture; b
- metal towel dispenser units design. int

**Amalgamated foyers for Playhouse, Studio and Drama Theatre at Broadwalk level C**

- potential of amalgamated space; b
- Wobbly regime; b
- roof piers; b
- brush box fittings (1973 and later); c
- small circular bronze-based tables; c
- 'egg-crate' ceiling; int
- partition partially obscuring piers. int

**Drama Theatre C**

- White birch and orange upholstery seating; b
- Coburn's *Curtain of the Moon* (removed); b
- space and form of auditorium; c

• proscenium configuration, stage machinery and revolve;	c
• painted and refrigerated metal ceiling;	c
• black painted off-form concrete and ply walling.	c
<b>The Studio, lower part of original rehearsal and recording studio</b>	<b>C</b>
• Large volume space with columns supporting galleries and catenary arch beams	c
• white birch type timber finishes to acoustic wall louvres, soffits, doors and arm rests	c
• light and sound systems	d
<b>Performers' assembly area under the Concert Hall</b>	<b>C-D</b>
• white birch fitout to locker rooms and WCs	c
• assembly area fitout	d
<b>Playhouse</b> (formerly cinema and chamber music room)	<b>C</b>
• White birch and dark blue upholstery seating;	b
• auditorium space with modified white birch panel system;	c
• extended stage and backstage;	d
<b>Harbour Restaurant complex spaces</b>	<b>B</b>
• original walls	c
• floor and fittings	d
• textile wall panelling	int
<b>Lighting, control and projection rooms</b>	<b>C-D</b>
• Small spaces with walls and ceilings lined by perforated ribbed metal sheeting and fire-rated insulation.	c-d
<b>Service areas</b>	<b>C-D</b>
• Character of white painted off-form concrete walling with applied colour-coded services;	b
• individual spaces so treated (including plant rooms, workshops, service corridors, vehicle access areas, storage and below-stage areas).	c-d
The following are individually assessed.	
<b>Central vehicle passage space</b> , level 12;	<b>B</b>
• Stage door;	c
• Concrete block additions for storage.	int
<b>Maintenance and contractors' facilities</b> (completed on level minus one in 1993)	<b>D</b>

## Existing assessments

Both the National Trust of Australia (NSW) and the Australian Heritage Commission have listed the Sydney Opera House. Neither listing has a direct statutory consequence for the conservation of the building although the Commission would have an interest under Section 30 of the Australian Heritage Commission Act, 1975, should Commonwealth funding be involved in work on the building or should the decision of a Commonwealth minister or agency be likely to have a 'significant effect' on the building or its relationship with its setting.

The Sydney Opera House is also a heritage item (No.62\*) listed on Schedule 1 (Buildings and sites) of the *Central Sydney Heritage Local Environment Plan, 2000*. See pages 98-100 (Statutory requirements).

## Awards for excellence

The following awards have been received by the Sydney Opera House and associated designers (Avis, SOH, 95; R.A.I.A. (NSW); Peter Hall):

### Year Award

- 1969 Queen's Award to Industry.
- 1972 Association of Consulting Engineers, Australia. *Excellence Award*, for the glass walls.
- 1973 Royal Australian Institute of Architects, *Gold Medal*, awarded to Jørn Utzon.
- 1973 *Special Award*. UK Institution of Structural Engineers.
- 1974 Royal Australian Institute of Architects. *Merit Award*, for work of outstanding environmental design.
- 1974 Illuminating Engineering Society of Australia. *Meritorious Lighting Award*, for the Opera Theatre.
- 1980 Royal Australian Institute of Architects (NSW Chapter). *Civic Design Award*, for the Opera House.
- 1988 Royal Australian Institute of Architects (NSW Chapter). *Lloyd Rees Award*, for the Opera House forecourt as part of the Circular Quay and Macquarie Street revitalisation.
- 1988 Royal Australian Institute of Architects. *National Civic Design Award*, for the Opera House forecourt as part of the Circular Quay and Macquarie Street revitalisation.
- 1988 Illuminating Engineering Society of Australia. *Certificate of Commendation*, for the shell floodlighting.
- 1992 Royal Australian Institute of Architects (NSW Chapter). *The Commemorative Sulman Award*, for the Sydney Opera House, architect: Jørn Utzon.

The 1992 Sulman Award was accompanied by a citation which read in part:

[the Sydney Opera House] is a building which has caught the imagination of the world, and lifted the spirits of all but the most immovable observer. But, just as importantly, there also exists a body of work recording Utzon's meticulous studies for parts of the project unfinished by him. This work is of great significance to architects and architectural scholars, as it describes work of great distinction and inventiveness. This is work of international significance. Accordingly, the jury celebrates and marks this important 60th anniversary by awarding Jørn Utzon, with an apology, the first commemorative Sulman Award for his contribution to the Sydney Opera House (*Architecture Bulletin*, September 1992, 10).

## Keys to the City of Sydney

In 1998 the Council of the City of Sydney unanimously endorsed the proposal of the Lord Mayor, Alderman Frank Sartor, to grant Jørn Utzon its highest honour: the Keys of the City of Sydney. The Lord Mayor's minute of 6 April 1998 noted that the honour was in recognition of the debt of the people of Sydney to Utzon in creating in the Sydney Opera House an architectural and engineering masterpiece and at the same time an 'icon' that had become an 'instantly and internationally recognised symbolic embodiment of Sydney'.



## CONSERVATION POLICY: PURPOSE AND EXPLANATION

The purpose of the conservation policies set out in this section is to provide a guide to the development and care of the complex in ways that retain or reinforce its significance. Such policies are framed to:

- recognise the primacy of Utzon's vision for the place and the value of Hall's hierarchy within the building which distinguishes the treatment of major public spaces, minor public spaces and performers' and staff areas, and service areas;
- permit adaptations and new works which are compatible with the above and which will make the place more effective in its principal intended use as a performing arts centre;
- prevent the place being overloaded with uses and functions that will result in its progressive degradation;
- identify elements which adversely affect the place and which should be modified or removed;
- retain the intended sequence of experiences both by day and night as patrons and visitors progress through and around the place;
- retain the character and quality of the building and its various elements, including its immediate setting;
- retain the integrity of the original structural systems;
- provide an approach to the conservation of deteriorating fabric;
- draw attention to the need for co-ordination of planning, continuity of conservation advice and good housekeeping regimes;
- outline procedures by which the objectives above may be achieved.

The policies are addressed in this sequence:

1. major policies to guide change;
2. setting and exterior;
3. sequence and access;
4. lighting;
5. character of internal spaces;
6. individual spaces;
7. care of the fabric and housekeeping;
8. managing the process of change.

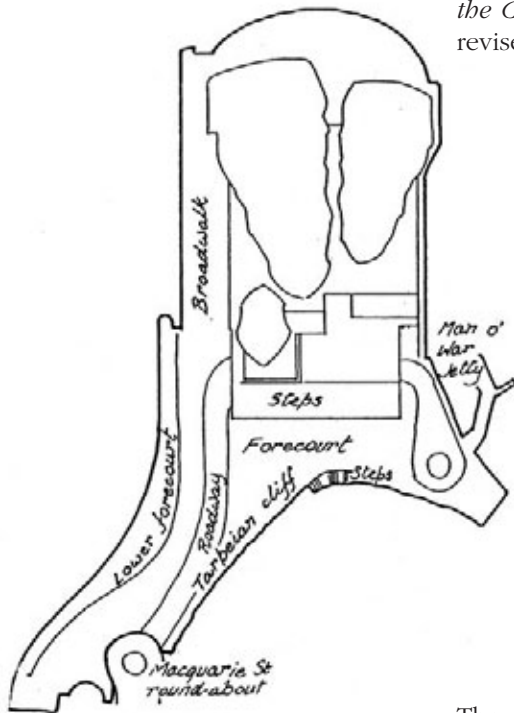
The first section establishes the key policies that set the approach to be taken in treating the various elements and aspects of the place – ranging from minor adaptations to major works. The third section covers the sequence to be experienced by patrons and visitors as well as dealing with issues of access. The fifth identifies groups of spaces based on common characteristics and the sixth is a gazetteer of individual spaces within the building. Both the fifth and the sixth provide options for future treatment based on the mother policies in section one. The last deals with the administrative processes that help management satisfy heritage requirements.

The policies are set in italics. They are accompanied by the information on which the policies are based and, where helpful, followed by examples of treatment or options which arise from the policies.

Policy 1.0 *Policies should only be read in conjunction with the associated text as this will make the context clear and aid interpretation.*

The area covered by this conservation plan is the Sydney Opera House precinct on Bennelong Point, north of the site perimeter from Sydney Cove to Farm Cove along the northern ends of East Circular Quay and Macquarie Street, the Tarpeian cliff face and the Botanic Garden fences. The terms used to identify parts of the building and its surroundings are usually those specified in the Department of Public Works and Services Sydney Opera House Asset Management Program. References to a specific fabric or space may be found in the index.

The following definitions taken from the *Australia ICOMOS Charter for the Conservation of Places of Cultural Significance* (Burra Charter), as revised in 1999, have been used.



29. Sketch plan showing area covered by conservation plan. JSK 1998.

**Fabric** means all the physical material of the place, including components, fixtures, contents and objects.

**Conservation** means all the processes of looking after a place so as to retain its cultural significance.

**Maintenance** means the continuous protective care of the fabric and setting of a place, and is to be distinguished from repair. Repair involves restoration or reconstruction.

**Preservation** means maintaining the fabric of a place in its existing state and retarding deterioration.

**Restoration** means returning the existing fabric of a place to a known earlier state by removing accretions or by reassembling existing components without the introduction of new material.

**Reconstruction** means returning a place to a known earlier state and is distinguished from restoration by the introduction of new material into the fabric.

**Compatible use** means a use which respects the cultural significance of a place. Such a use involves no, or minimal, impact on cultural significance.

The 1999 version of the Charter redefines adaptation as 'modifying a place to suit the existing use or a proposed use.' In so doing the concept of compatibility has been lost, so the original definition has been retained here as it is consistent with the intent of the Charter.

**Adaptation** means modifying a place to suit proposed compatible uses.

The Sydney Opera House is a complex establishment with complex problems and solutions. Policies and explanations dealing with a particular issue will be found at more than one place and use of the index will help identify the relevant locations. However, initially at least, a reading of the entire policy section is strongly recommended.

## UTZON, HALL AND THE APPROACH TO CHANGE

The brief for the 1993 interim conservation plan and its 1999 revision required 'a plan which considered the building as built' (SOHT Chairman Butcher in her introduction, Kerr, *Conservation Plan*, 1993, page iv). This 2003 edition has a wider scope and places stronger emphasis on functional improvements and possible future developments within the context of retained or even expanded significance. It not only benefits from the experience of the past decade but also has the exceptional advantage of having the original designer again involved to guide the policies in this plan.

As well as reworking the revised 1999 conservation plan, these policies draw on the following documents provided by the Sydney Opera House Trust.

*Sources for policies*

### **Jørn Utzon**

- *Commentary on the Sydney Opera House*, SOHT, July 2001;
- 'Comment... [on] the report commissioned by the NSW Department of Public works and Services for the SOHT named *Sydney Opera House*, a revised plan for the conservation of the SOH and its site, James Semple Kerr, 1999;'
- *Sydney Opera House, Utzon Design Principles*, dated May 2002, including sections on vision, future and design principles. The latter consist of quotations arranged by Richard Johnson and approved by Jørn Utzon. The quotations originated in the writings of Utzon and in taped discussions between Johnson and Utzon.

### **Sydney Opera House Trust**

- *Sydney Opera House, Venue Improvement Plan* dated May 2002 briefly outlining works developed by Johnson in collaboration with Utzon for the Trust.

### **Peter Hall**

- *Sydney Opera House, The design approach to the building*, Sydney 1990.

Both the *Design Principles* and the *Venue Improvement Plan* were released by the Premier of NSW on 29 May 2002. In addition to these documents, the author had informal discussions with Richard Johnson and members of a working group setup by the Trust to test and improve policies. Also, in 1993, Peter Hall and Bill Wheatland gave professional advice and comment on the first edition of the conservation plan.

The primary significance and visual character of the Sydney Opera House as it stands in 2002 is that established by its original designer, Jørn Utzon, who was responsible for its plan concept, exterior form of ceramic clad shells above a solid platform, grand supporting structures, ceremonial stairs, the sequential relationship of its public spaces and its spectacular relationship with its setting. Peter Hall determined most of its internal character, designing the auditoria, staff and performers' areas, the service facilities and the finishings and furnishings. He was also responsible for the external glass walls.

*Existing significance*

It is now thirty years since the building was completed and, despite alterations, some aspects of its function as a performing arts centre are

*Approaches to policy*

inadequate for present use. This conservation policy is therefore approached on two (occasionally interlocking) levels.

First, the retention and, where necessary, adaptation of existing fabric and spaces in accordance with the approach of the original and early designers – Utzon and Hall.

Second, developments not necessarily envisaged by the original and early designers but in keeping with the 'fundamental' principles and innovatory approaches that inspired Utzon.

*The minimum approach*

Successful adaptation at the first or minimum level will depend on the degree to which new designers have understood the approach of the relevant original designer as well as on the design quality and materials of the new work. Such adaptation would, for example, avoid the progressive and piecemeal degradation of the character of Hall interiors, particularly where it vitiated the homogeneous treatment of spaces or a related sequence of spaces. On the outside, the process would, for example, take extraordinary care to retain the magical atmospheric qualities of Utzon's ceramic clad shells.

*The dramatic approach*

Second level developments may be more dramatic but also more dependent on substantial funding. They may be aimed at resolving technical and functional issues such as the separation of heavy vehicles from pedestrians, the relocation of major delivery and support facilities and even the remodelling of auditoria.

Whatever approach, or combination of approaches, is chosen, the mother policies 1.1 to 1.6 will provide a general guide to the work.

*Utzon's principles*

Policy 1.1 *All work on the Sydney Opera House should be carried out within the framework of Jørn Utzon's design principles as endorsed in 2002.*

'Principles' is perhaps too formal a word for Utzon's approach. Pages 58 and 59 of the *Design Principles* booklet of May 2002 reveal that two ideas were of particular importance to Utzon.

The first was his use of organic forms from nature. The leaf form pattern devised for the ceramic tiles was an exactly apposite solution to the technical and visual problem of cladding the lids on the shell ribs. Similarly, the bird-wing concept for the structure of the ply mullions that were to hold his suspended glass walls is a celebrated if unexecuted example (fig.33).

The second idea was the creation of sensory experiences that would bring pleasure to the users of the place. There is no better example than the sequence of experiences that patrons could enjoy as they approach, mount the grand staircase to the podium platform, pass through the low ribbed box office and climb to the airy foyers flanking the auditoria with their spectacular harbour setting. It was an experience to be brought to a climax by the performance itself.

Both ideas were (or were to be) reinforced by Utzon's application of counterpointing techniques using light and dark tones, soft and hard textures and richly treated warm and cool interior colours. On a grander scale, the light toned shells of the building were to stand out against the (then) darker fabric of the city. At the more detailed level he achieved delicate and precisely calculated contrapuntal effects by the use of two groups of similar shell tiles with different light refracting qualities.

Other aspects of Utzon's approach supported his work. He was acutely aware of the intimate relationship that must subsist between choice of material and the nature of design. He used whatever technology would best accomplish his objectives and he was determined to create, or

appropriate, industrially fabricated modular systems with sufficient flexibility to facilitate the often extremely complex construction programs. In all this Utzon was helped by a variety of firms and people but until 1966 it was his vision that directed the project.

In addition to Policy 1.1 above, more specific policies are necessary. They establish appropriate responses to proposed and possible developments as well as to the care and functional adaptation of the work of Utzon and Hall. The policies fit generally within the framework of Utzon's approach.

Policy 1.2 *The following fabric and attributes are essential to Utzon's concept for the Sydney Opera House and should be retained in any future development:*

*Retention of Utzon's concepts*

- a. *the relationship between the three shell groups and the platform below;*
- b. *the shell geometry and the ceramic tile cladding;*
- c. *the canted alignments of the major shell groups;*
- d. *the supporting structural systems throughout the building;*
- e. *the visually free standing sculptural form of the building unobstructed by adjacent erections;*
- f. *the open and uncluttered character of the forecourt and grand stair by which the raised podium is gained;*
- g. *the visual relationship with the harbour setting from the podium – including the foyers surrounding the auditoria;*
- b. *the retention of a 'natural' palette of materials for external fabric.*

The foyers surrounding the auditoria are a combination of Utzon and Hall design. Utzon regarded them as 'outside' spaces with clear vision in through the glass walls as well as out. Hence the foyer fabric was to be designed with the same natural palette of materials, textures and colours as the outside. It was also intended that the profile of the auditoria carcasses would enable the underside of the soaring ribs of the shells to be seen in almost all their glory. Largely because of seating demands, Hall designed auditoria carcasses that heavily oversailed the foyers and substantially obscured the ribs. The foyers are still extraordinary spaces but adjustment of the envelope and materials of the major auditoria carcasses is an acceptable option should the auditoria be remodelled for functional and acoustic reasons.

*Treatment of hybrid 'outside' spaces*

Policy 1.3 *Hybrid spaces, such as the foyers surrounding the major auditoria and the reception hall, reflecting the work of both Utzon and Hall, may be retained, or reworked in accordance with Utzon's concepts and principles, provided the qualifications set out in Policy 56.1 are accepted.*

Except for 'The Studio', part of the western foyer at Broadwalk level, the orchestra assembly area and some excavated office and storage facilities, the existing spaces within the podium were designed by Hall. He later reported that the character of his design approach was particularly shaped by two factors. First, the government's determination to bring costs under control. This led to a 'disciplined approach' and meant that 'quality where it counted most, or was essential to performance, was affordable, but care had to be taken to economise where possible'. The consequence was the establishment of a hierarchy of treatments for the various parts of the building (Hall, 1990, 22). The hierarchy is set out on pages 69 to 72.

*Hall's interiors*

Second, he strove for a 'commonality of character' that enabled 'all the spaces within the Opera House to be recognisably part of the same building'. 'With the decision to use white birch veneered plywood for the Concert Hall ceiling and chair shells it seemed logical,' he said, 'for both practical and aesthetic reasons, to extend its use' to those areas

where a 'higher standard of finish' was required – even to the fitout of toilets. These were to be the spaces heavily used by the 'public, artists and administration' (ibid., 187) but did not include the 'outside' spaces such as the foyers. There the predominant character had already been established by Utzon's concrete structure.

The need for commonality and a limited palette of materials extended to the full range of details, but it was the white birch veneer in its various forms that made a major contribution to the unity of the performers' and staff spaces within the podium. Hall therefore appealed to future generations to ensure that change was not considered in isolation but that the parts should continue to be related to the whole and 'produce the feeling, despite its size and diversity of its functions, that it is one building'. He finished his appeal with the pithy advice: 'Isolated detail changes are enough to undermine that quality' (ibid., 199–200).

Policy 1.4 *In any adaptation or modest functional improvement, interiors designed by Hall should retain or recover the character of his original design regimes with their co-ordinated detailing.*

#### *Major interior works*

Major works to the auditoria and podium interiors can become acceptable if they achieve such new levels of technical and functional excellence that they increase the significance of the Sydney Opera House as a performing arts venue. There are, however, constraints. Policy 51.1 requires that the more significant the item the more should care be exercised in preparing proposals. For example, any process of remodelling the carcass (and hence character) of the concert hall to meet new acoustic objectives is made difficult by the varied and changing opinions of musicians and acousticians. Major works, therefore, require reasonable certainty of objective, method and outcome, if the criterion of excellence for both performer and audience perception is to be met.

Policy 1.5 *Major works within the auditoria and podium are acceptable where technical advance, expert advice, design quality, adequate resources and meticulous construction can be combined to create performance and service facilities that will improve function and reinforce or enhance the significance of the Sydney Opera House, provided that:*

- *the work is planned in the context of an overall plan for the place;*
- *the scheme is developed in accordance with Policy 56.1 on the management of change.*

Such major works could also, for example, include replacing and relocating obsolete plant, mechanical, hydraulic and electronic services, as well as resolving problems of heavy vehicle access, docking and storage facilities.

#### *Additional on-site facilities*

Space at the Sydney Opera House has always been tight, particularly for work places and support facilities. Some are now inefficient and barely habitable. The podium deck and walls place an absolute limit on upward or lateral expansion and it is essential that the deck, forecourt and broadwalks remain uncluttered by developments. There are therefore two acceptable options for the provision of major floor space: first, removal of inessential functions off site and the reallocation of the space created to uses that fit and are appropriate; second, the excavation of entirely new facilities below existing levels.

Policy 1.6 *Entire new spaces, including access and delivery systems, may be created by excavating areas below existing facilities, forecourt, vehicle concourse and broadwalks, provided the supporting mechanical services and access systems are designed to be minimal visual intrusions into the surrounds of the building.*

See also Policy 1.2 (Retention of Utzon concepts) and 53.1 (excavation).



## SETTING

### Views and vistas

Two aspects of the Sydney Opera House make it an exceptional landscape (and seascape) monument: its form and its relationship to its setting. It follows that views and vistas to and from the Opera House identified in the schedule on page 34 are a major element in the marine landscape of Sydney. It is important that they are taken into account in the design of any development with an actual or potential visual relationship with the building.

*Policy 2.1 All agencies of government and local government involved in planning the continued development of Bennelong Point and nearby peninsulas and bays should give consideration to the creation, retention and recovery of views and vistas to and from the Opera House when considering proposals. These objectives should be progressively incorporated into any relevant development strategies.*

*Policy 2.2 The Sydney Opera House Trust should ensure that no erection in the area under its control interferes with any view or vista to or from the Opera House.*

Policy 2.2 above does not prevent a range of lively performances, pageants and functions held for a specific occasion. It would, however, preclude the erection of temporary structures or tents so large that they obscured favourite views to or from the Opera House to the disappointment and disgruntlement of tourists and patrons. Tourists are an important part of the commercial lifeblood and word-of-mouth publicity of the Sydney Opera House—and Sydney. They should leave the site bearing an unspoilt memory and photographic record of their pilgrimage (fig.32c).

### Open and uncluttered setting

The surrounds of the Sydney Opera House reflect the inherent conflict between heritage requirements and new ideas for improving visitors services and experiences. On the one hand there is a need to maintain the building as a free-standing iconic monument of exceptional significance in an uncluttered and publicly accessible setting and, on the other, there is a management desire to enliven the surrounds and to accommodate leasable concessions or hireable venues. The Andrew Andersons and Peter Hall lower forecourt design of 1987 was a neat resolution of the problem but in 2002 there are unacceptable intrusions into the forecourt and broadwalk. The 'icecream, coffee and food and drink' bars (fig.31) and the large metal framed and air conditioned venue for hire north of the podium (fig.32) are examples.



*30. Tented erections covering the forecourt in 2001. The boundary fence bore the warning AUTHORISED PERSONNEL ONLY. Eleven garbage bins lined the roadway to the Opera House. JSK photograph 2001.1.3.*



*30a Clear forecourt. JSK photograph 2002.5.14A.*

*31. First of the new ice cream, coffee and food bars against the podium wall with garbage bins and sheltering canopies. Two more have been placed in the forecourt. JSK photograph 7.9.2002.*

32. Unacceptable 'temporary' (i.e. long stay) venue for hire located against the north wall of the podium. The air conditioning plant is on the right and the servicing trucks are out of the picture on the left. The structure remained in place from September 2002 to April 2003. JSK photograph 19.9.2002.



Policy 3.1 *The erection of long stay structures as venues for hire (or for any other purpose) is unacceptable on the forecourt, broadwalk and podium stairs and platform.*

Policy 3.2 *Long stay commercial concessions to sell merchandise and foodstuffs with their attendant service, supply, storage, waste, sign and shelter requirements are inappropriate on the forecourt, broadwalk and podium stairs and platform.*

Apart from the visual intrusion in heritage spaces of such importance to the Opera House itself, the cumulative effect of the growth of such outlets and venues results in an awkward increase in infrastructure needs and housekeeping and supervision problems.

While policy 3.2 on commercial concessions remains a valid principle, there are circumstance in which (and processes by which) food and drinks outlets may become acceptable. Where they are placed, how they are designed and requirements for associated infrastructure and servicing will be determining issues. Such proposals should go through the processes outlined in the last section on managing change to establish whether, how and where they may be introduced.

The forecourt, broadwalk and podium have been, and will be, seen as a splendid place for a whole range of impedimenta: freestanding sculptures, planter beds, statues to benefactors, memorial tablets on plinths, avenues of flag standards, and a surfeit of bollards, railings and directional signs to guide the unwary have all been, or are likely to be, proposed. In order to preserve the stark and dramatic presentation of the Opera House, the unnecessary should be resisted and the necessary kept to an absolute minimum.

Policy 3.3 *Objects should only be permitted on the forecourt, lower forecourt sea wall path, broadwalk, podium deck and steps, if they do not interrupt or intrude upon the open and uncluttered character of the place, or if they are absolutely necessary for the safety of visitors.*



32a North-eastern broadwalk in 1993 with vision across the broadwalk retained. JSK photograph 93.9.10.



From time to time provision has been made for outdoor performances or celebrations in the forecourt. These use the podium steps as a base for seating with a substantial temporary stage and associated facilities erected in the forecourt. While visually intrusive and dislocating, their brief duration and infrequent occurrence make them tolerable – particularly where substantial synergy exists with community objectives. However, any proposal for the long term erection of stage, lighting and associated facilities for commercial productions would seriously damage the approach and setting of the Opera House on its site.



For example, the Sydney Opera House Trust has provided a list of facilities that are likely to be required for forecourt performances (These were given a trial in November and December 2002):

- relocatable stage;
- toilets, change rooms and performer facilities;
- lighting towers or [and?] follow spot positions;
- speaker towers;
- shade and shelter (tent type structures);
- wheelchair accessible toilets and seating positions;
- relocatable seats for stairs and forecourt;
- vending and sales outlets;
- fencing to [a height of] two metres with opening gates;
- barriers ('bike rack' type) to [a height of] 1.2 metres;
- [signs to direct patrons to appropriate gates on fence line in order] to avoid crowd backup or queueing;
- garbage bins and directional signs.

32b. Examples of 'bike rack' type barriers and non-transparent two metre fencing on the forecourt used during the trial events. JSK photograph 10.11.2002.

In addition there would need to be 'in ground' connection points and systems for 'power reticulation, communication cabling, water, sewerage, EWIS [Emergency Warning Intercommunication System] cabling and fence supports.'

Policy 3.4 *The frequent or long stay erection of above ground performance facilities and fencing that results in the visual encumbrance of the setting and the loss of public access to, and views across, the forecourt is unacceptable.*

Policy 3.5 *Whatever activities take place, fencing designed to block public vision across or into the forecourt is unacceptable.*

A practical heritage rule of thumb suggests that, where seating is to be installed and public access denied, three days is an acceptable short run performance duration. Any intrusion of facilities with introduced seating and loss of public access extending past that time is an unacceptably long stay. However, performances and celebrations that simply use the stairs as seating but do not exclude the public and require a minimum of infrastructure, may be acceptable up to eleven days. Ultimately it will be up to the Sydney Opera House Trust in negotiation with NSW government planning and heritage bodies to determine the appropriate interpretation of the words 'frequent' and 'long stay' in policy 3.4



32c. George Molnar's 1989 watercolour 'An aesthetic adventure' emphasises the importance of the podium steps to the tourist adventure. Reproduced by courtesy of Carol Molnar.

above. However, any determination should involve real and effective public consultation.

See also policy 56.1 (Sequence and advice in developing proposals) and pages 98 to 99 (External processes).

### **Forecourt pedestrian and vehicle paths**

Visitors who round the 'toaster' from East Circular Quay have an immediate and spectacular view of the Opera House. Their natural, and appropriate, path is to cross to the right to gain the ceremonial steps of the podium. Vehicles on the other hand arrive on the right and cross to the left to pass under the steps.

Policy 4.1 *Any action taken to reduce the conflict of pedestrian and vehicle paths should make clear the pedestrian approach to the Opera House via the forecourt and podium steps as well as via the vehicle concourse.*

See also pages 58 to 59 on the forecourt.

Policy 4.2 *The long term objective should be a complete separation of pedestrian and heavy vehicle traffic accessing the Opera House.*

This could be achieved by heavy vehicle access at a lower level.

### **Removal of buses**

Tim Jacobs' much publicised complaint that the Opera House interiors are like '...a bus station' (e.g. SMH, 20.9.1997) has a certain literal accuracy when applied to the vehicle concourse. It has become a layover point for some city buses and the consequent powerful noise pollution, diesel fume emission and periodic congestion in the enclosed space is unacceptable. The timetable posted in the concourse shows there are 99 departures each week day and two or three buses can occupy the space at any one time. The bus traffic has also made a contribution to the breaking up of the granite sett road surface.

Regular emissions from diesel buses are partly responsible for the discolouration of the famous folded beams overhead, resulting in management requests for them to be painted. It is, however, important to retain the texture and colour of Utzon's precast and concrete structures (see pages 86 to 88).

In any case visitors should be encouraged to walk the short distance from ferry, train and bus services. The new developments on East Circular Quay provide both covered and open access along the waterfront and visitors are rewarded with a spectacular 'surprise' view as they reach the entry to the site.

Policy 5.1 *City bus services should not layover on the Opera House site but should instead wait at their accustomed points round the Quay—or circumnavigate the fountain roundabout at the foot of Macquarie Street to service bus stops nearby.*

The disabled and infirm may of course continue to be delivered to the door in light vehicles.

## **EXTERIOR**

### **External form**

The external form of the Opera House as conceived and largely constructed under Utzon is of exceptional significance. It is one of those rare monuments which warrant the adjective “unique”. Although the roof shells, glass walls and podium place constraints on the continued development and use of the place, it is necessary that these constraints be accepted.

Policy 6.1 *The Opera House should retain unchanged its external form of roof shells, glass wall concept, podium and podium steps, forecourt and broadwalk.*

Policy 6.2 *Proposals that obscure the original exterior form of the Opera House are unacceptable.*

In the past site sheds have been erected against the west wall of the podium and an (inadequate) maintenance facility constructed above the north door of the central passage. The latter was put in place for the decade-long upgrade program and, although both shed and facility were designed to minimise impact, both remain intrusive accretions. See page 85 (treatment of intrusive items). The 1997 ‘master plan report’ contemplated a further decade of building activity and current proposals for site works will continue for some time. The provision of site facilities will be a recurring problem throughout the twenty-first century.

Policy 6.3 *Consideration should be given to providing fully concealed facilities and visually modest access for essential on-site building and maintenance work.*

Policy 6.4 *Where temporary exterior building and maintenance facilities are unavoidable they should be located as unobtrusively as possible and should only be erected for a stated limited time.*

### **Roof shells and tiles**

The roof shells with their ribs, spherical geometry and tiled skins are an exceptional element in a grand waterscape. The retention of their original structure and character is essential.

Policy 7.1 *The original roof form with its spherical geometry, ribs and close-fitting ceramic tiled lids should be retained in any future work.*

The ribs of the roof shells are covered by precast concrete lids which are in turn clad with tiles. Utzon's requirement of a natural palette of colours on the building exterior is reflected in the tiles. A white terracotta slurry was floated in the glaze and the tiles were then turned out in two groups with different light refracting qualities – a shiny glaze for the lid body tiles and a matt effect for those in the lid borders. This created a subtle chevron pattern and a series of seductive reflective effects analogous to types of ice and snow as the light changes. The tiles were supplied by Hoganas of Sweden together with “adequate stocks for future use in repair or replacement” (Littlemore, SOH, 153). The lids and their tiles were fixed with precision and followed exactly the curvature of the shell, presenting a completely smooth exterior skin.

Policy 7.2 *Any repair, adaptation or replacement of tiles or tile lids should retain the original qualities—in particular:*

- *colour, texture, reflectivity, geometry and pattern;*
- *dimensional accuracy and precision of jointing;*
- *unbroken spherical alignment of surface;*
- *resistance of tile to corrosion.*

Any interruption of the characteristics and quality outlined in policy 7.2 above is unacceptable. For example, early in the 1990s an access trap-door was cut near the top of the main Concert Hall shell. Although similarly tiled, its disruption of the pattern (and leaky grouting) made it a strong visual intrusion. Subsequently an alternative access system was devised and the original surface was restored.

Policy 7.3 *Care should be taken to ensure that any logistic or technical problems associated with the provision of necessary replacement fabric for the roof is resolved well in advance of requirement.*

“The process of casting the tile lids produced a convex meniscus in the joints between each tile. To prevent the penetration of water at the joint edge, this was converted to a concave meniscus by trickling epoxy resin into the joint. This epoxy is a cream colour not unlike that of the edge tiles. Its contribution to the overall colour of the shells is important” (Hall, SOH, 42). The lids were regouted in 1993, however, with the stress of exposure and diurnal heat, the grout deteriorates and darkens.

Policy 7.4 *Temporary local repairs to the grouting between the tiles should be carried out in a colour that approximately matches adjacent grouting.*

Policy 7.5 *Any overall program to replace grouting should be carried out in the original cream colour.*

The purpose of policies 7.4 and 7.5 above is to avoid a piebald effect.

A third type of tile was originally fixed along the lip of each roof shell as a barge or edge tile. This detail proved defective in that the tiles were subject to cracking due in part to the extent of cantilever from the point of fixing. Some fell, posing a threat to persons below and presenting a gap-toothed appearance (fig.63). As the lip tiles are awkward of access, piecemeal rectification would have proven expensive in the long term. Instead, a new mechanical system of fixing was devised within the upgrade program and tiles were developed with appropriate thermal and visual characteristics for a complete replacement program.

Policy 7.6 *Heritage requirements for any future replacement of edge tiles are:*

- *colour, texture and reflective quality closely matching the original matt tiles;*
- *consistency of production so that the characteristics above may be kept within a narrow range;*
- *capacity to retain the above characteristics in situ for a prolonged period and to weather modestly and uniformly;*
- *dimensional accuracy and precision of jointing;*
- *security of fixing by whatever method proves most safe.*

Policy 7.7 *Because of the transitory nature of suppliers and the difficulty of matching previous batches, any order should include adequate stocks for future repair and replacement.*

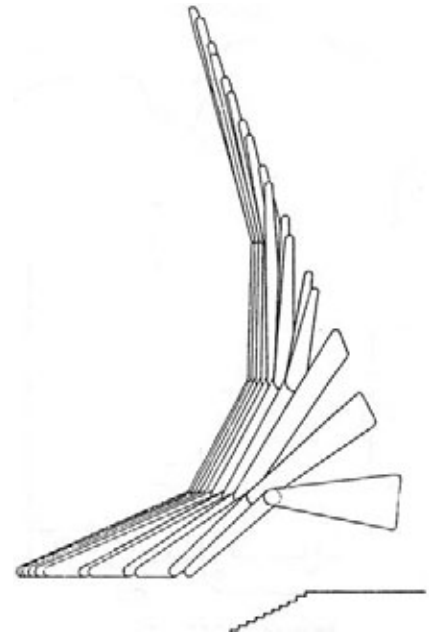
## Glass walls

Despite its complex geometry the glazed infill between the shells and the podium have always been known as the glass walls. Utzon had proposed to support the glass between bronze capped ply ribs using a concept similar to that in his celebrated bird wing sketch of 1964 (fig.33). The refusal of the minister for public works to grant funds for Utzon to test the practicability of the design was one of the problems which contributed to his “resignation”.

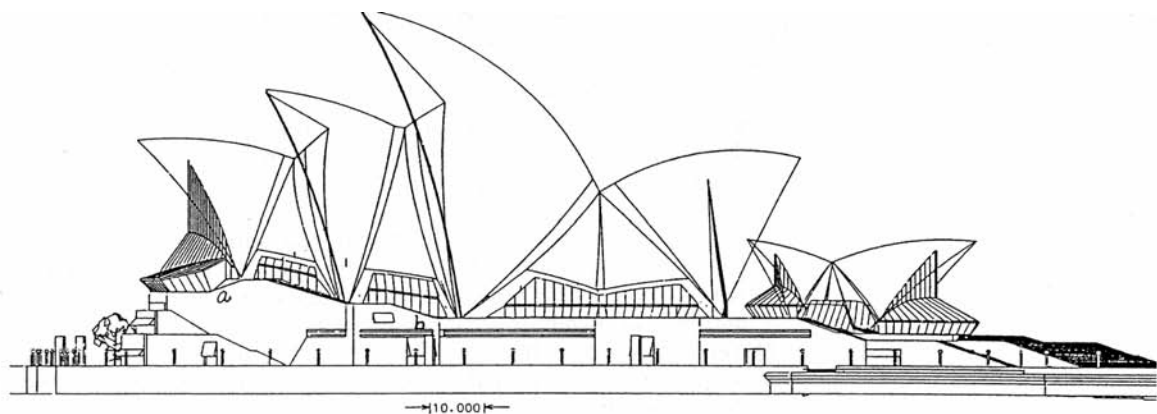
In 1967, Hall, Todd and Littlemore, together with the Arup organisation, developed a design of a continuous glass surface secured to a structure of light steel ‘mullions’ by a range of bronze fittings. The fixing points for the northern glass walls inserted in the shell rib to receive Utzon’s mullions did not correspond to the new requirements nor did the position of the cables in the prestressed rib permit the drilling of new holes. To solve the problem a ‘corbelled’ concrete strip was bolted to the rib using Utzon’s holes and the mullions were attached to the ‘corbels’ (Croft & Hooper, *Glass Walls*, 31–32).

Utzon had intended a design built on a limited range of mass-produced elements. It was never fully developed. Although physically different to the Utzon concept, the glass walls as built still used a substantial degree of standardisation in their components. Boussois Souchon Neuvesel of France manufactured the laminated glass, J. Broomhead and Son Pty Ltd fabricated the metal structures and Hornibrook carried out the erection from 1970 to 1972 (Littlemore, SOH, 23, 24, 80). Peter Hall and Harry Sowden provided separately a useful account and a detailed photographic coverage of the glass walls (Hall, SOH, 165–178; Sowden, SOH *Glass Walls*). The Association of Consulting Engineers of Australia gave the design of the glass walls its award for engineering excellence in 1972.

Some aspects, however, were never satisfactorily resolved: the awkward conjunction of the glass walls and the ‘suicide’ steps at the northern corners of the podium (fig.33a); and the heavy heat load transmitted to the spaces behind the glass—particularly in the northern foyers. Also, Utzon’s intended effect of transparency and sense of graceful suspension from the shells was not fully realised. In some light conditions the glass takes on an opaque and solid character.



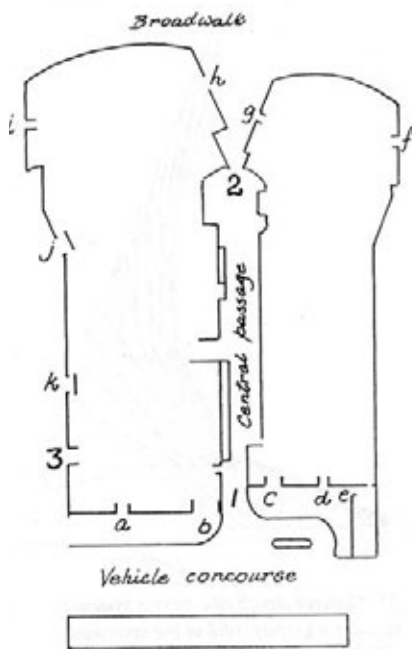
33. Concept sketch of a ply rib system to support a glazed infill of the openings, 1964. From Utzon, SOH, *Zodiac*, 14.



The glass walls remain controversial. One section of the design community see them as a lost opportunity and the other as an ingenious and successful award winning solution to an extraordinarily difficult problem. While the conflict does not present a conservation problem during the life of this conservation plan technical advances in

34. West elevation showing glass walls. The suicide steps are marked 'a'. NSW PWD CADD prepared for SOH Facilities Management, 1988.





35. Sketch of Broadwalk level showing vehicle (1-3) and pedestrian (a-k) access through solid podium walling. JSK 1993.

glass design and manufacture mean that there will come a time when clearer glass walls with better thermal properties may make replacement economically as well as aesthetically desirable. Should this situation arise, the rationale set out in policy 1.5 (major works) would legitimate a revised design.

Policy 8.1 *When replacement of the glass wall system becomes necessary, or when resources make it feasible, the opportunity should be taken to consider redesign to achieve a better resolution of:*

- *thermal properties;*
- *transparency of vision in as well as out;*
- *sense of suspension and curvature;*
- *the link between the glass walls and the northern part of the podium.*

In the meantime the existing glass wall system should be retained and conserved. All exterior metal work associated with the glass walls and doors is carried out in bronze. It is an appropriate solution in a hostile environment. Some bronze elements have acquired an encrustation of salt crystals and dirt and a few have been repaired using ferrous screws.

Policy 8.2 *Encrustations which are visually or chemically damaging to exterior bronze work should be removed with as little damage to the patina as possible. Any existing ferrous metal hardware should be removed and care taken to see that incompatible materials are not introduced during repairs.*

### Openings in podium walls

Utzon designed the podium to be a visually solid platform from which the shells would spring. Door and window openings were kept to a minimum and were sheltered by heavy precast hoods. The contrast between the ethereal roof and solid platform was an important element in his design.

For these reasons, previous policies stressed the need to retain the solid side wall effect of the podium and recommended Broadwalk level access through the podium walls to be restricted to the existing number of openings. While this concept remains valid, it has been complicated by the development of a continuous western foyer at Broadwalk level to serve the three theatres in the podium and by the present Utzon/Johnson proposal to achieve a greater visual relationship between the new foyer and the harbour. The latter is in accord with Utzon's concept of creating pleasant sensory experiences for the users of the place.

The external impact of the three extra openings is ameliorated by Utzon's proposal of a simple and sturdy loggia sheltering the openings and continuing the horizontal emphasis of the podium and its windows. The loggia is of a design inspired by the surrounds of the Mayan temples on which Utzon drew for his grand stair and podium concept. It is important that the loggia is treated to remain in harmony with the podium.

Policy 9.1 *No treatment of the podium should diminish the impressive effect of its solid side walls with their minimal horizontal fenestration nor disrupt the contrast with the ceramic clad shells and glass walls above.*

Policy 9.2 *New Broadwalk level openings are acceptable provided they can be carried out in accord with Policy 9.1 above and will achieve functions and effects that materially add to the significance of the place.*

This can be best achieved by a covering loggia that is simple and of sturdy bulk and proportions, with a horizontal roof, and executed in similar materials, textures and colours to the podium. For much of the day the openings below will be subsumed in a horizontal band of shadow. The spaces between the loggia piers should not be enclosed or glazed.

The doors for vehicle access to the podium were constructed of bronze, although the service door to the Bennelong Restaurant was later replaced by a painted steel roller door. Later still the original door was replaced and it should be retained for as long as the space behind remains a loading dock. Pedestrian entries are of bronze and glass and those on the western and eastern broadwalks are recessed from view.

Policy 9.3 *The vehicle access doors to the podium should retain their original unpainted bronze finish, although the way in which the doors are operated may be adapted should it become necessary.*

### **Podium steps**

The 272-foot wide steps provide a spectacular access to Utzon's "platform". Their effect, like that of the Mayan temple steps that inspired Utzon, is enhanced by their open spatial character.

Policy 10.1 *Except for the bronze rails that guard the east and west edges, the podium steps should remain open and free of furniture. Should any alteration of the rails become necessary, they should retain the materials and character of the original design. Intermediate handrails, inclinators or escalators should not be constructed.*

### **Podium "platform", broadwalk and forecourt**

The platform of the podium, together with its encompassing broadwalk and forecourt, are important pedestrian promenades and open spaces. The broadwalk in particular provides a formal base to the Opera House building.

Policy 11.1 *The exterior platform of the podium, the broadwalk and the forecourt are important open spaces which set off the Opera House and should be kept free of permanent structures or wheeled vehicles. Furniture should be kept to a minimum and should not intrude aggressive tonal or colour contrasts with the surrounding built form. Temporary structures for occasional celebrations or manifestations should be designed to be erected, used and dismantled without damage or alteration of the fabric.*



The outdoor eating area with its tables and sun shades on the north-eastern part of the broadwalk is an exception to this policy. It is adjacent to what was once the takeaway bar and restaurant within the podium and was a part of the early concept (fig 32a). The bar and restaurant are now a function venue.

36. *The podium deck and bronze railing showing the canted glass walls at eye level which ensure that reflections do not mar the view from the interior, 1993. JSK photograph 93.8.10.*

Policy 11.2 *Use of the north-east broadwalk should enable the area to retain the character of a public outdoor space without enclosed built structures. It should also allow pedestrian vision across the entire broadwalk. Provision may be made for tables, chairs, overhead protection,*



37. 'Safety' pickets added to the rail at the northern lip of the podium. JSK photograph July 2002.

planters and limited transparent wind breaks, provided these do not exceed the footprint of the original outdoor eating area designed by Peter Hall.

(See particularly policies 3.1 and 3.2 for intrusions upon this area and pages 59 to 60 for observations on outdoor furniture.)

### Podium railings

The railings at the edges of the podium prevent accidental falls to the broadwalk and roadways below. The existing railings are neat and visually unobstructive except at the northern end of the podium between the Concert Hall and the Opera Theatre. Here the rail has been reinforced by visually distracting two metre high safety pickets.

Policy 12.1 *The metal fence at the northern end of the podium should be replaced by an arrangement that permits an unobstructed northern view.*

There is an equally obtrusive barrier of splayed pickets at the southern end of the suicide steps.

### Paving and cladding of podium and broadwalk



38. North-west corner of the broadwalk showing paving and furniture. JSK photograph 93.7.21.

At the time of his departure, Utzon proposed using precast concrete elements of monumental scale for paving and cladding. He had decided on a soft pink crushed granite aggregate, bush hammered to achieve a matt finish (Wheatland). Hall, Todd and Littlemore chose a similar option and the final product was prepared by EPM Concrete in Sydney using pink granite from Tarana, NSW (Littlemore, SOH, 82). The difference lay in the finish. Hall's precast aggregate was acid etched and satin polished to show up "the character of the stone" (Hall, SOH, 52). Utzon objected to satin polishing on the grounds that it was not the nature of stone and preferred a matt finish (Wheatland).

Precast paving slabs were used on the podium and broadwalk, and also in those interiors which had a strong link to the exterior. Exterior slabs had rounded arrises and open joints so that storm water would drop through. This meant that the very large paved areas could be kept level and the water would be carried off by the fall of the disposal channels below the slabs. The precast floor slabs inside the building had square arrises and filled joints (Hall, SOH, 52-53).

EPM used the same mix and finish for the precast cladding on the podium and sea wall skirting. As with the paving, the precast cladding was extended to interiors such as the Box Office foyer. The basic cladding panel was U-shaped in section. Variants included the hoods of the horizontal podium windows and the parapet to the sea wall skirting.

Policy 13.1 *The existing paving and cladding system of precast and etched pink reconstituted granite slabs of monumental size should be retained.*

Policy 13.2 *When replacement becomes necessary, care should be taken to maintain quality control of colour, form and finish to match existing fabric.*

It is impractical to attempt to retain existing surfaces in pristine condition. Provided the visual effect remains reasonably homogeneous, paving and cladding may be allowed to age. It then takes on a more matt finish. For this reason replacement slabs need not be given a high and reflective polish which will set them apart from their neighbours.



### The sea walling, broadwalk skirting and supports

The first sea wall was built in the early 1860s (fig.8). During the later nineteenth and early twentieth centuries it was progressively rebuilt and augmented as a result of wharf, jetty and ferry developments (fig.10). Much of the sandstone fabric of this sea walling remains under the broadwalk.

Policy 14.1 *The remains of the early sea walling should only be removed where it becomes necessary for the stability of the broadwalk or associated structures above.*



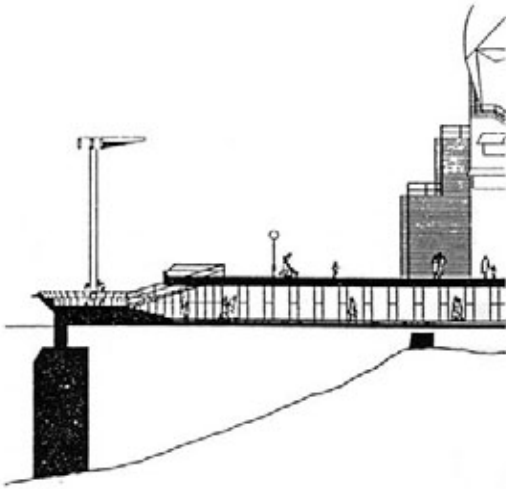
39. West elevation showing: on the left, the original podium cladding and broadwalk skirting; and, on the right, the 1988 sea wall of the lower forecourt. JSK photograph 93.7.0.

One of Utzon's options for the skirts of the broadwalk involved short cladding panels which did not extend to the water line, thus revealing the pile structure below (Hall, SOH, 52). As this strip would be mostly cast in deep shadow, it would produce an intentional dark underlining to the podium. The solution chosen by Hall, Todd and Littlemore continued the precast skirting below the low water mark. This was partly an aesthetic preference and partly a result of Maritime Services Board advice that an open front in the disturbed waters round Bennelong Point could trap and endanger small boats (ibid).

The skirting and the pile structure which supported both it and the adjacent broadwalk deteriorated rapidly during the 1970s and '80s. It was caused by a combination of inadequate material technology in a hostile saline environment and wave action and, as a result, major remedial work was carried out under the upgrade program. It involved reconstruction in part of the support structure and the installation of cathodic protection above the deep water below the western Broadwalk, and solid concrete fill below the eastern and northern Broadwalks.

Policy 14.2 *The condition of the structures supporting the Broadwalk and sea wall skirting should continue to be monitored and timely remedial work undertaken when necessary.*

When the sea wall of the lower forecourt facing Sydney Cove was designed, a different option was taken. The work was completed in 1988 with a lower parapet to enable the lower forecourt walkway to be related to Sydney Cove. Its overhanging profile (figs 39 and 40) was designed to deflect wave action and gave it a dark shadow line for much of the day.



40. Section through the lower forecourt showing the 1988 'sea wall' profile and floodlight pylon. Plan by NSW Public Works and Hall, Bowe & Webber Pty Ltd, 1986.

Policy 18.3 of the 1993 conservation plan for the Opera House proposed that the Broadwalk sea wall skirting could either retain its existing form or, if advantageous in practical terms, be redesigned to provide a dark underlining to the podium. What made the dark underline an acceptable alternative was that viewers across the water of the Opera House shells and podium were largely seeing an Utzon creation. As the major remedial work recently completed retained Hall's full skirted sea wall, the question is now academic and the dark option is dropped for the life of this plan. Nevertheless, the treatment of the skirting in a way that achieves a dark underlining remains a valid long term option.

### **The forecourt and lower forecourt**

The creation of an uncluttered, granite-paved, forecourt and an "invisible" covered pedestrian approach to the Opera House through a shopping concourse was a major bicentennial enhancement of the setting of the building. It eliminated the existing bitumen-paved car park and pedestrian covered way from the immediate approach to the building and also provided access to the underground car park when it was completed in 1993.

The considerable extent and irregular shape of the forecourt determined the choice of granite setts, or cobbles, laid in a fan pattern between strips of granite with a sawn finish which were in turn parallel to and designed "to respond to the powerful horizontal element of the [podium] steps" (Hall, SOH, 65). The granite was South Australian: Siena for the setts and Calca for the slabs. Both were supplied by Monier and laid by Melocco (ibid, 64). The same materials were used on the lower forecourt except that the setts were confined to the sea wall promenade and the concourse itself was laid with slabs of solid granite.

*Policy 15.1 The fan pattern granite setts or cobbles and the high quality solid granite strips and paving on the forecourt and lower forecourt should be retained and conserved.*

The roadway of granite setts is not wearing well. There are three reasons: first, the material on which the setts were laid was too thin to provide a firm foundation; second, some cobbles are of irregular form and small dimension and are too loosely laid to provide the mutual support necessary for a long wearing surface; and, last, the roadway is subject to relatively heavy traffic including buses and service and construction vehicles. Remedial action is needed.

*Policy 15.2 The roadway of granite setts should be renewed in a way that will stand up to the wear and tear imposed by Opera House traffic, and retain the visual effect of driving across an open pedestrian space. Any design solution should:*

- *retain the same materials, colours and textures;*
- *incorporate more appropriate 'traffic calming' features;*
- *reinforce pedestrian direction (and safety) when crossing to the podium steps.*

One solution would be to raise the road to the surrounding pavement level and mark its location by directional patterns. However, the preferred long-term objective is the separation of pedestrians and heavy vehicles: pedestrians at Forecourt and Broadwalk level and heavy vehicles below. It would be in accord with the extension of policy 1.5 (major works) and would involve the complete replanning

of access, docking, storage and plant arrangements as well as substantial excavation (including the Forecourt).

Policy 15.3 *Any scheme for providing facilities under the Forecourt should:*

- *retain the existing level of the Forecourt;*
- *co-ordinate and minimise above ground intrusions;*
- *record the surviving nineteenth century fabric of the storm water drain before diversion;*
- *provide for paving designed to be consistent with the character of adjacent Podium and Broadwalk paving as well as accommodating changed structural requirements.*



41. Timber partition obscuring dramatic descent of folded beams in vehicle concourse. JSK photograph 98.8.3.

### The vehicle concourse and folded beams

This remarkable open-ended space provides cover for patrons arriving and departing by vehicle. Utzon's competition drawings had shown the 'slab' above the vehicle concourse to be supported by columns. However, when he first discussed the structure with Arup he asked if it would be possible to do without the columns. Arup recounted:

...a typical question, which received the typical answer, that of course it was possible, but it would cost a lot of money, and as the columns did not obstruct anything, this expenditure might not be justified. The Architect then explained that his concept demanded that the architecture should be expressed through the structure, in fact the structure in this case was the architecture; it should be bold, simple, on an impressive scale and on a form which combined sculptural quality with a clear expression of the forces acting on it. This achieved, finishes could be simple; 'the concrete itself would speak...' (Messent, Opera House Act One, page 183).



42. Shop added to vehicle concourse obscuring overhead beams and masking Reception Hall entry. JSK photograph 98.8.2.

The result was the folded beams that supported the southern part of the podium deck and steps. Seen from underneath, the beams rose dramatically from the ground (fig.41), bridged the vehicle concourse, lifted above the four stairways and finally crossed the box office foyer (fig.46). The concept is a spectacular example of the triumph of art and science over economy and 'sense'—from which a simple policy emerges.

Policy 16.1 *No structures should be permitted to encumber and diminish the vehicle concourse space or to obscure any part of the folded beams.*

It is for this reason that the ply partition (fig.41) and the shop built in the concourse (fig.42) were assessed as intrusive and recommended for removal. The partitions are now gone – to the great benefit of the space. The shop remains and may be treated in accord with policies 39.1 and 39.2 and its qualification in the subsequent paragraph.

### Exterior furniture

As Utzon left the project in 1966 he had not begun to design exterior furniture and lighting. This was the work of Hall in the early 1970s and, subsequently, Public Works and Trust consultants. Over the last thirty years a variety of furniture has come and gone on the forecourt, lower forecourt, broadwalks and podium platforms. As well as lighting, these items have included planter beds and boxes, umbrellas, tables,



43. Mobile sign from the rear. JSK July 2002.



44. Lower forecourt showing column bases obscured by furniture. JSK photograph September 2002.

seating, signs, drinking fountains, bollards, garbage bins, flagpoles and service connection points. While these conservation policies do not deal with the design of such furniture, some observations based on past experience are appropriate.

Furniture on the surrounds of the Opera House should:

- be strictly controlled in accordance with policies 3.2 to 3.5 to prevent the proliferation of items and retain the uncluttered aspect of the open areas;
- be located away from key visual features. For example, furniture should not be placed at the bases of the pedestals from which the shell ribs spring, nor should items obscure the bases of the lower forecourt columns (fig.44);
- be made of materials that will not result in damage to, or disfigurement of, the fabric on which the item sits. For example, the mobile sign introduced in 2000 was made stable by a heavy steel box base and, consequently, Sydney rain results in oxides staining the granite paving below. Also the former sites of some garbage bins show accelerated decay and discolouration. Both create maintenance problems;
- avoid excessive brightness and harsh tonal and colour contrasts with adjacent fabric. White umbrellas, tables and seating are, for example, highly obtrusive in a reconstituted granite setting and in direct competition with the tiled shells.

(See pages 65 to 66 for exterior lighting.)



## SEQUENCE AND ACCESS

### Designed sequence of interior public spaces

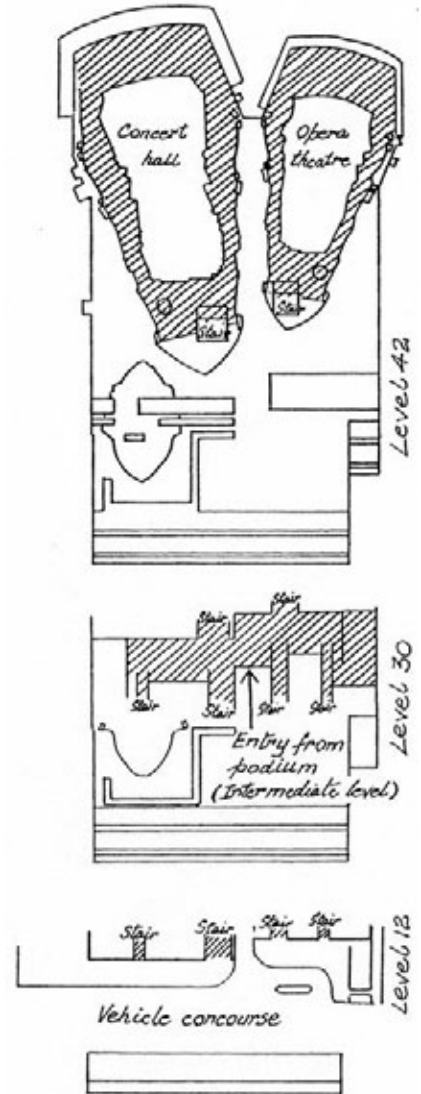
The Opera House is not a hotel but a place for the dramatic performance of the arts. Both Utzon and Hall sought to capture that drama when planning the linked public spaces through which patrons and visitors passed on arrival. In his descriptive narrative of 1965, Utzon described both outer and inner approaches:

For patrons arriving on foot, it is possible to walk in the open right up to the moment they will enter the foyers of the auditoria. For those arriving by car, there will be a spacious area under the concourse with 6 driving lanes. The patrons will be discharged onto the kerb under cover to the 4 stair access [doorways] leading into the building. (Utzon, Descriptive narrative... January 1965, page 10, formerly held in the Wolanski Library.)

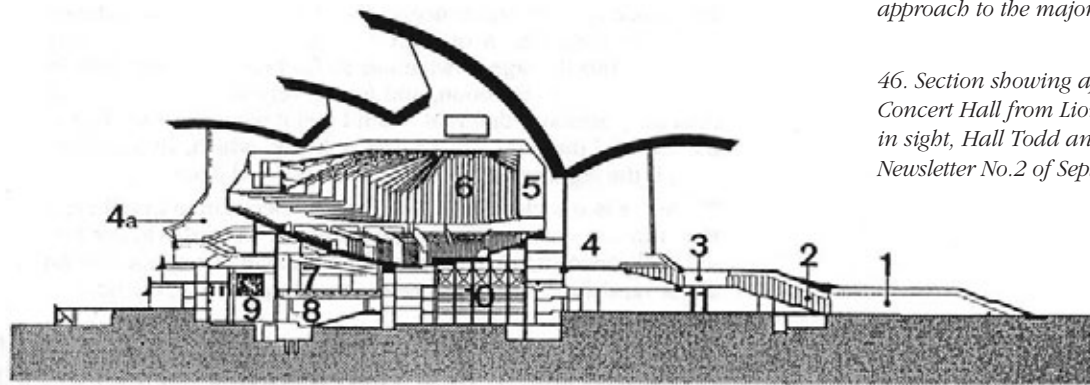
While the exterior podium stairs were intended to remain the primary approach, the spaces through which the lower approach was effected were designed to provide a sequence of contrasting experiences in which powerful structural forms and levels of illumination played an important part. The vehicle concourse, the four stairways and the box office foyer were the first three elements in Utzon's lower sequence. The concourse was a broad, open-ended space defined to the south by the mysterious angled descent of the folded beams into the ground. From the concourse, those arriving climbed one of the four stairways which ascended in an linear incline to the box office foyer.

The box office foyer was a long east-west vestibule sealed at both ends. It received limited natural light from the range of glass doors to the intermediate deck of the podium. This low space with its modest level of natural and artificial light provided an intended contrast to the next experience—the extraordinary spaces of the foyers, contained only by the soaring ribs of the shells and the brush box carcass of the auditoria, and linked to the surrounding land and sea scape through non-reflective glass walls. The transition was similar to that of passing from the low dark narthex of a mediaeval cathedral to the soaring, clerestory lit, rib-vaulted space of the nave.

The NSW Heritage Office in its comments on the 1993 interim plan urged the need for 'the grand processional ascent from the vehicle concourse to the box office and thence to the performance halls... to retain their primacy in the building's sequential circulation pattern' (NSWHO to DofPW&S, 14.8.1998).



45. Diagrammatic sketch plan showing public spaces over three levels in the approach to the major halls. JSK 1993.



46. Section showing approach and Concert Hall from Lionel Todd, *The end in sight*, Hall Todd and Littlemore Newsletter No.2 of September 1972.

CONCERT HALL AXIAL SECTION: 1. Car concourse. 2. Staircase to foyer. 3. Foyer, box office, cloak rooms. 4. Concert Hall foyer. 4A. Promenade Lounge. 5. Organ loft. 6. Concert Hall. 7. A rehearsal room. 8. Drama Theatre. 9. Drama Theatre stage. 10. Rehearsal/Recording Hall. 11. Cinema and Exhibition Hall foyer.

Both approaches (via the exterior podium stairs and via the vehicle concourse and internal stairs) are important visitor experiences. Entry to the building via the former is through the range of glass doors to the box office foyer. Like the auditoria foyers with their glass walls the box office foyer was treated as an outside space and given a natural palette of materials and colours.

Policy 17.1 *Both original arrival sequences with their different and changing experiences should be retained:*

- *forecourt, grand staircase, podium, box office foyer, and auditoria foyers;*
- *vehicle concourse, stairways, box office foyers and auditoria foyers.*

This policy includes the retention of original spaces, the presentation of unobstructed and revealingly lit structural systems and the consistent use of a range of 'natural' materials, textures and colours.

### **Access for people with disabilities and elderly**

At present, guided disabled access is available from both the lower forecourt and the vehicle concourse via lifts to the Box Office and stalls level of both the Concert Hall and Opera Theatre. The position of the lifts makes their extension beyond stalls' level inappropriate. It is a barely adequate system and does not help people who find the climb up the existing stairs from the vehicle concourse, and later in the foyers, very difficult. Additional lifts, seat inclinators and escalators have all been considered.

#### **Inclinators**

Seat inclinators on the minor stairs from the vehicle concourse were an acceptable heritage option under policy 33.3 of the 1993 conservation plan. Their disadvantage was their modest capacity due to their slow turn-round time and the need for them to be monitored by staff.

#### **Escalators and lifts**

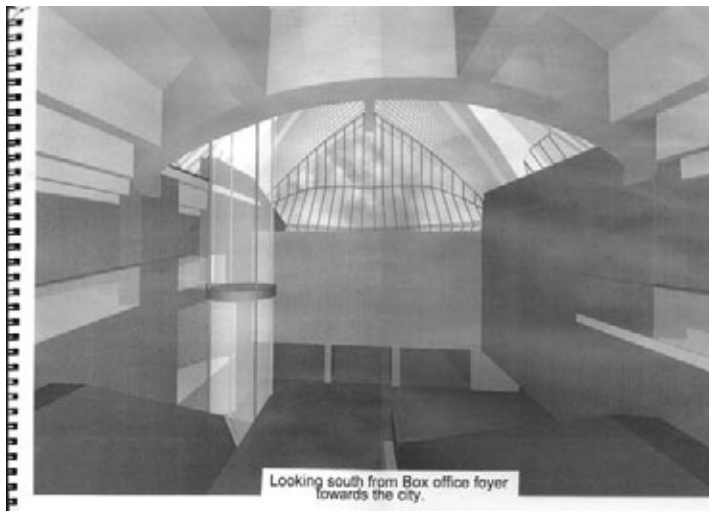
The installation of escalators from the vehicle concourse to the box office foyer has been an issue since the late 1960s. Utzon made the stairways an integral part of his scheme and he chose not to use escalators. Hall agreed that they would damage Utzon's concept for the place. It was an issue on which all the original designers concurred. In January 1970 Ove Arup wrote to the minister for public works, Davis Hughes:

I now come to the crux of my letter. I have told you about some of our misgivings about policy and architectural matters which we realise are not our concern. But if a decision is threatened which, in the opinion of both Architect and Engineer, would cause serious damage to what has so far been achieved with so much labour and devotion, and for no very compelling reason, then the position is different. Then I feel it would be our duty to the job and the public to protest publicly, which, in a democracy, is the legitimate way to influence political decisions.

There are two such cases. The first is the decision to install escalators in the ceremonial staircase leading from the lower [i.e. vehicle] concourse to the foyer. This would in our opinion be an act of vandalism. (Ove Arup to the Hon. Davis Hughes, M.L.A., 27.1.1970.)

The second matter raised by Arup was Hughes' decision to abandon the underground car park. Arup felt so strongly about both issues that in the final paragraph he reserved the right to publish the letter.

Clearly, any proposal to install escalators between the vehicle concourse and the box office foyer will become a heritage issue complicated by the need to avoid compromising the existing structural systems. One option is for the majority of visitors and patrons to continue to use the stairs above and throughout the podium as intended by Utzon, and for existing and supplementary lifts to be used by those who are unable to manage the stairs. The lifts represent a reasonable compromise: that is, they can service levels equivalent to the lower forecourt or basement, the vehicle concourse or western foyers, the box office foyer, the auditoria foyers and (depending on the technical advances and skill of the design solutions to reduce adverse impact) convenient auditoria levels.



47. A suggested improvement to the southern end of the Box Office foyer showing severed folded beams and upper level Bennelong Restaurant floor removed to bring light to the proposed escalator space. Master plan report, 1997.

Conservation plans do not solve design problems. They set parameters in such a way that heritage values are retained or, where some compromise is unavoidable, affected as little as possible. The need to improve access between levels is not at issue—how and where it is done is. The approach suggested in the master plan report of 1997, in which folded beams were severed and the upper level floor of the Bennelong Restaurant was removed (fig.47) is a memorable example of what could go wrong. Policy 18.1 below is intended to enable significant characteristics and relationships to be retained, but to allow the chosen designer as much freedom as possible to explore options in an unusually difficult situation.

Policy 18.1 *Any proposal to improve access between levels should not:*

- *vitiate Utzon's concept for the sequence of public spaces (see pages 61 to 62 and policy 17.1);*
- *interrupt or obscure any of the original structural systems (for example, folded and radial cranked beams);*
- *result in the sub division or cramping of spaces with an assessed significance of 'considerable' (B) or 'exceptional' (A).*

While Utzon, Hall and Arup were clearly not in favour of escalators at the time the building was being designed, the formidable nature of the stairs from the vehicle concourse and the very real need of a substantial number of patrons make a compelling case for some form of mechanical assistance. There have been recent developments of escalators capable of securely transporting wheelchairs, and lifts without superstructure that travel on inclined planes, but the most effective and least damaging solution is that offered by an escalator that can rise at

the same angle as the existing stair. It does this by landings built into its continuous traverse. Location is important. Whatever decision is taken, the wide staircase immediately west of the vehicle passage should remain intact. Instead, either the stair serving the Bennelong Restaurant end of the Box Office Foyer or the stair immediately east of the central vehicle passage may be fitted with a 'landing' type escalator. The remaining most eastern stair rising near the Reception Hall could then be given a wheelchair inclinator. This leaves the stairs between the Box Office Foyer and the two Southern Foyers of the major auditoria to be dealt with. Each could be fitted with a single 'landing' type escalator programmed to travel up or down as required.

If the decision is taken to introduce mechanical aids of adequate efficiency, this arrangement is the one that will cause the least disruption to the character of the spaces.

### **Western foyers at Broadwalk level**

In 1993 the Opera House Trust considered a proposal to link the Drama Theatre and Playhouse foyers at Broadwalk level and to extend the link to the Box Office foyer above. It was intended to create internal all-weather access to all performance spaces off the western Broadwalk. The scheme was associated with the redevelopment of the Rehearsal and Recording Studio (see pages 79–81).

The 1993 conservation plan noted that 'the operational advantages... need not be offset by any noticeable loss of character or quality' and that the success of the proposal would depend on the quality of the design, particularly in regard to the treatment of the intended link to the Box Office foyer (SOH, Interim plan, 1993, page 53). The scheme as finally developed in 1997 envisaged a continuous western foyer by removing the plant room between the Playhouse and Drama Theatre foyers altogether and relocating it in the basement below. This project is now complete, but the way in which patrons are to gain undercover access to the new continuous foyer from the Box Office foyer and/or the vehicle concourse has not yet been resolved.

Possibilities have included: the insertion of escalators between the box office foyer and the western foyer; the incorporation of the Bennelong dock and storage area into the western foyer and the creation of direct access from the vehicle concourse; or all of the above.

Policy 19.1 *The way in which access to the new western foyer from the box office foyer and the vehicle concourse is achieved is a heritage issue and should only be considered in the context of a co-ordinated plan for the place. See policy 1.5 (major works).*



## LIGHTING

Lighting has a dual function: first, to emphasise the architectural character and sublime effect of the Opera House and its major public interiors without interfering with views from the building; second, to provide light to enable the building to function with reasonable efficiency. The latter should be arranged in a way that does not compromise the former.

### Floodlighting of shells

From the beginning, the intention was to provide “gentle” or “low level” floodlighting (Waldram, SOH, 1968, 2). The current floodlighting, designed by Julius, Poole and Gibson, was constructed as part of the 1988 bicentennial work. The lights were erected on slender 12.5 metre poles at the northern end of the lower forecourt and on the Man o’ War Jetty (fig.48), and were fitted with control louvres. The height enabled the light to bathe the full arc of the shells and the louvres kept the light above the eyes of people on the podium both within and without the glass walls. In this way their view of the setting remained unaffected by glare. In location, directional control and intensity the present floodlighting is a reasonably successful execution of the early intentions (ibid., 2). However, technical advances may make improvements possible.

Policy 20.1 *Any adaptation of floodlighting should:*

- *retain a monochromatic and medium intensity effect just bright enough to be distinctive in the Sydney night sky, but not harsh;*
- *achieve as much modelling of the curvature of the shells as technical limitations permit;*
- *avoid hard horizontal shadow lines on the surface of the shells;*
- *direct light in such a way that it does not interfere with the view from the glass-walled foyers and from the external podium decks.*

From time to time, special effects may be required as a temporary measure. The Olympic Games bid celebrations in 1993 were an example.

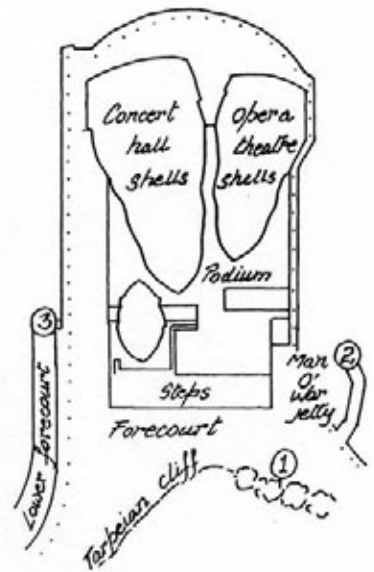
Policy 20.2 *Temporary lighting for a particular manifestation is acceptable provided it can be erected and completely removed without damage to any original fabric.*

See also ‘laser projections’ on page 90.

### Forecourt and podium steps

Lighting is needed to provide modest illumination to the forecourt, Tarpeian cliff and podium steps. This is at present supplied by floods on a very tall slender pole set back against the trees at the edge of the Botanic Gardens and is supplemented by tinted floods softly illuminating the cliff. An identical pylon stood against the cliff near the present gatehouse but was removed as redundant, presumably during the 1988 repaving of the forecourt and development of the lower forecourt. Pedestrian ways on the periphery of the forecourt are illuminated by lamp standards and by lights concealed in handrails.

Additional light is provided to the southern part of the podium and steps by floods set at the apex of the Concert Hall and Opera Theatre shells. The baffles which originally shielded the lights have been removed and they are now a source of irritating glare.



48. Sketch showing location of pylons for floodlights. JSK 1993.

Policy 21.1 *Any adaptation or development of the general illumination of the forecourt area should:*

- *be sufficient to relate the night form of the Opera House to its peninsular setting but not of a level that would compete with the shell illumination;*
- *continue to be set at a height and so baffled that glare is eliminated from the eyes of pedestrians;*
- *render the colour of natural materials as accurately as possible;*
- *employ the minimum equipment necessary for the job and locate it as unobtrusively as possible.*

Policy 21.2 *Any black spots which may endanger a reasonably aware pedestrian should be illuminated by task lighting which visually complements the existing family of equipment.*

### **Major interior spaces**

In 1967, two major manufacturers of lighting in Australia, the (English) General Electric Company and Philips combined to form G.E.C. Philips Opera House Lighting Co. Pty Ltd. Having been chosen to design and supply the lighting for the Opera House, G.E.C. appointed a United Kingdom consultant, John Waldram, Philips seconded a staff member, Fred Drijver, and the pair combined with Hall, Todd and Littlemore and the electrical consultants, Julius, Poole and Gibson, to design a lighting environment for the building (Littlemore, SOH, 52, 78, 101, 162; Hall, SOH, 180–181).

Waldram was well chosen. He was an experienced and articulate operator—it was no coincidence that he had gained a reputation lighting English cathedrals without cluttering up the place with visible fittings (Hall, SOH, 181). Utzon, with his several published cathedral analogies for the Opera House, might have appreciated the choice. Hall later wrote:

Waldram saw lighting and architecture as inseparable. Drijver was himself an architect and I had years earlier developed an acute interest in lighting... There was, as there should have been, a strong architectural bias in the lighting design team (ibid). [Our] main aim was to integrate the lighting with the architecture and to display it without displaying the lighting itself (Hall to Hughes, 4.1.93, 2).

Waldram's report of February 1968 described the approach and envisaged the sequential effect presented in the summary below:

#### **Vehicle arrival concourse**

The vehicle arrival concourse was to have subdued general lighting “as a preparation for later views”, supplemented at kerbside by sufficient lighting for dismounting from and mounting cars. In addition concealed lighting of low intensity was to be used to emphasise the folded beams overhead (Waldram, 5–6).

#### **Stairs to Box Office foyer**

The four stairways which led to the Box Office foyer were to be “more brightly lit” to attract arrivals to them and were to have their folded beams emphasised (ibid, 6).

#### **Box Office foyer**

The level of lighting in the Box Office foyer was to be “not very high” but patrons were to be attracted to specific “well lit” destinations such as the ticket sales counter and the stairs to the foyers under the southern shells (ibid, 7).

### Stair canopy to southern foyers

The folded beams which form the canopies over the stairs to the southern foyers terminated in curious scroll soffits and were to be revealed by lighting (ibid, 7).

### Southern and side foyers under the shells

The dramatic contrast between the low Box Office with its modest lighting levels and the southern foyers with their soaring rib vaults was intended to create an “effect of awe”. Foyer lighting was to emphasise architectural qualities. For example, the rib pedestals and spreading ribs should be clearly revealed but the brightness should fade out towards the summit to enhance the effect of height. “There should be adequate light on the floor” and “the lighting should be such that people look attractive and can be well seen” (ibid., 7-8).

The side foyers which pass on either side of the major auditoria were to be emphasised by “local lighting which would serve to draw the visitor to one or the other”. As those foyers which overlook the harbour had fine views, lighting should be at a low level and care taken to eliminate reflections. Emphasis lighting was needed at entry points to the auditoria and to the broad foyer steps by which patrons ascend to the upper parts of the auditoria and northern foyer. The walls of the auditoria were panelled in wood and were to be “gently washed with light” (ibid, 8-9).

Two years earlier, when speaking of the foyers underneath the shells, Utzon had said:

I want you to imagine the sort of lighting I want. The movement of people is to be accentuated by their passing through lighting of varying intensity.

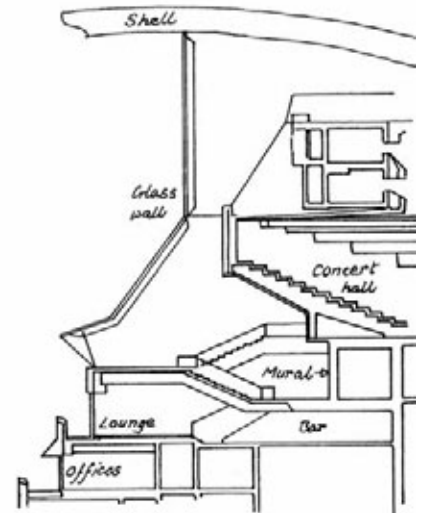
I want the patrons to be able to see the harbour at night. If there is a ferry passing by, I want them to see it, so lighting in the lounges and foyers is to be arranged in a way that night views will be seen clearly without internal reflections (Utzon to Matthews, Anderson & Cochrane, 82).

### The northern foyers

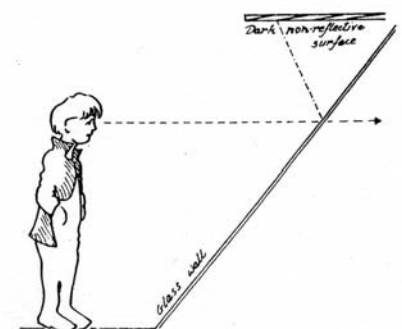
The lounges Utzon refers to are set on two levels in the northern foyers over looking the main shipping channel and the north shore. The prevention of reflection was to remain a leit-motif in all utterances on the design of lighting for areas exposed to harbour views. The elimination of reflection in such areas was achieved by Waldram’s scheme of placing a black band of louvres above the outward tilted glass (fig.50).

The northern foyers are complex interrelated spaces with an arrangement analogous to the landings of an immensely broad imperial staircase (fig.49). The brush box clad rump of the auditoria and the glass walls with their spectacular geometry almost meet overhead.

Waldram suggested that the upper and outer part against the glass should receive “subdued lighting” and that the inner and lower part should be provided with “more light”. The brush box soffits of the auditoria were to be washed in light and would in turn provide fixing points for lighting the area. In addition the beams of the ceilings and stair soffits were to be emphasised and bar area well lit. It was an adequate solution for the uses originally intended, but by the 1990s new activities required supplementary light. As elsewhere, the gap between original intention and actual performance was becoming marked.



49. Diagrammatic section of northern foyer of Concert Hall. JSK 1993.



50. diagram showing method of eliminating reflections in the northern foyers. JSK 1998.



51. Supplementary lighting and conduits between the mullions above the north foyer of the Concert Hall. JSK photograph 93.6.5.

## Interior lighting policies

The approach reflected in policies 1.3 (hybrid ‘outside’ spaces), 1.4 (Hall’s interiors) and 1.5 (major internal work) carries on into the treatment of the types of spaces.

Policy 22.1 *Lighting in the hybrid ‘outside’ spaces within the building should:*

- *retain the sequence of contrasting effects as an arriving patron passes through the building;*
- *reveal the architectural character and atmosphere of the spaces: for example, the structure of the pedestals and spreading ribs, and the considerable height and cathedral atmosphere of the rib vaults; also to emphasise the character of the beams in both south and north ends of the building;*
- *maintain reflection-free views of the harbour from the foyers;*
- *render the colour of natural materials as accurately as possible;*
- *achieve reasonable levels of visual acuity for specific functions without compromising the above requirements and without the inappropriate location of equipment and conduits.*

Developments in lighting technology help make the last requirement feasible, but, with the need to service many new functions, it is still a complex task—particularly in the northern foyers. The problem has been investigated off and on since 1973 but remains unresolved. Instead, makeshift lighting has been positioned which degrades the quality of the spaces in which it has been placed. The spotlights and leads draped between the steel mullions of the northern foyer glass walls in the early 1990s are an example (fig.51).

Policy 22.2 *Where relatively modest adaptations of spaces are involved the original lighting design regime should be retained and, where necessary, unobtrusively adjusted or supplemented.*

For example, the visual effect of the original fluorescent, low brightness, parabolic diffuser strip lighting in Hall’s ceilings should be retained. When it becomes necessary to replace damaged or lost units, alternative materials and technical improvements may be incorporated provided the effect and colour temperature are the same.

Where supplementary task lighting is necessary it should be designed or chosen by a specialist lighting designer to complement the character of the existing regime.

Policy 22.3 *In any major redesign of spaces in which architectural character is important, the emphasis should be on concealed or unobtrusive light sources that reveal or reinforce that character, in addition to illumination for the safe and effective function of the space.*

Policy 22.4 *Light fittings identified in the schedule on pages 35 to 37 as being intrusive should be removed as soon as practicable.*

Policy 22.5 *Any safety issues should be addressed without disrupting the requirements in the policies above.*



## CHARACTER AND TREATMENT OF INTERNAL SPACES

The existing interiors of the Sydney Opera House fall into groups with distinctive characteristics:

- hybrid 'outside' spaces (Utzon and Hall);
- individually designed major auditoria (Hall);
- spaces fitted out with timber panelling regimes (Hall);
- The Studio and orchestra assembly area (Kristensen and Public Works);
- service and plant areas (Hall);
- excavated space with utilitarian fitout (Public Works).

### Hybrid 'outside' spaces

The hybrid 'outside' spaces are the major public spaces with outside views. Their concrete structures were designed by Utzon and because they related to the outside they were to be finished in natural materials, textures and colours similar to those on the exterior of the building. It was a way of bringing the outside inside. The work was completed by Hall in ways he believed respected Utzon's intentions. The spaces included all the foyers surrounding the major auditoria, the Reception Hall, the Box Office Foyer (with its glazed range of doors to the south) and the Bennelong Restaurant. These spaces are covered by policy 1.3 (hybrid 'outside' spaces) and are detailed on pages 76 to 78.

### Hall's interiors

Policy 1.4 states that 'in any adaptation or modest functional improvement, interiors designed by Hall should retain the character of his original design regimes with their co-ordinated detailing'. A second policy, 1.5, deals with major works, but it is the first policy that requires an explanation of the character of Hall's work.

During the final stage of construction in 1970-73 Hall, Todd and Littlemore established a three level hierarchy of interior treatments. They reflected in a general way the degree of importance placed on the spaces and therefore on the nature and cost of the finish appropriate. The hierarchy was:

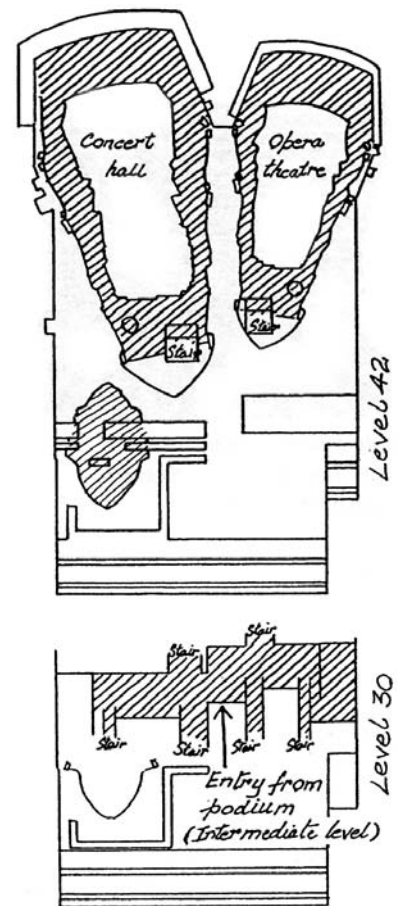
- major auditoria;
- minor performance spaces and performers and staff areas; and
- service, handling and plant areas.

The character of these groups and their policies are set out below.

### Major auditoria

The Concert Hall and the Opera Theatre were individually designed to meet the acoustic and capacity requirements of the day. Visually, the Concert Hall has a moulded ply ceiling finished with a white birch veneer arranged in a ribbed pattern radiating from above the stage. The small wall areas and floors are clad in thick laminated brush box and the doors are finished with a laminated brush box veneer. It is the grandest interior space in the building.

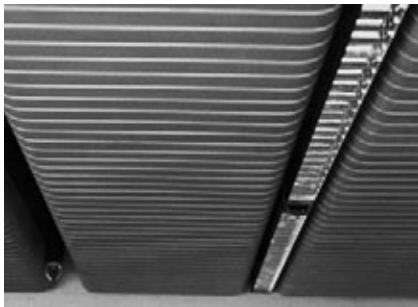
The Opera Theatre was a smaller, steeply raked space with a proscenium arch and revolve stage serviced from below. Unlike the Concert Hall, which generally remained lit during performances, attention was to be concentrated on the stage and a dark Australian veneer was sought for the ceiling and walls—without success (Hall, SOH, 133). Finally a timber known as "yellow caribeen" (*Sloanea woollsi*) was used and stained matt black.



52. Interior areas treated as hybrid 'outside' spaces and finished accordingly.

The seating in both Concert Hall and Opera Theatre, as in minor auditoria throughout the building, was carried out in white birch veneered ply with coloured upholstery. The only other splash of colour in the Opera Theatre was provided when John Coburn's *Curtain of the Sun* was exposed to view. This, however, is no longer in place among the proscenium curtains (see page 92).

### **“Wobbly Land”: minor performance spaces and their foyers, performers’ and staff areas and rehearsal rooms**



53. Wobbly ceiling with white birch panels, strip lighting and sprinklers. JSK photograph 93.8.19.

In addition to the spaces of major significance already discussed, Hall, Todd and Littlemore identified “heavily used spaces, for public, artists and administration...where a higher standard of finish was required” (Hall, SOH, 187). The internal podium walls were of white painted off-form concrete. To those areas requiring a higher standard of finish Hall introduced the white birch veneer already planned for the Concert Hall. It was applied to ply panels moulded to a shallow ‘U’ shape and in various forms was used to conceal services, absorb sound and accommodate changing geometry (ibid, 187). In this it bore a functional relationship to Utzon’s corridor system. The panels became known as wobblies.

When used as wall panels the convex side of the wobbly faced the room or corridor. In low corridors and rooms, ceiling panels were often reversed to create the impression of a little extra space but, reversed or not, they were always set slightly apart to accommodate a purpose-built strip lighting system (page 68) and sprinklers. Access to services was simply achieved by opening or removing a panel. All doors in the area were finished with a white birch veneer and fitted with a standard door lock and numbering system (pages 91 and 92). In dressing rooms and places where panels were inappropriate, white birch veneer was applied to items such as locker and water closet partitions and doors. Spaces where the concealment of wall services or the control of acoustics was not necessary, as in the foyers off the western broadwalk, simply had white painted off-form concrete walls and wobbly ceilings.

Wobbly Land includes the Green Room; the Drama and Playhouse Theatres and their foyers; the present main rehearsal room; the administration foyer, corridors and associated offices on level 12; and the major corridor systems, management suites, and ablution, WC and locker facilities on level 30. The Reception Hall had wobblies added to it to conceal the poor quality of the concrete walling but, with its glazed eastern wall and harbour view, it remains an ‘outside’ hybrid space. See pages 77 to 78. The recently created western foyer at Broadwalk level has original wobbly components but, owing to a change of mind at a late stage of the project, it is now partly finished with an ‘egg crate’ ceiling. The Broadwalk level foyer is discussed on pages 81 to 82.

Policy 23.1 *Spaces fitted out with wobbly regimes should retain the characteristics and quality of that regime.*

Policy 23.2 *Work necessary to adapt existing wobbly spaces to new or upgraded functions should be designed:*

- *to continue the original characteristics and quality of the space or to complement those characteristics;*
- *to have minimum impact on the original fabric.*

Minimum impact is exemplified by the recently-erected partition in the senior management offices, constructed to fit round and not damage the ceiling wobblies. Conversely, failure to continue or complement

wobbly characteristics can be seen in the timber and glass partition introduced to the western passage on level 30 and in the former administration foyer on the broadwalk level (fig.54a).

### **Timber finishes used by Hall**

Brush box (*Tristania conferta*)

The brush box timber used in and on the major auditoria came from Allen Taylor Pty Ltd of Dungog, NSW, and the bulk of the manufacture and installation was carried out by Premier Joinery Pty Ltd. The surface treatment was Wattyl Uformel (Littlemore, SOH, 114). As well as being used for walls and floors, the laminated brush box appeared in a range of furniture, including that fitted in the Box Office and minor auditoria foyers.

Policy 23.3 *Carefully selected matching laminated brush box should continue to be used for the repair and replacement of damaged timber and in the design of any furniture for spaces in which brush box was originally used.*

However, change of material can be an acceptable option for the cladding of the outer carcasses of the major auditoria. This is compatible with policy 1.3 (hybrid outside spaces) which allows for such spaces to be reworked in accordance with Utzon's concepts and principles.

White birch (*Schizomeria ovata*)

The contractor under Hornibrook for the supply and installation of the white birch veneer was Cemac Brooks Pty Ltd and all the timber came from the forest around Wauchope, NSW. To assure complete homogeneity of visual effect, the birch was treated with a white filler or pigment and sealed with a Wattyl spray application known as Uformel (Littlemore, SOH, 155).

Policy 23.4 *Similarly treated white birch veneer should continue to be used for the repair and replacement of damaged elements and the Sydney Opera House Trust should actively encourage plans for the long-term supply of the timber.*

Policy 23.5 *All removed white birch veneered elements should be safely stored and catalogued for future reuse.*

Policy 23.6 *Should supplies of white birch fail, consideration may be given to the use of a timber veneer with similar characteristics and finished surface treatment which on casual inspection is indistinguishable from the original veneer.*

### **Kristensen and Public works conversions**

(The western foyer, Studio and performers assembly area)

In 1998–99 the lower part of what was originally designed as a rehearsal and recording room under the concert hall stage was converted to a New Music Studio and the upper part to a performers assembly area for the concert hall (figs 58 and 59). In addition a foyer was created that gave access from the Broadwalk and at the same time linked up with the Playhouse and Drama theatre foyers.

The work was designed by Leif Kristensen and while it resulted in a functional and useful Studio, alterations made at a late stage of the project resulted in the Department of Public Works and Services completing the foyer and assembly area to a cut-back or 'interim' design. For example, the foyer ceiling is partly Hall panelling and partly Public Works 'egg-crate'. It is not a mix that brings pleasure to the users of the foyer.

As it is now proposed to open the foyer to the harbour view (see pages 54 to 55) it is also an opportunity to bring a coherent treatment to the entire foyer.

### **Service areas**

Hall, Todd and Littlemore's treatment of the service areas, mostly deep in the podium, was utilitarian: that is, off-form concrete walls and ceilings painted matt white with the same family of locks as used elsewhere in the building. Where necessary, exposed, neatly aligned and colour coded services were fixed to walls and ceilings. The complexity and precision of installation of the colour coded conduits, piping and ducting created a strong visual character in spaces which included plant, machinery and storage areas as well as pedestrian and vehicle passageways.

Policy 24.1 *In accordance with policy 1.4 (Hall's interiors) the general character of the service areas should be retained in any future adaptations.*

Policy 24.2 *Care should be taken during alteration and upgrading of services to remove those with no likely future use and to maintain a tradition of neat and precise installation of colour coded services.*

### **New areas**

As external enlargement of the Opera House building is unacceptable, new space can only be created by excavation. In 1993, at a cost of about \$7,000,000, an area was excavated under the south-western part of the podium for storage and some maintenance activities. On completion it was fitted out as modern, modest cost offices with exposed air conditioning ducting for the Sydney Opera House Upgrade Program.

Policy 25.1 *In accord with policy 1.6 (additional on-site facilities), entirely new spaces may be created by excavation. Where the new spaces are to have a visual or significant sequential relationship with existing Hall designed spaces they should be fitted out to the corresponding design regime. Where no such relationship exists, the new spaces may be fitted out in a contemporary idiom appropriate to the proposed use.*

Adaptations and alterations of other spaces should be fitted out in accordance with the policies for those areas.

### **Internal adaptation and alteration**

Irrespective of the quality of design for a performing arts centre, there are always calls for alterations once the complex has gone into service. They arise from:

- changes to, or extension of, the use for which a space is designed;
- the incorporation of technical improvements and the upgrading of services;
- the cycle of fashion in theatrical presentation;
- problems of access and internal communication;
- the need to increase accommodation for both staff and storage; and finally
- changing perceptions of requirements for public safety as embodied in new building codes.

The Sydney Opera House has been no less subject to calls for adjustment, particularly because of the disjointed nature of its original design



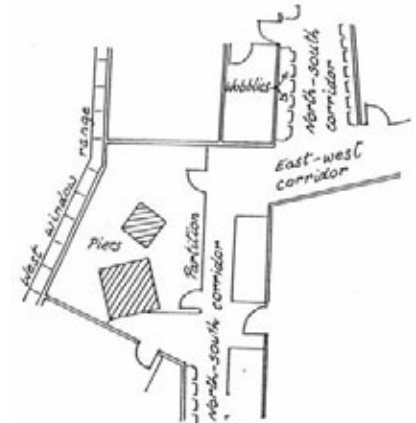
process. Utzon designed and substantially built the podium and roof following the 1957 brief. Ten years later Hall, Todd and Littlemore effectively rewrote the brief to accommodate demanded user requirements and fitted new and changed uses into existing spaces. Thirty years later the complex is still undergoing adaptations and alterations for the reasons listed above. It is a rational part of the evolution of the building and can be accomplished without damage provided:

- the building is not overloaded with demands for facilities, services and accommodation which can be better located elsewhere; and
- necessary adjustments are carried out in ways that reinforce rather than degrade the very real quality and character with which the building was endowed in 1973.

Policy 26.1 *In keeping with policy 1.4, changes and extensions of use, technical improvements and upgrading of access and facilities should be permitted where they can be carried out without loss of quality and character in the spaces involved.*

Seemingly minor alterations can have a damaging effect. For example, Utzon positioned the cross passage at Green Room level to meet the north-south passages where the piers supporting the main roof shells passed through the level. Hall appreciated this felicitous conjunction and left the space open round the piers. The effect was entirely lost when an alien partition was installed to close off the space and create an awkward office (fig.54). In 1993, Hall's Administration Foyer was similarly despoiled by the insertion of ad hoc partitions and neglect of lighting (fig.54a). Anyone working in or on the building should take time to understand its virtues as well as its vices and try to rectify the latter without disrupting the former.

The character and quality of the spaces are identified on pages 69 to 71 (Interior character) and both the levels of significance and intrusive elements in the schedule on pages 36 to 39. The more significant the space, the more should care be exercised in planning the work. Proposed changes that will have an impact on the character of the place should follow the processes set out on pages 93 to 100.



54. Roof shell support piers and corridor spaces degraded by additions. JSK 1998.



54a. Former administration foyer showing progressive degradation by partial removal of strip lighting and intrusion of makeshift partitions, 1993. JSK photograph 93.8.23.



55. Concert Hall. NSW Govt Printer photograph 89716 supplied by NSW Public Works.

This paragraph is simplified from a submission by the Director, Theatre Services, to the Sydney Opera House Trust in April 1997 and information from John McWhinney in 2002.

## SPACES ABOVE PODIUM LEVELS

### Concert Hall

The Concert Hall is a space of exceptional significance and the levels of significance of its various elements and qualities are set out on page 37. When they came to design the intended space both Utzon and Hall were faced with two major problems:

- the need to provide the required seating capacity in a reasonably comfortable configuration within the space under the existing shells; and
- the difficulty of achieving an acceptable acoustic balance in what was to be a multi-purpose theatre.

Hall's solution (effectively forced on him by the Australian Broadcasting Commission's requirements) was to abandon the proscenium arch configuration and associated backstage space and equipment, and to transfer opera to the intended Drama Theatre. Instead he proposed to design a concert hall with relevant acoustic properties and to extend the seating round the orchestra. His recommendation was accepted by cabinet in 1967. It was the largest of the many upheavals in the design history of the Sydney Opera House.

On completion the general consensus was that the acoustics of the Concert Hall for its intended purpose ranged from good to excellent. Minor adjustments have been made over subsequent years to reduce perceived shortcomings for both concert and other uses but (except for recent speaker clusters) these have had little permanent visual impact on the space. Improvements to the orchestra platform have been similarly modest in impact.

Following comments on auditorium and on-stage acoustics made by the conductor, Edo de Waart, and members of the Sydney Symphony Orchestra in 1996, three reports were prepared: Kirkegaard (March 1996), Muller (May 1996) and Knowland (late 1996). A further review was carried out by Arup Acoustics in 1998. Issues included the ease with which musicians could hear other sectors of the orchestra, and the balance, intensity and quality of sound conveyed to the audience. The level of background noise was also questioned.

While acoustic issues are outside the scope of this report they can affect heritage value in two ways: first, the more excellent the acoustics the more functionally and technically significant the space; second, attempts at improvement have a potential to cause needless damage to the very real character of the space—particularly if there is uncertainty on appropriate remedial action. The way it is done is therefore very important.

In accord therefore with policy 1.4 (Hall's interiors) and 1.5 (major internal works) there are two policy options. The first relatively modest approach covers adaptations and functional improvements that do not adversely affect the visual character of Hall's interior and seek to bring the Concert Hall to a level of excellence for a chosen priority use.

Policy 27.1 *Acoustic improvements of the Concert Hall should:*

- *retain the character of Hall's design regime;*
- *be based on adequately resourced expert advice and on an agreed priority use of the space as well as acoustic objectives.*

Should the objectives in policy 27.1 above prove unattainable, the major works policy (1.5) may be invoked. It would be expensive and involve the architectural as well as acoustic redesign of the hall. Two requirements for such a redevelopment should be emphasised: the need for adequate resources to carry the work through to a successful aesthetic as well as acoustic conclusion and a full realisation of the consequences for associated spaces, facilities, services and access systems.

Whatever way the Concert Hall is treated, the general management policy from the 1993 interim plan remains appropriate.

Policy 27.2 Management practices should ensure that new installations:

- *do not reduce the acoustic quality of the space as a concert hall;*
- *do not leave the fabric of the hall with a progressively increasing collection of unrepaired drilled holes, fixing points and minor alterations to the ultimate detriment of both its visual and acoustic quality;*
- *do expose to view only the minimum necessary pendant winch cabling at any one time;*
- *are contained in the least bulky housings possible so as to reduce and, finally, avoid visual intrusion into the auditorium space.*

The suspension of a nest of speakers above the stage is clearly an intrusion of the type mentioned above. Apart from its bulk, it cuts across the view of the organ from the rear of the Concert Hall. The long-term objective should therefore be to harness technical advances to find an alternative solution or to reduce bulk substantially. In the meantime consideration should be given to the practicability of removing the speakers when not in use.

A performers' assembly area immediately under the Concert Hall was completed in 1999. The work did not affect the Hall space (see page 81).

## **Opera Theatre**

In April 1967 the NSW Government took the dramatic decision to replan the Sydney Opera House (see page 22). The space under the major shell group intended for the Opera Theatre would instead be occupied by a Concert Hall and the Drama Theatre space under the minor shells would become the Opera Theatre. The latter move was always going to mean tight space constraints for auditorium, orchestra, stage and back stage, and management has struggled with the consequences ever since. For example, in 1978 the Theatre was closed and the orchestra pit enlarged to hold fifteen additional musicians. The pit is still a problem, both in terms of the playing conditions for the musicians and in its acoustic relationship with the auditorium. Under the May 2002 *Venue improvement plan* further work is proposed with implications for the pit structure.

Utzon had envisaged a rich and festive expression of colours for his major and minor halls. The minor hall (present Opera Theatre) was to be dark and warm in contradistinction to the 'light' and 'optimistic'

scheme of the major hall (Utzon, *Design Principles*, 80). Hall finally decided to concentrate all attention on the stage and stained the walls and ceiling of the Theatre matt black. Only the precast concrete fronts of the boxes and circle remained untreated in order to help define and counterpoint the space.

One result has been that the architectural character of the auditorium is substantially neutralised and this, together with existing functional and acoustic problems, means that the theatre's level of significance is relatively modest (see page 37). It follows that, while policies 1.4 (Hall's interiors) and 1.5 (major internal works) are both acceptable treatments, it is the major reworking in terms of Utzon's principles that can achieve the most satisfying results.

The policy options in order of preference are therefore:

- redesign of the Opera Theatre in accordance with policy 1.5 (major internal works) having regard to Utzon's design principles;
- adaptation of the Opera Theatre in accordance with policy 1.4 (Halls interiors) in order to improve functional and acoustic performance while retaining the character of the Hall approach.

See page 92 (Artworks) for comments on John Coburn's *Curtain of the Sun*.

### **Foyers surrounding the major auditoria**

The foyers surrounding the major auditoria are a vital part of Utzon's concept for the place. Hall's completion of the glass walls and auditoria carcasses created a hybrid space and as such should be treated under policy 1.3. This means that retaining the existing situation and reworking in terms of Utzon's principles are both acceptable heritage options.

Policy 28.1 *Whatever action is taken, the foyers should be treated as 'outside' spaces and 'natural' materials, textures and colours used.*

This would, for example, preclude the installation of gaudy carpeting such as that in the northern foyer.

Policy 28.2 *Surrounding views from the foyers should remain unimpaird by intrusions or reflections and the foyers should be maintained in an uncluttered state.*

The latter would, for example, preclude the introduction of facilities for the sale or display of merchandise. See particularly the sections on housekeeping (pages 89 to 92) and lighting (pages 67 to 68).

### **Bennelong Restaurant**

The Bennelong Restaurant occupies the only space entirely open to the full range of shell rib vaults. This, combined with its location on the podium, its glass walls and views, make it a space of exceptional significance potentially capable of taking its place "alongside the Taillevent in Paris and the Four Seasons in New York" as one of the three great restaurant spaces of the world (Anders Ousback to GM, SOHT, 10.3.1993).

The space is readily accessible to the public and capable of a variety of uses, including that of restaurant. Because of its 'outside' concept and 'heroic' character, it should be treated in accord with policy 1.3 (Hybrid 'outside' spaces).

Policy 29.1 *Whatever use the space under the minor shells is put to, it should remain accessible to the public.*

Policy 29.2 *The interior space should be retained intact and views from the inside out to the surroundings, and from the outside into the space, should be kept open.*

Policy 29.3 *Any fitting out and decoration should complement the character of the original space using 'natural' materials, textures and colours.*

### **Box Office foyer**

The Box Office foyer space is the cynosure for arriving and departing patrons and visitors on six sets of stairways, and glazed doors to the podium deck. It also provides information, ticket sales, cloakrooms and café facilities, as well as giving access to the Bennelong Restaurant, male and female toilets and a reception hall. The space is intentionally designed without exterior outlooks to the east and west and general illumination is maintained at a modest level with patron service points made evident by task lighting. The storage room and shop have reduced the east end of the Box Office to the scale of a passage.

Policy 30.1 *The Box Office Foyer should retain the characteristics of an 'outside' space, that is, it should be predominantly fitted out with a 'natural' range of materials.*

Policy 30.2 *The original spatial quality of the Box Office Foyer should be retained or recovered in any improvement of facilities or access.*

Improvements referred to in policy 30.2 may include links between Box Office Foyer, Broadwalk and basement levels offering easier access for disabled and elderly. The policy also involves the removal of the shop, store and moveable storage bay from the east end of the foyer, but see 'Treatment of intrusive items' on page 85.

Policy 30.3 *No facility should obscure the folded beams overhead.*

### **Reception Hall**

The hall at the eastern end of the Box Office foyer was designated a "recital/reception room" in 1973 and was a space for "general use". It was fitted with generous "electric/electronic installations" (Littlemore, SOH, 124) but its primary use has been for receptions. Its spectacular ceiling is formed by the folded beams which support the podium platform and steps. They rise from floor level at the southern end and run the length of the room. The east wall is glazed to provide extensive harbour views although the effect is reduced by the nature and fitting of the existing glare reduction blinds.

The room, with its fitted panels (Wobblies) belongs to the category of hybrid 'outside' spaces. Hall, Todd and Littlemore introduced the wobblies to hide the "lamentable" quality of the off-form concrete walling (Hall, 19.7.1993) and this treatment was subsequently extended to complete the wall coverage and conceal a projection screen on the north wall. Two unfortunate additions associated with its present use are the ply partition concealing the rise of the beams at the southern end and the partitioning of an adjacent area of the Box Office foyer to provide a serving facility for the reception room.

Policy 31.1 *The Reception Hall with its glazed east wall, wobbly panels and folded beams is a hybrid 'outside' space and as such should be treated in accordance with policy 1.3, that is, retained or reworked in such a way that any fabric replacing the wobblies (necessary to conceal services or defective concrete) should exhibit an appropriate palette of natural materials, textures and colours.*

Policy 31.2 *Whatever approach is chosen the room should not be partitioned nor should the descent of the folded beams to the floor be obscured.*



## SPACES WITHIN THE PODIUM

### Green Room and passage system

The Green Room straddles most of the north-south axis of the building immediately under the podium platform. It is both an important social centre and, like the central vehicle passage immediately below, a place of orientation for the labyrinths on either side. Its extended linear space is enhanced by the penetration of roof support piers, to the north of which the room widens into an octagonal lounge which gives access to branching corridors to the east and west (fig.56). Off-form white painted walls and a wobbly ceiling complete the treatment.

Policy 32.1 *Because of its spatial, social and locational significance the Green Room should not be subdivided and the roof piers should stand free of encumbering partitions. The characteristics of the wobbly regime should be retained.*

The passages radiating from the Green Room on level 30 provide major communication links for performers and staff and are finished with the complete white birch wobbly regime. A similarly finished passage services the administrative offices on level 12 (Broadwalk).

Policy 32.2 *Passages with white birch wobbly regimes should be retained in that form.*

### Management suites and board room

The management suites and the board room on level 30 are fitted out with the white birch wobbly regime. Over the last 25 years care has been taken in removing and erecting partitions to retain the wobbly system intact. This care and the fine harbour views make the spaces highly desirable.

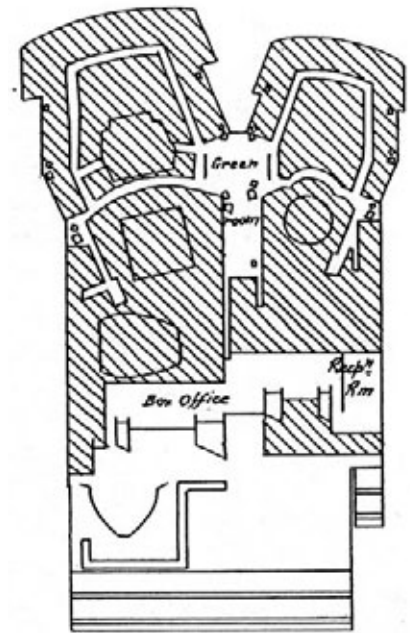
Policy 33.1 *The white birch wobbly regime should be retained regardless of the uses to which the management suites and board room are put.*

### Spaces within the western part of the podium

The spaces within the western half of the podium under the Concert Hall were the most changed by the decision to reconfigure the building in 1967 and the performance spaces have continued to have an unsettled functional history. There have been several proposals for further alterations and major work was carried out in 1998–99.

### The Studio, originally rehearsal and recording room

The large volume space under the Concert Hall stage was originally to be devoted to elevator platforms under the “major hall”. In 1967, with the redesign of the hall, the decision was taken to fit it out as a rehearsal and recording studio for the ABC orchestra and particular attention was paid to its sound isolation and to its acoustic qualities. The ceiling was fitted by Cemac Brooks Pty Ltd with white birch veneer pyramids backed in part by gypsum plaster. Control rooms overlooked the space from the south and galleries on two levels flanked the other walls. A variety of adjustments were built into the galleries and walls to aid the variation of reverberation time. Thatcher and Oberg laid the parquetry floor (Littlemore, SOH, 126).



56. Diagram showing Green Room and main passage system on level 30. JSK, 1993.



57. Rehearsal and recording room.  
 Photograph from the 1973–74 annual  
 report of the Sydney Opera House Trust.

Because of its height, volume, flanking galleries and the visual effect of its acoustic and wobbly treatment it was a quite unusual space in this context. The designer who adapted and fitted it out, Peter Hall, thought it not a bad space architecturally although “slightly mad” and “un-opera house”-like (Hall, SOH, 1993). It was, however, awkward of access, less than successful acoustically and never achieved a long-term practical use. The ABC subsequently decided to base its orchestra rehearsal elsewhere and the space was converted to a variety of uses.

In 1993 it was a space in distress: the galleries were blocked off and a temporary (and later redundant) public works office was built against the northern wall at the upper level, while the original floor was devoted to the steel shelving of the Dennis Wolanski Library. The works office, although an intrusive eyesore, had been deliberately constructed in a way that did the least damage to original fabric and was capable of removal. The ideal heritage option was to find a use for the entire space which enabled it to regain its original spatial quality and visual character. It was not, however, of sufficient significance to warrant restoration unless able to be used effectively, and there was little prospect of that.

Various schemes were developed, culminating in a proposal of 12 June 1997 by Leif Kristensen and Partners Pty Ltd in which the uppermost of the four levels was devoted to a much needed assembly area for the Concert Hall performers and the three lower levels were given over to a ‘New Music Studio’. The Studio would have direct access to the proposed western foyer at Broadwalk level (fig.61). The work also involved changes of use to some facilities adjacent to the proposed assembly area.

A heritage impact statement of 20 June 1997 advised that the proposal was ‘acceptable in heritage terms’ with the qualification that some issues remained unresolved. The plans were short on detail and the summary continued:

The character of the internal spaces of the podium depend to a considerable extent on consistency of fabric and detail. It is therefore important that that consistency be continued and that a further heritage assessment be carried out of any proposed fabric, hardware and sign systems unless they are indistinguishable from those originally used in the relevant area. Such assessment should be done before specifications are prepared. It would not include the Music Theatre space as it is a ‘new’ creation which will depend on the quality of its design for its visual success. (Kerr, J.S., Broadwalk Studio, 20.6.97, page 5.)



58. The Studio, opened 1999. the floor  
 level seating can be collapsed and  
 retracted under the gallery. Brett  
 Boardman photograph supplied by the  
 Sydney Opera House Trust.

‘The Studio’ is now complete and seats 296: 152 at first gallery level and 144 in tiered concertina seating that can be pulled out from under the northern gallery (fig 58). The Studio retains the pier and gallery characteristics of the original space with unpainted white birch type finishes to acoustic wall louvres, doors and





lower gallery soffits. The new performers' assembly floor above is supported by exposed catenary arch beams and the upper parts of the space are unashamedly dominated by suspended and black painted light and sound systems. The ensemble is a successful solution of a functional problem.

Policy 34.1 *Any future work on The Studio should be carried out in accord with the policies outlined on pages 93–100 (Managing the process of change).*

### **Performers' assembly area**

Kristensen's proposals (Kristensen to Kerr, 13.6.1997, pages 2–3) for the performers' assembly area under the Concert Hall were in accord with conservation advice and endorsed by the heritage impact statement (Kerr, *op. cit.*, page 4). It maintained the continuity of Hall's Wobbly Land treatment for the interconnected facilities at this level. The approach was abandoned as an economy measure and the newly created space is useful but non-descript (fig 53). Like the egg crate ceiling in the new western foyer, its significance is minimal and may be regarded as a temporary expedient.

A return under policy 1.4 to Hall's white birch regime which consistently details the associated spaces at this level (Green Room, passage ways, toilets and dressing rooms) remains the preferred option. Retaining the status quo and, should circumstances require it, complete reconfiguration under the provisions of policy 1.5 (major internal works) could both become acceptable options.

### **Amalgamated foyers for Playhouse, Studio and Drama Theatre**

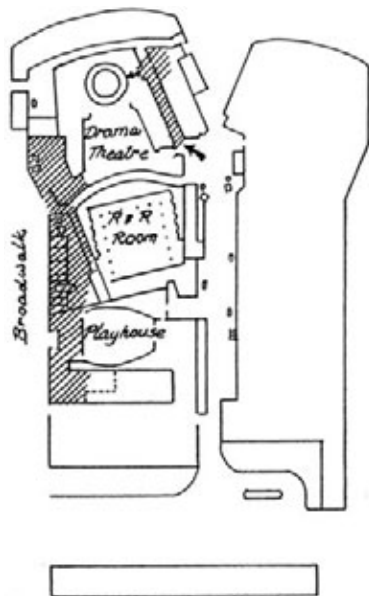
The Playhouse and Drama Theatre foyers were designed to a standard regime of wobbly ceilings and white painted off-form concrete walls. The recent work has created a new foyer for The Studio and all three foyers are now linked in a continuous space. Nib walls and an overhead beams have been retained and these define the individual foyer spaces. The Studio foyer space has been fitted with a 'temporary' egg crate ceiling (fig.60). Two freestanding roof support piers penetrate the Studio foyer and another pair, partly obscured by partitions, is located in the Drama Theatre foyer.

*59. Performers' assembly area under the Concert Hall created from the top level of the former rehearsal and recording room. Brett Boardman photograph, May 1999. Supplied by the Sydney Opera House Trust.*



60. Newly extended western foyer at Broadwalk level servicing Playhouse, Studio and Drama Theatre. Brett Boardman photograph, May 1999. Supplied by the Sydney Opera House Trust.

The *Venue improvement plan* of May 2002 now proposes a total of five openings in the podium side-wall to the Broadwalk instead of the present two. This will connect the foyer to the harbour and give patrons a pleasant awareness of their orientation. An explanation of the way the openings are to be managed is given on pages 54 to 55. The change in orientation means that, like the foyers beside the auditoria above the podium, the new space could be regarded as a hybrid 'outside' space (with a consequent choice of natural materials) instead of a Hall white birch regime interior.



61. Diagram showing linkage of spaces off the western Broadwalk and access for sets to Drama Theatre stage. JSK, 1998.

However, except for the 'interim' ceiling in the central part of the foyer, the existing treatment is that of Hall's regime. The preferred option under policy 1.4 (Hall's interiors) is therefore to reinforce his design. There is substantial merit in Hall's plea for commonality of character and a sense of unity (see pages 45 to 46). This option would result in:

- the completion of the white birch ceiling with original lighting – or facsimilies with technical improvements;
- the retention and recovery of the original white or off-white wall paint scheme;
- roof piers unencumbered by partitions or impedimenta.

The treatment of the foyer as an 'outside' space under policy 1.3 (hybrid outside spaces) could become an acceptable option but it is a tenuous proposition with relatively limited harbour links and none of the spatial grandeur of the foyers above the podium.

Policy 35.1 *Whatever approach is adopted, the amalgamated western foyer at Broadwalk level should be given consistent detailing throughout and should take into consideration probable future connections to the box office foyer and vehicle concourse as well as present links to the three theatres.*

For policy on artworks see page 92.

## **Playhouse**

The area now occupied by the Playhouse was originally to be used for set changing in association with the stage elevators for the major hall. It was redesigned as a cinema, briefly and unsuccessfully converted for chamber music and then became a small theatre (Hall, SOH, 195) with an enlarged backstage and a history of alterations. Its visual character is determined by its moulded white birch wall and ceiling panels and standard white birch and upholstery seating. It is assessed as being of 'some' significance.

The preferred option for the Playhouse auditorium is the retention of Hall's original design regime under policy 1.4 (Hall's interiors). However, if the requirements of policy 1.5 (major internal works) can be met, complete redesign could become an acceptable option.

## **Drama Theatre**

The Drama Theatre lost its site in the 1967 game of musical chairs and Hall, Todd and Littlemore, acting on theatrical advice, recommended the space under the north-west part of the podium as a proscenium arch drama theatre. The space was defined by the structures erected during stage I construction and this permitted a wide proscenium arch and straight-line seating. The modest height available for the auditorium however resulted in a decision to install a cooled aluminium ceiling to assist air conditioning. The roughly finished off-form concrete side walls of stage I were retained and were painted black to focus attention on the stage. Control booths at the rear were similarly painted. The stage was fitted with a double revolve and elevators (Hall, SOH, 190-191).

With its black painted walls, low painted metal ceiling and rectilinear character the Drama Theatre is a comparatively neutral space. Colour was provided by the standard white birch seating with orange upholstery and John Coburn's proscenium *Curtain of the Moon*, although the latter deteriorated and was removed. See page 92 for comments.

As a relatively neutral space of 'some' significance both adaptation under policy 1.4 (Hall's interiors) and redesign to meet the requirements of policy 1.5 (Major interior works) are acceptable options. The future of the Drama Theatre will be determined within a co-ordinated master plan for the Opera House.

### **Drama Theatre access for people and stage sets**

Two problems arose from installing the Drama Theatre in a structure already complete and not intended to receive it. The first was the exposed access for patrons along the western broadwalk in inclement weather. This has only been partly rectified by the development of linked foyers for the Playhouse, Studio and Drama Theatre. The second was the awkward access for stage sets. Bearing in mind the significance of the exterior of the building and policies 9.1 and 9.2, the creation of a new large podium opening for the purpose is unacceptable.

Access for stage sets is at present gained via a corridor and lift from the central vehicle passage and this remains the preferred option. Performances have been successfully staged in the theatre for twenty-five years and are capable of continuing. Improved access requires structural alteration; however, if it is considered both necessary and



62. Central vehicle passage showing increasing congestion due to the addition of stores and facilities, 1993. JSK photograph 93.8.28.

cost-effective, the least intrusive option is to improve the existing route from the central passage. This involves the alteration of comparatively utilitarian fabric and spaces, and keeps the loading and unloading activity away from the public broadwalk.

Policy 36.1 *Any changes to facilitate access of stage sets to the Drama Theatre should be carried out along the existing route from the central passage rather than from the broadwalk.*

Should heavy vehicle access ever be provided at a level below the present central vehicle passage, access for sets would be improved.

### **Central vehicle passage as delivery space**

The broad vehicle passage designed to service the building has been progressively reduced in width by the addition of painted concrete block stores and facilities. They are an undesired but tolerated expedient, having the virtue of being easily removed if necessary. The fact that they increasingly restrict the handling space should not, however, be accepted as a reason for an additional opening in the exterior podium walls for the delivery of goods. Rather, the necessary space should be reclaimed by their removal.

Policy 37.1 *Except for the Bennelong restaurant service door to the broadwalk, the central vehicle passage should remain the only vehicle access and goods' entry point in the building.*

(Unless some future development of the building allows lower level heavy vehicle access. In which case the present central vehicle passage could be opened to public access.)

## CARE OF THE FABRIC

### Removal or alteration of fabric

From time to time consideration is given to the removal of original and significant fabric from its location. A wide range of materials and fittings may be involved.

Policy 38.1 *Any proposal to remove or alter original and/or significant fabric should:*

- *have regard to the level of significance of the fabric and to the impact on the character and quality of the place affected;*
- *be checked to ensure that there is no feasible alternative;*
- *only be considered in the context of an overall plan.*

The last point in policy 38.1 above will help to prevent a series of ad hoc minor removals or alterations resulting in the progressive degradation and, ultimately, destruction of significant elements of the place.

Policy 38.2 *Where significant fabric is removed and capable of subsequent re-use on site, its location should be recorded and the items catalogued and stored safely against possible future replacement or relocation in a space of appropriate character.*

### Treatment of intrusive items

A number of items have been identified as intrusive in the schedule on pages 34 to 39. These include items ranging from inappropriately located and designed shops to cheap metal towel dispenser units in white birch ablution areas.

Policy 39.1 *Items identified as intrusive in this conservation plan should be removed.*

Where an intrusive item is essential to an appropriate function and where the nature of its intrusiveness lies in its design, materials or bulk, redesign or modification may be an acceptable option. The service connection kiosk in the forecourt was an example. However in most cases, of which the ply partition in the vehicle concourse was an obvious example (fig.41), removal was the only acceptable option. Some items, such as the banks of light battens in the Concert Hall, are tolerable because they are only present for particular events or performances but any such features should be designed to minimise intrusiveness.

Policy 39.2 *Priorities and a time based program for the removal or modification of intrusive items should be established and incorporated into any program of works.*

### Maintenance

Intelligent and prompt maintenance and repair is the single most important part of the conservation program.

Policy 40.1 *The building should continue to be cared for by a planned maintenance and repair program based on a complete knowledge of the building and its materials, regular inspection and prompt preventative maintenance and repair.*

Policy 40.2 *Only persons qualified and experienced in treating the*



*relevant material (stone, ceramics, bronze, timber, steel, etc.) should be employed and supervision should be consistent.*

Policy 40.3 *Care should be taken in the supervision and, where relevant, the training of operatives to ensure that fabric is not damaged by maintenance, repair and cleaning activities.*

Policy 40.4 *Particular attention should be paid to keeping in good order surfaces, channels and systems which conduct water safely from the building.*

Policy 40.5 *Makeshift openings and alterations in the external fabric made to accommodate past and present services should be sealed or modified to ensure that they do not present a threat to the fabric.*

Policy 40.6 *Services should not be permitted to discharge liquid or gas in a way which will cause deterioration in the fabric.*

### **Treatment of unpainted precast and off-form concrete**

Unpainted elements such as the roof shell ribs, pedestals and beams, as well as having a vital structural function, make an exceptional visual contribution to the character of the place. When Corbet Gore of Hornibrooks was lamenting the way architects treated the surface of off-form concrete, Utzon picked up a piece of ply from the floor and wrote on it...

I, Jørn Utzon, undertake never to cover this concrete but to leave it in the completed building as it comes off the form.  
(Messent, Opera House Act One, page 390.)

Peter Hall continued the policy and so should it now be.

Policy 41.1 *Interior and exterior surfaces of unpainted concrete ribs, pedestals and beams should remain unpainted and their details unobscured.*

Pollutants break up the more exposed external concrete surfaces and may lead to moisture penetration and consequent rusting of ferrous reinforcing and pre-stressed cables. This in turn leads to spalling of concrete and an acceleration of the degenerative cycle. Ribs exposed to airborne saline spray and industrial chemicals, and the pedestals where rainwater runoff is concentrated, are particularly vulnerable. In 1993 the exterior feet of the pedestals were given a protective coat. This produced a discontinuity of the concrete surface and resulted in the visual effect of feet wearing socks. Since then water entered behind the socks and the surface again started to crack, spall and fret necessitating further remedial action.

Policy 41.2 *The consequences of remedial treatments necessary to retard the degeneration of concrete surfaces should be well understood or fully tested before use. As well as affording protection, treatments should approximate to the colour and texture of adjacent surfaces after two or three years of weathering.*

Policy 41.3 *Any remedial work on exposed concrete surfaces should be carried out in such a way that visual continuity with the original surface is retained and any joint between the old and new work designed to achieve this should be executed with precision and in a way that does not trap rainwater.*

The soffits of some concrete beams, ribs and panels above public areas



63. 1993 photograph of broken edge tiles before replacement and pedestal feet wearing their new socks. JSK photograph 93.5.27.

have become dirty and discoloured. This darkening has affected light levels as well as being visually displeasing.

Policy 41.4 *The sources of pollution on unpainted concrete surfaces within the public areas should be identified by testing and both origin and transmission of the polluting agents reduced as far as is practicable (for example, by the removal of the diesel bus layover stops from the vehicle concourse).*

Discolouration also arises at low levels from sweaty and greasy fingers—the interior surfaces of the pedestals are an example. Unless discolouration is accompanied by surface deterioration, no treatment is necessary. The patina of use is acceptable in the same way as is the darkening of the base of piers in mediaeval cathedrals or the lanolin polished posts in Australian shearing sheds. Where treatment becomes necessary as a result of defacement or deterioration, policies 41.5 to 41.7 are appropriate.

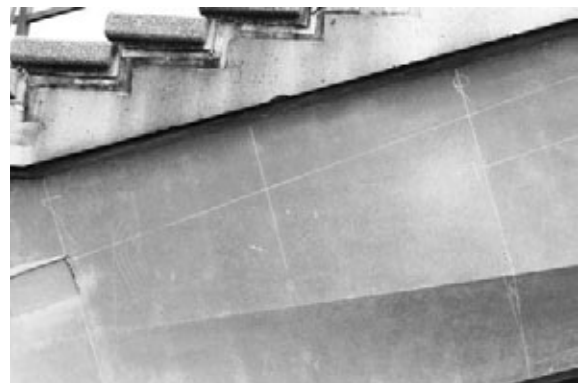
Policy 41.5 *Unpainted concrete surfaces may only be cleaned by methods where the consequences are well understood or fully tested and which result in no change to the character of the original surface. In accordance with policy 41.1 above, the concrete should remain unpainted.*

Policy 41.6 *After cleaning of unpainted concrete, consideration may be given to the use of sealants in areas subject to continued soiling where the source of pollution is outside the fabric. Sealants should also be tested before use and should not result in changes to the texture, colour or tone of the concrete surface. Where the outcome is uncertain the surface should remain unsealed.*

The structural systems devised by Utzon and the Arup firm are of exceptional significance. For example, chalk guide lines and markings placed on the formwork panels in which the folded beams have been cast are now offset on the beams themselves. The lines provide a precise indication of the structures involved and are a delight to engineers and, on explanation, to many visitors.

Policy 41.7 *Any treatment of unpainted concrete should retain existing textures and allow markings to continue to tell the story of the underlying structural systems.*

The treatment of the folded beams above the vehicle concourse presents a nicely balanced problem. For some time it has been the wish of management to have the beams painted in order to conceal the dark discolouration caused by diesel pollution and some water penetration. The preferred option is first to remove the source of the trouble (policy 41.4) and to clean as far as may be practicable in accord with policies 41.5 and 41.6. It may then be considered whether it is desirable, or necessary, to treat the concrete to a light wash that approximates to its natural colour and does not obscure its textures or markings. If the wash is applied without tackling the source of the trouble it will necessitate repeated treatments of a difficult to access surface. The result would probably be the progressive loss of texture and markings, as well as additional expense.



64. Lines offset on folded beams from formwork. JSK photograph July 2002.

The issue is made both complex and interesting by the fact that the beams remain an exception to Utzon's expressed determination not to paint off-form concrete surfaces. The beams were poured in 1960–61

and the early work was beset with trouble: interrupted pours, the difficulty of forcing a stiff mix into all parts of the space, and formwork that moved – resulting in substantial soffit holes and some deformation of the beam surfaces (Messent, *Act one*, 189–192). The Arup firm wrote to Utzon asking whether he would accept them or not:

If you find these earlier sections unacceptable they will have to be broken down and rebuilt... I think that a matter of this seriousness would require you to visit Sydney and make the decision. (Jenkins to Utzon, 27.1.1961, Messent, 191).

Utzon replied:

I think it is unwise and wrong that I am going to be involved with this... I think it is obvious that we must paint the beams [or] some sort of surface treatment. Any repair on the beams can be done, even on the edges, because that will be covered completely up by the painting and treatment... (Utzon to Jenkins, 30.1.1961, Messent, 192).

In March the Arup firm decided that ‘if the faulty beams could be stressed successfully they would be left.’ As far as painting was concerned the general opinion in Sydney seems to have been that expressed by Arup’s Alan Levy:

The beams, now depropped and completely self supporting look magnificent. It would be a great pity to have to treat them in any way as part of the grandeur [of the] appearance is derived from the rough concrete texture (Levy to Skead, 4.4.1961, Messent, 192).

Now, in 2002, any remedial treatment of the folded beams that is in accord with policies 41.4, 41.5 and 41.7 is acceptable. The preferred sequence is:

- reduction of the source of contaminants;
- cleaning;
- decision of whether to apply a light wash or not.

In this case, use of a sealant may prove to be inappropriate because of the probability of some water penetration from above. Whatever approach is taken, lighting that reinforces the character of the beams will be a distinct improvement.

### **Cleaning reconstituted granite paving and cladding**

Reconstituted granite paving and cladding is cleaned periodically with a pressure water jet. There is evidence that each cleaning removes a little more of the fine mortar from the interstices between the granite aggregate: therefore the lower the water pressure and the fewer the cleanings the longer the life of the slabs.

*Policy 42.1 Investigation should be carried out to determine the best method and appropriate frequency of cleaning necessary to retain an acceptable appearance. Operators should be trained in the method appropriate to the job, the purpose being to prolong the life of the reconstituted granite paving and cladding.*

*Policy 42.2 Staff should be briefed to alert maintenance personnel to graffiti strikes on any unpainted fabric as quickly as possible.*



## HOUSEKEEPING

Any large establishment has to guard against slipping standards of housekeeping and an organisation that doubles as a major international tourist landmark and a famous performing arts centre needs to be particularly vigilant. It is the aggregation of minor expediencies that becomes so damaging to the presentation of a place. A regime of good housekeeping is vital.

In 1999, some respondents to the interim conservation plan remarked on the increasingly untidy presentation of the Opera House and its immediate setting. For example, the Engineering Heritage Committee commented on the 'objectionable odours and vapours' from the restaurant service areas, the 'spillage and consequent staining' of paving at places like the western broadwalk vehicle dock and from temporary stalls and outdoor entertainments on the broadwalk and forecourt. The Committee also pointed out the parking of waste bins and motor cycles against the east end of the grand podium steps and the erection of 'tacky' decorations in key spaces (IE Aust., Sydney Division, Comments on Interim Conservation Plan, 10.9.1998, p.2). Also in 1997 and '98 three large shipping containers were parked in the forecourt and the enclave they create was used to hold equipment and materials (fig.65).



65. Long stay 'temporary' storage in the forecourt of the Sydney Opera House at the time of the replacement of the broadwalk paving. JSK photograph 98.8.0.

*Policy 43.1 All items that need not be stored on the Opera House site should be stored elsewhere, or disposed of, and consideration should be given to providing concealed facilities for items that it is essential to retain on site.*

Within the building the fixings and detritus of past entertainments, and sponsors' and hirers' advertising, were fixed to walls. Notice boards obscured the drama of piers supporting the roof shells and souvenir sale swamped the information desk in the box office foyer. 'Temporary' power and light cabling proliferated over the years obeying only the laws of economy and expediency. In the northern foyer the spaghetti of cabling along the glass wall ring beam was joined by a disco globe cable hanging from the brush box rump of the concert hall.

Spaces seen by the public through glass walls and windows should be kept shipshape. Similarly repair work in unseen spaces (particularly between the inner shells of the major auditoria and the roof shells) should be followed by the meticulous removal of leftover material. While this is primarily a fire hazard, any such careless housekeeping has a potential for major heritage loss.

*Policy 43.2 Staff should be trained and given the resources to ensure that an appropriate housekeeping regime is in place and supervised. It should eliminate practices (and hirers) that may:*

- *spoil or obscure the character of the place;*
- *damage fabric;*
- *require cleaning methods that are in turn damaging.*

*Policy 43.3 A simple pamphlet should be prepared setting out the conditions and restrictions applicable to the hire or use of each venue.*

Management and staff commitment to regular and intelligent house-keeping practices is important. It is easy for established regimes to slide into decay.

Policy 43.4 *In addition to informed supervision, a simple, six-monthly audit of current practice should be carried out to ensure that the quality of the housekeeping regime is maintained.*

### **Laser projections and external advertising**

The Sydney Opera House will come under increasing pressure to permit laser projections on the Opera House shells. Frequent use for that purpose would destroy the intended lighting effect and debase the image of the building as an icon. Policy 44.1 below reflects the Conservation Council's advice. Similarly, external advertising such as billboards and banners would progressively degrade the place.

Policy 44.1 *The use of the roof shells as a medium on which to project images should be confined to exceptional non-commercial occasions of brief duration.*

Policy 44.2 *No advertising material should be placed on, or obscure, the external fabric of the Sydney Opera House or topographical features of exceptional significance (fig 67a).*



66. Banners in the south foyer of the Concert Hall. JSK photograph 93.6.10.

### **Exhibitions, displays, banners, posters and allied materials**

There are spaces of quite exceptional character and significance in the Sydney Opera House. They provide on entry a "strong, unexpected and moving contrast with what has gone before". John Waldram, who advised on the original lighting, calls this an "impact view" (Waldram, 3). Whether by night or day, it is important that such spaces are not progressively cluttered by the installation of exhibitions, merchandising counters, banners, posters, pylons and allied material, or by the detritus of past exhibits.

The south foyer of the Concert Hall is a case in point. The impact on entry from the podium or Box Office stairs is weakened by banners on the facing brush box wall (fig.66). It was ironical that in 1993 they bore the name of a firm that did so much to make the lighting of the public spaces in the building a success in 1973. In October 1998, poorly hung commercial banners were still suspended in the southern foyer, and eleven 7-feet high display cases had been ranged along the western glass walls (fig.67). The latter defeat the architects' intention of providing magnificent unobstructed views of the harbour and city.

Policy 45.1 *Free-standing exhibitions, displays and miscellaneous structures should not obscure or interrupt views from the Opera House or reduce the impact of its major interior spaces.*

Policy 45.2 *Except as set out in policy 45.4 below, no banners, posters or allied materials should be placed on the walls of spaces listed in the schedule on pages 34 to 38 as being of exceptional significance.*



67. Free-standing display cases against the canted glass walls of the Concert Hall southern foyer for an exhibition in 1998. JSK photograph 98.8.15.

Such spaces include the foyers surrounding the major auditoria, but not the Box Office foyer and vehicle concourse. In the latter locations

posters advertising coming attractions are an appropriate part of the ambience of a performing arts centre. It is, however, necessary to ensure that the manner of presentation is in keeping with the character of the space.

Policy 45.3 *Any poster mounting for the Box Office Foyer and Vehicle Concourse should be designed to complement the character of the surrounding fabric.*

Some visual system of sponsor identification may be required for particular events. Because of the wide range of technical and artistic innovation now available, it is impractical to prescribe arbitrary rules.

Policy 45.4 *Temporary sponsor identification is acceptable in spaces of exceptional significance in which an event takes place provided the identification is competently prepared, modest enough in size so as to have minimal adverse impact on the character of space and removable without damage to fabric.*



67a Banners on the Tarpeian Cliff face. JSK photograph 98.8.12.

## Signs

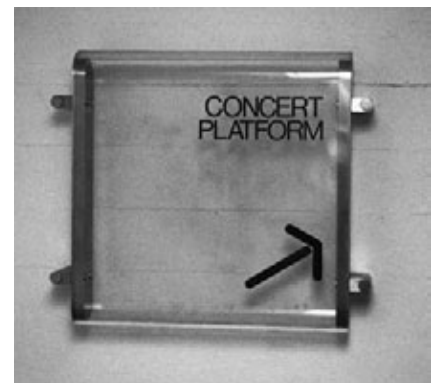
In 1973 the Opera House and its surroundings were fitted with a co-ordinated family of signs. Twenty-five years later, that co-ordination needs to be re-established to ensure that existing and proposed signs are relevant, necessary and of appropriate character and quality. In August 1993, for example, the vehicle concourse presented typographical and symbolic information in over twenty (contrasting) forms. The original alloy and perspex signs within the podium present a different problem. They were developed as a handsome and homogeneous family, visually appropriate to their “Wobbly Land” domain, but, because of the expense of altering their message, they are gradually becoming redundant.

Policy 46.1 *A sign manual should be prepared (or brought up to date) to guide the design of new signs. These should be either identical or complementary in character and quality to the original signs in that part of the building.*

Policy 46.2 *Originals signs should be retained and, where necessary, a way found to make them serviceable.*

Policy 46.3 *Exterior signs should be kept to the minimum and, as far as possible, given common design and graphic characteristics.*

Policy 46.4 *Guidance for the design of corporate and sponsorship banners and method of fixing should be included in the sign manual.*



68. One example of a family of metal and perspex signs used on the wobbly areas in 1973. Some have been fixed upside down, allowing them to become transparent receptacles for rubbish. JSK photograph 93.8.17.

## Door furniture

### Numbers

All doors throughout the building were numbered, catalogued and have a range of finishes and performance attributes. Acoustic doors, for example, were veneered in white birch or laminated brush box. The design, material and method of application of the door numbers vary with the type of door and are an important part of its character and the space in which it is set. Brush box doors have engraved and filled bronze plates and white birch doors have cut-out metal numbers (fig.69). Adhesion of the latter has not been good and some numbers



69. Example of poorly designed signs appearing in the building. SOH photograph.

are now partly missing while others have been replaced in an ad hoc manner with varying degrees of success.

Policy 47.1 *The door numbering system appropriate to the different types of doors should be retained. Where necessary, the numbers should be replaced with precision using the original Helvetica medium typeface.*

### Locks

Doors in wobbly areas and work areas are fitted with a family of silver coloured Astra mortice locks and associated furniture. Laminated brush box doors have bronze fittings (fig.69).

Policy 47.2 *The relevant family character of door locks and associated furniture should be retained in any future work.*

### Artworks

The Opera House contains several artworks of a scale to impact on the spaces in which they are housed (Appendix 3). There are four major elements: the murals of John Olsen and Michael Nelson Jagamara in the northern foyers, and John Coburn's *Curtain of the Sun* in the Opera Theatre and *Curtain of the Moon* in the Drama Theatre. The curtains occupied the proscenium arch when performances were not in progress.

Both murals and curtains are fine works and all present problems. The warp in the proscenium curtains deteriorated badly and they were removed for repair. It is unlikely that either will be returned to their intended function. The acrylic paint on the murals fades in the extreme light of the northern foyers and they have been covered by curtains. Because of technical problems and options to be assessed, it is appropriate that both murals and curtains be the subject of a separate study. Gifts are another class of art work acquired by the Sydney Opera House Trust. They can present problems and should not be accepted unless they are designed for, and suited to, their intended location. A general policy only on the acquisition of permanent artworks is appropriate here.

Policy 48.1 *Artworks acquired in the future should be visually compatible with the character of the space in which they are to be set and capable of long life with ordinary maintenance and without intrusive protective coverings or treatments.*

Olsen's splendid 'Five Bells' mural is an example. To have a painting so faded (and still fading) that it has to be kept covered by an intrusive and obscuring curtain is unacceptable. Consideration may be given to the replication of 'Five Bells' in a ceramic or permanent medium while the artist is still able to oversee the work. The curtain should then be removed. Failing that the painting should ultimately be replaced in accordance with policy 48.1 above in a material appropriate to the environment.

Policy 48.2 *Artworks, whether curtains or murals, should not be cut into sections to fit convenient walling elsewhere.*

In keeping with policy 45.2, no artworks should be erected on brush box walling, off-form concrete or reconstituted granite in those spaces of exceptional significance listed on pages 36 and 37.

Policy 48.3 *A guide should be prepared and adopted to cover the acquisition, replacement and disposal of artworks that takes into account the policies in this conservation plan.*



## MANAGING THE PROCESS OF CHANGE

This section is about the approaches, processes and advisory resources necessary for the efficient management of change in such a way that the heritage significance of the place is reinforced. It draws on the experience of successes and failures of the last twenty five years.

### Use, approach and review

The Sydney Opera House was designed primarily as a performing arts centre with associated facilities and should continue in that use. It is also an internationally renowned cultural landmark. This does not mean that the use of parts may not change, but it is important that decisions for change are only made in the context of a co-ordinated plan for the whole building that takes into account all the necessary factors.

Parts of the building and surrounds already exhibit signs of overcrowding and intrusive development with facilities being provided in inappropriate places or displacing uses which may become intrusive elsewhere. It is therefore desirable to establish what functions are necessary within the building and what may be located elsewhere.

Policy 49.1 *The Sydney Opera House should continue its primary use as a performing arts centre and its importance as a tourist attraction should be recognised. The building and its setting should not be altered to accommodate uses that will vitiate its significance and character. The approach should be sufficiently flexible to permit the delivery of a high level of performance and provision of services.*

Policy 49.2 *The policies set out in this document should be applied irrespective of the use to which the building, or its parts, are put.*

Policy 49.3 *Proposed changes of use to any part of the building should only be considered in the context of a co-ordinated plan for the whole building and priorities established to determine which functions must be kept on site and which may be located elsewhere.*

### Compatibility

Some parts of the building and its site have already been adversely affected by inappropriately intruded or incompatibly designed additions, facilities and services. Examples are noted in the assessments on pages 34 to 39.

Policy 50.1 *Uses are unacceptable if they require alterations, additions and facilities that:*

- *vitiate the original concept of the designers of those elements of the place that are assessed as being of exceptional significance;*
- *degrade the character and quality of fabric, spaces and relationships;*
- *are likely to cause excessive wear and tear, or disfigurement, to significant fabric.*

### Relating levels of significance to proposals

The statement of significance on page 32 sets out the reasons why the Sydney Opera House is of exceptional significance. The more detailed assessments of levels of significance on pages 34 to 39 are an important factor to be considered when planning future action.



70. Detail of Matthew Fortescue Moresby's late 1850s photograph showing the main sewer on the western side of Fort Macquarie. Provided by the Department of Public Works in 1993.

Policy 51.1 *The more significant a concept, fabric, relationship, space or vista, the more should care be exercised in preparing proposals that may affect the place—the objective being to ensure that the work will not reduce, and may reinforce, the identified significance.*

Understanding of the levels of significance helps introduce the flexibility necessary for the management of change. The policy does not, however, mean that spaces of exceptional significance may not be remodelled in accordance with the provisions of this plan. It does mean that extraordinary care should be exercised with full knowledge of the consequences and proposals justified by cogent arguments that consider alternative solutions.

**Use of the Burra Charter**

The *Australia ICOMOS Charter for the Conservation of Places of Cultural Significance* (Burra Charter) is a useful general guide to the conservation of complexes such as the Sydney Opera House. It is used by the NSW Heritage Council, the Australian Heritage Council and National Trusts. The Charter provides a philosophical framework that is reasonably flexible and recognises the need for continued use and compatible development.

Policy 52.1 *The future conservation and development of the place should be carried out in accordance with the principles of the Australia ICOMOS Charter for the Conservation of Places of Cultural Significance (Burra Charter) as revised in 1999.*

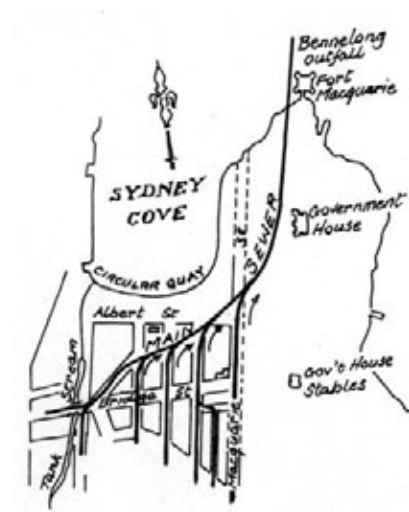
**Excavation**

Although the area of Bennelong Point controlled by the Sydney Opera House Trust has a history of European occupation dating back to 1788 and unknown millennia of Aboriginal use before that, the site is now so heavily disturbed that sub surface cultural remains are limited. The major elements are the surviving parts of the 1860s sea wall (fig.8, now encased in concrete or buried in mud) and the partly diverted 1850s 6 by 4 foot oviform main sewer and stormwater drain which relieved much of the then City of Sydney of its nightsoil (figs 70 & 71). By the end of the century it had been replaced by ocean outfalls and the sewer then carried only storm water. Its northern end has been diverted and now passes through a box section concrete drain under the forecourt and Opera Theatre before discharging into the harbour.

Policy 53.1 *Work involving excavation, or investigation of sub surface objects, should be planned and executed in accordance with the requirements of the Heritage Act 1977 and advice of the NSW Heritage Office.*

**Endorsement and review of this plan**

These policies have been developed and successively adjusted in conjunction with the Sydney Opera House Working Group and the Sydney Opera House Trust Conservation Council. As no conservation plan can cover all eventualities, the policies should not be regarded as black letter law for literal enforcement but a core document to be consulted by the Trust, management and staff and by planning and heritage bodies, in any proposals for the place.



71. Detail of Sydney sewerage plan of 1857 supplied by Michael Clarke. Redrawn by JSK.

Policy 54.1 *The policies and supporting arguments in this conservation plan should be endorsed as a guide to future development and conservation by the Sydney Opera House Trust and used in support of (or in response to) future applications and negotiations with government agencies.*

Conservation policies may need adjustment to meet unforeseen circumstances and to clarify intentions.

Policy 54.2 *This policy document should be reviewed as the need arises but not later than July 2008.*

## **Internal processes**

### **The present state**

As well as enlivening the place as a performing arts venue, functioning as a community gathering place, servicing an increasing number of visitors, and meeting reasonable commercial imperatives, the Sydney Opera House Trust is concerned to retain the integrity of the building and its setting. However it is evident from recent developments\* that processes designed to achieve the last objective are not working well and that heritage input into the early stages of a project is sometimes missing.

\* See figs 31, 32, 43, 44, 47, 51, 54, 66, 67 & 70.

Examples this year (2002) illustrate the point. The first is the creeping expansion of the Opera Bar in the Lower Forecourt. The modest stages by which it encroached on its setting helped it avoid attention. Once tables and chairs were placed on the relatively narrow raised pathway beside the harbour parapet, it seemed necessary for linked stainless steel bollards to be added to the adjacent steps as a safety measure (fig.72). There are now a promiscuous mix of bronze, granite, black painted steel and polished stainless steel bollards around the Opera House, and tables and chairs on a path better devoted to pedestrian promenade.



72. Tables, chairs and bollards on the raised pathway beside the harbour parapet in the lower forecourt. JSK photograph 8.10.02.

Other intrusions are more dramatic. The venue for hire erected in September 2002 on the north Broadwalk is an extreme example (fig.32) and the letting of a contract for ice cream, coffee and food bars in the Forecourt (fig.31) is another. All were erected without any apparent heritage input or, perhaps, in defiance of any informal heritage advice.

However, the current project with the strongest potential for adverse impact on the setting is the proposal for erecting long stay infrastructure to accommodate performances in the forecourt. Compare, for example, the 'existing' and 'proposed' images on page 10 of the *Venue improvement plan* with the list of facilities required on pages 48 to 49 of these policies. Any such proposal will require well considered heritage input, and an impact statement, before any permanent development proposal can be decided upon.

### **Awareness and co-ordination of heritage issues**

The Sydney Opera House Trust adoption of this revised conservation plan and the reconstitution of the Trust-appointed Conservation Council are the first steps in repairing the decision making process. It will help ensure that the executive and management of the Sydney Opera House are aware of heritage issues and the need to incorporate them into their 'business case' methodology for all projects. Providing copies of this conservation plan is a first step, but it needs to be backed up by the inclusion of heritage briefings and discussions as an integral part of internal training programs. In this way the processes will become familiar and 'matter of course' rather than alien and arcane.

The process should be given certainty by the promulgation of clear and formal responsibility for heritage issues in each 'portfolio' within the Opera House structure. It will ensure that the need to consider heritage is recognised and that the office of the Director of Facilities is alerted to any proposal. The Facilities 'portfolio' is the natural co-ordinator of heritage matters within the Opera House system, well able to decide on necessary follow-up action.

Policy 55.1 *All staff and consultants should have access to a copy of this conservation plan.*

Policy 55.2 *A heritage component should be incorporated into the induction and training of senior and medium level staff involved in any changes to the building and its setting. (Staff turnover will make continuity of training a necessity.)*

Policy 55.3 *Responsibility for heritage matters should be included in job descriptions of relevant positions.*

Policy 55.4 *The office of the Director of Facilities should be formally responsible for co-ordinating advice on heritage issues.*

### **Sequence and advice in developing proposals**

The process of developing plans without expert heritage input and then subjecting them to an assessment of heritage impact is inefficient and likely to result in alteration and unnecessary delay. It also creates a climate of confrontation rather than the facilitation of progressively developed solutions.

Policy 56.1 *Continuity of relevant and experienced heritage conservation advice should be provided as part of the process by which changes to the Sydney Opera House and its setting are developed and executed.*

*The timing of this advice is important. For major projects it should be drawn upon:*

- *initially, at the concept stage;*
- *during the development and refinement, or alteration, of the proposal;*
- *for a formal statement of heritage impact, or its equivalent, in response to the completed development application;*
- *to keep a watchful eye on work actually underway.*

Accessing professional heritage advice should not be cumbersome but flexible enough to suit the nature of the proposal.

### **Conservation Council**

In 1996 the Sydney Opera House Trust arranged for a further level of heritage conservation advice by the appointment of a Conservation Council. Its charter was to advise the Trust on 'the discharge of the Trust's responsibilities under the provisions of Section 4(1)(a) of the Sydney Opera House Trust Act, with particular reference to the care, control and maintenance of the Opera House (Brief... for Conservation Council [March 1996]). Members were to include:

- a member of the Sydney Opera House Trust;
- the government architect or his nominee;
- an eminent architect from private practice or academia;
- an eminent engineer from private practice or academia;
- a nominee from the Ministry for the Arts;



- a nominee from the NSW Treasury;
- the general manager of the Sydney Opera House;
- the member of executive staff having responsibility for the building and the 'total [asset] management plan' for the Sydney Opera House.

Treasury declined the offer of membership. The rest had their inaugural meeting in March 1996, then met on nine subsequent occasions, mostly during lunch hours, the last meeting being in November 1997 when the Trust advised the Council of a revised brief and membership rules. These limited the Council to seven members: a member of the Trust to chair the Council; the Opera House chief executive and the director responsible for building and site; and four eminent government and private sector specialists—a 'minimum' of two of whom were to retire annually (Attachment 2, agenda for Council meeting 97/05).

The Council agreed to the revised brief and membership rules with amendments that emphasised, first, the 'important role' of the Council 'in providing confidence to all stakeholders in the conservation and heritage networks regarding developments and conservation management of the Sydney Opera House' and, second, the long time-frame of developments at the Opera House meant that too rapid a turnover of membership would create problems of continuity (Minute 3.1, Council meeting, 24.11.1997). The matter was referred to the Trust. No further meetings were called. In 1999 the second edition of the Sydney Opera House conservation plan included two policies (56.1 and 56.2). They remain valid and are renumbered below.

*Policy 57.1 Consideration should be given to the following points in deliberations on the nature of any committee appointed to give conservation advice to the Sydney Opera House Trust:*

- *members should be chosen primarily for the relevance of their expertise and knowledge;*
- *one member should be acceptable to the Heritage Council and should be responsible for informal liaison with that body;*
- *members should not have a proprietorial or beneficial interest in the carriage of any matters before the committee (where this is unavoidable, they should declare an interest and confine themselves only to providing information when asked);*
- *minutes should be accurate and, except when commercial confidentiality is involved, publicly available after they have been corrected and ratified at the subsequent meeting;*
- *the committee should retain a collective memory through reasonable continuity of membership.*

*Policy 57.2 The Conservation Council should be made aware of all management and operational issues, and any conservation studies, that may affect its advice.*

A brief was prepared in July 2000 to reconstitute the Conservation Council. The Council would:

- provide the Trust with specialist advice on the conservation and development of the Sydney Opera House and its site;
- inform 'strategic direction' and 'decision making';
- advise on the 'management of key stakeholder relationships on conservation and heritage matters'.

There were to be a maximum of eight members:

- two representatives of the Trust, one of whom would chair the Council;
- The Chief Executive Officer and the Director responsible for the building and site;

- four eminent government and private sector specialists with recognised expertise in some or all of the following – architecture, heritage and conservation, design and engineering or related disciplines.

Membership was to be 'for a period of three years.'

In view of the length of time taken on many Opera House projects, the only qualification that the brief invites is that it should be made clear that councillors are eligible for reappointment after three years, although a maximum term may be set. This will ensure reasonable continuity of membership and therefore the retention of collective memory. The first meeting of the reconstituted Council took place in November 2002.

### **Collective memory**

#### **(or easy access to archival material and living repositories of essential information)**

In 1996 the annual report of the Sydney Opera House Trust noted the importance of the Dennis Wolanski Library. The 1997 report noted its closure and the dispersal of its contents. In 1993 it was the Dennis Wolanski Library that made it possible for a stranger to the Opera House to research and write the first edition of this conservation plan in a relatively brief time and at reasonable cost.

In any long term organisation, management, staff, consultants and contractors change. The major impediment to the full understanding of a place of the complexity of the Sydney Opera House is the loss of collective memory. If people no longer have access to what was done and why it was done, decisions on development and conservation may be primarily guided by short-lived aesthetic and operational fashions—to the detriment of the place.

*Policy 58.1 It should be the long term objective of the Sydney Opera House Trust to bring together at one accessible location (or in the minimum possible number of such locations) all documentary, graphic and oral records relating to the development of the Opera House and its site.*

At the moment such material is spread among a range of government archives and agencies, commercial firms, universities and individuals. Also those individuals involved in the design and construction of elements of the place that are still alive are approaching the end of their life. Now is the time to secure their documentary or oral contribution.

*Policy 58.2 Consideration should be given to recording the contribution and reminiscences of the lesser known but important consultants, contractors and staff of the Sydney Opera House and Department of Public Works who had an intimate connection with the Opera House between 1960 and the 1990s.*

### **External processes**

There is a range of statutory processes that may impact on proposals for the Sydney Opera House and its immediate setting but it is the *Central Sydney Heritage Local Environment Plan, 2000*, that is of particular relevance to the heritage aspects discussed in this conservation plan. The Sydney Opera House is listed and asterisked in Schedule 1 (Buildings and sites) of that document. The consequence of this is that the consent authority may not grant consent for a development that may have a 'significant effect' on the heritage significance of the

place without taking into consideration the views of the Heritage Council of NSW.

Policy 59.1 *Changes that may have a 'significant effect' on the heritage significance of the Sydney Opera House and its site should be referred to the relevant consent authority.*

The process will be simplified and expedited if the internal processes of the Sydney Opera House detailed on pages 95 to 96 are working effectively and if the proposal and any accompanying statement of heritage impact draw upon the guidance provided by the policies in this conservation plan. It is therefore useful to seek informal comment on draft conservation plans from the consent authority and the Heritage Council of NSW and subsequently to seek formal adoption or endorsement as appropriate.

The threshold of what constitutes a 'significant effect' is best illustrated by examples. Of the six proposals set out in the *Venue improvement plan* of May 2002, all are likely to have a 'significant effect' on heritage significance and all are appropriate subjects for the consent process. Four proposals (Concert Hall acoustic improvements, Opera Theatre pit extension and auditorium refurbishment, and Reception Hall refurbishment) should result in enhanced significance, amenity and utility. The fifth proposal (Western Broadwalk loggia and foyer refurbishment) will require careful explanation and documentation but all five can be justified by the policies of this third edition of the conservation plan.

The sixth proposal (Forecourt performance infrastructure) presents real heritage problems and, bearing in mind the intrusive nature, extent, duration and frequency of the infrastructure (see pages 48–49), is capable of having a distinctly adverse 'significant effect' on the approach to and setting of the Sydney Opera House. This adverse effect would be at its worst where performances required bulky infrastructure, extensive introduced seating, the exclusion of the public from Forecourt, steps and part of the podium deck, and fencing that excludes vision across or into the Forecourt. On the other hand, the more open and modest approach illustrated on page 10 of the *Venue improvement plan*, with the spectators seated directly on the steps, would have little or no adverse effect. The issues are complex and any schemes for permanent arrangements will need careful development if the Forecourt is to remain an appropriate space to set off the approach and visual enjoyment of the Opera House.

Policy 59.2 *In assessing the level of 'significant effect' of proposals for performance infrastructure in the Sydney Opera House Forecourt, consideration should be given to:*

- *the fact that the Forecourt and podium steps constitute Utzon's primary approach to the building (page 61) and are assessed as being of exceptional significance (see pages 34 and 36, and policy 51.1);*
- *the degree to which the vision of the Opera House is intruded upon by the bulk and extent of the facilities and tall opaque fencing (see pages 48 to 49);*
- *the duration and frequency of stay including erection and dismantling times;*

- *the actual periods in which the public will be excluded from the enjoyment of the Forecourt and podium steps;*
- *wear, tear and soiling from work crews and vehicles;*
- *the fixtures and connection features left in situ when not in performance mode.*

Other examples of improvements that could have been seen as having an impact on the character and hence significance of the Sydney Opera House and its setting include:

- the construction of intermediate handrails on the ceremonial steps of the podium and awkward additions to some podium handrails;
- letting of contracts that permitted sales outlets and venues for hire to be erected in spaces of exceptional significance;
- loss of character and spatial unity as a result of the ad hoc addition of facilities with partitions of inappropriate material and design;
- progressive weakening of early design regimes by the removal of key elements and fittings.

In each case the potential 'significant effect' was translated into a significant adverse effect. About half of them have already been rectified at additional expense.

### **Interpretation**

Existing interpretive facilities have included guided tours, publications, models, occasional exhibitions and, until dispersal in 1997, the collection of oral, documentary and artifactual material in the Wolanski Library. There are also commemorative plaques and signs on site and a lively and detailed website.

While the Sydney Opera House has an immense reputation as a sight to see in Australia, many visitors do not penetrate past the podium steps and gain little understanding of its remarkable features and functions, and of the way it is continuing to develop. The number of people taking guided tours have, for example, been in gradual decline over the past five years (SOHTAR, 2001, page 23) and the Sydney Opera House Trust and management are committed to reversing this decline.

Policy 60.1 *Existing interpretive facilities should be reviewed and a co-ordinated strategy developed for presenting and interpreting the Sydney Opera House and its site.*

Policy 60.2 *The program outlined in policy 60.1 should be progressively monitored and adjusted to ensure that it increases the number of people who visit, understand and enjoy what they are seeing.*

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\*The name given to spaces designed by Hall with curved white birch panelling.

### **James Semple Kerr**

Dr Jim Kerr has been writing, publishing and assessing conservation plans for twenty five years. His guide to the process is now into its 6th edition and his work has been recognised by honorary life memberships of the National Trust and Australia's ICOMOS.

In 1999 he was awarded a membership of the Order of Australia for his services to conservation.



## APPENDIX 1—ABBREVIATIONS

ADB	Australian Dictionary of Biography	ML	Mitchell Library
AJ	Architects Journal	NLA	National Library of Australia
A/NSW	Archives Office of NSW	PWD	Department of Public Works
AR	Annual report	PWD&S	Department of Public Works & Services
DEST	[Commonwealth] Department of the Environment, Sports & Territories	RAHSJ	Journal of the Royal Australian Historical Society
DUAP	NSW Department of Urban Affairs & Planning	SCC	City of Sydney
EC	Executive Council	SMH	Sydney Morning Herald
HRNSW	Historic Records of NSW	SOH	Sydney Opera House
J&P, RSNWSW	Journal & Proceedings, Royal Society of NSW	SOHT	Sydney Opera House information typescript
LA	Legislative Assembly	SOHT	Sydney Opera House Trust
		SOHUP	Sydney Opera House Upgrade Program
		V&P	Votes & proceedings
		WO	War Office files, Public Record Office, London

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### APPENDIX 3—ARTWORKS (MURALS AND CURTAINS)

The Sydney Opera House possesses a collection of artworks in a variety of media. Murals and curtains that are normally an integral or fixed part of the fabric in which they were set are tabulated below.

Artist	Description	Location or intended location
Coburn, John	Curtain of the Sun	Proscenium curtain in Opera Theatre
Coburn, John	Curtain of the Moon	Proscenium curtain in Drama Theatre
Federson, Jutta	Ede tapestry, 1974. 8521x274 cms	South wall of boardroom
Unknown	Replica of fragment of mosaic laid about 508 AD from a synagogue at Gaza	Reset on brush box walling in south-west Concert Hall ambulatory
Nolan, Sydney	Little shark, 1973, 224 crayon and dye sketches on paper	Panels 1–13 on east wall of Playhouse Theatre, panel 14 in general manager's office
Olsen, John	Salute to Slessor's 5 Bells, mural, acrylic on plywood, approx. 21x3 metres	Installed in the north foyer of the Concert Hall in 1973
Tjakamarra, Michael Nelson	Possum dreaming, 1987, acrylic on canvas, 10x1.8 metres	North foyer of Opera Theatre
Zofrea, Salvatore	Summer of the Seventeenth Doll, fresco on detachable panels	Playhouse foyer

SYDNEY  
OPERA  
HOUSE  
UTZON  
DESIGN  
PRINCIPLES

May 2002

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#### **1.1 THE SYDNEY OPERA HOUSE**

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#### **3.2 FUNDAMENTAL PRINCIPLES**

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#### **3.4 PROCESS**



# INTRODUCTION

“Since being completed twenty-five years ago, the Sydney Opera House has become an international icon, instantly recognisable to people all around the world.

It is one of the world’s great buildings of the twentieth century and a living testament to the creative mind of its architect, Jørn Utzon.

The Sydney Opera House Trust has decided to embark on a long-term program aimed at achieving two significant objectives.

The first is to safeguard the Sydney Opera House and its site for the benefit of future generations.

The second is to address the current effectiveness of the building’s function as a contemporary performing arts centre.

In establishing these two objectives, we are mindful that they must be achieved within the design principles established by Utzon.

The challenge now facing the Trust is to safeguard the integrity of Jørn Utzon’s vision, whilst assessing the functions of the building to ensure that it can continue to perform as the world-class performing arts centre that Utzon intended it to be.”

*Extract from Media Release 1 September 1998 by the Chairman of the Sydney Opera House Trust Mr. Joseph Skrzynski.*

This document prepared by Jørn Utzon outlines his vision for the building and its setting and his comments on the future. It is the first critical step in the process of establishing a long-term plan for the Sydney Opera House.

It is intended as a permanent reference for the conservation of the building and its setting. It can be used to clarify original design intent, to manage proposals for change and influence planning controls for the precinct.

The document is structured into three parts. Part one contains a recent text written by Jørn Utzon, describing his vision for the building. Part two outlines Utzon's approach to the future of the building, and Part three lists the fundamental principles underlying the designs.

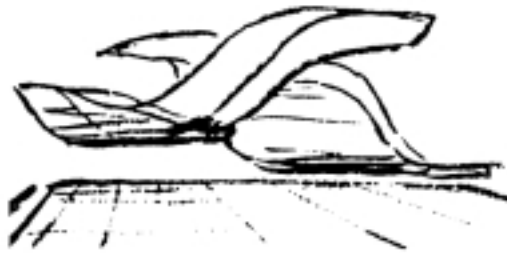


# 01 THE VISION





2



3



4

# 1.1 THE SYDNEY OPERA HOUSE

**UTZON DOCUMENT, DATED 4 JUNE 2000**

The programme for the new Opera House in Sydney was so unique that I felt I simply had to participate. This programme had all an architect could wish for. It had a fantastic site, with a beautiful and demanding position on Bennelong Point.

This caused me to start on the project immediately as I happened to live near the castle of Kronborg, situated in a similar position with similar surroundings between the two coasts of Denmark and Sweden, with the town of Helsingør on one side and that of Hålsingborg of the other.

With Kronborg in mind I was convinced that a new building in such a position as to be seen from all sides, had to be a large sculptural building.



5



6



8



7

Another inspiration I got from seeing the naval charts over Sydney, on which were shown the sandstone heads at the entrance to Sydney Harbour. These heads slope upwards to the Gap, where they drop abruptly to the sea.

The same feature is often seen in Denmark, on a smaller scale, where you walk uphill as you approach the sea to the edge of an escarpment falling away to the beach and sea below. As you approach the edge you look up into the empty sky and only at the very last moment are you able to get a magnificent view of the sea.

This feeling of moving upwards, was a determining factor in the shaping of the large platform or plateau, which, within its mass, could house all the facilities for preparing the performances with stage sets etc. On top of this plateau the audience should meet the performers. In this way, the appreciation of the man-made performance landscape would be very strong. The audience and the performance itself, all taking place on top of the plateau, should be covered with a "light" sculptural roof, emphasising the heavy mass of the plateau below.

To emphasise the mass of the plateau in relation to the sea (harbour) and to the white roof-shells, it is very important that the exterior of the plateau remains with as few and as small openings in its sides, as possible. If the plateau is perforated by many windows it will change character and will soon have the appearance of an office building with an unbalanced white structure on top.

Another source of inspiration I got from an early visit to the Yucatan Peninsula in Mexico. The Yucatan Peninsula is flat with a jungle vegetation of approximately 8 metres in height. In this jungle lived the Mayan People. When they build their temples, these are often placed on a large platform with wide stairs leading to the top of the jungle canopy. From here you have a limitless view of the expanse of jungle, like a large plain. On this platform the temples were built.



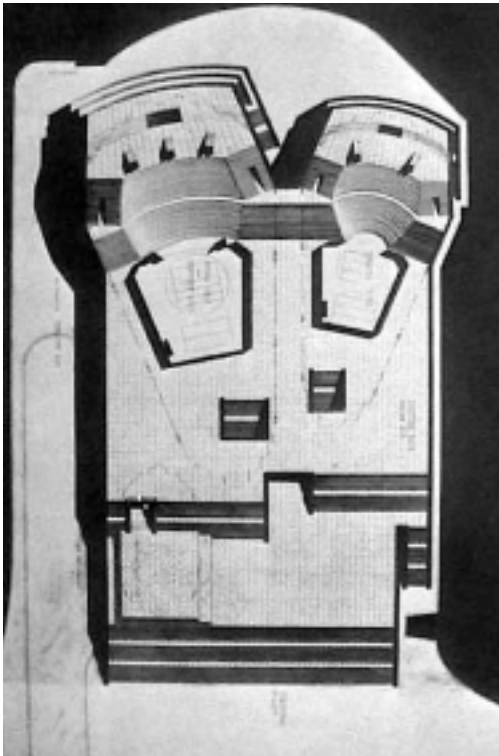
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The feeling you have when you sit on one of these grand staircases in Mexico is a feeling of liberation from daily life. Because I had seen this, the large staircase at the Sydney Opera House was made 100 metres wide and the plateau on top became a very important feature for the feeling of being in another world. This plateau also functions as a gathering place, a town square and outdoor auditorium.

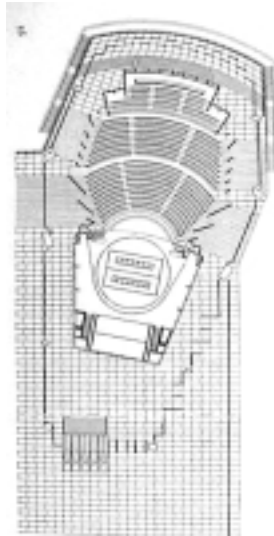
One functional problem arising from the size of the site was that it was impossible to place the large wings or side-stages at the same level as the stage itself. Therefore these were placed below, in the plateau, an arrangement also seen in a few other theatres in the 1960s.

From here the sets were transported to the stage with large elevators, arranged in a paternoster system, providing a continuous up and downwards movement of the sets for the smooth operation of the stage in the large auditorium or Major Hall. For the Minor Hall there were two sets of elevators, one set in the revolving stage and one set behind that.

The base or plateau was made 12 metres high, so it was possible to have the full stage height below the stage-level, for arranging the sets prior to their being sent to the stage. Because of this arrangement it was possible to place the two halls alongside one another and receive the audience via a grand staircase.



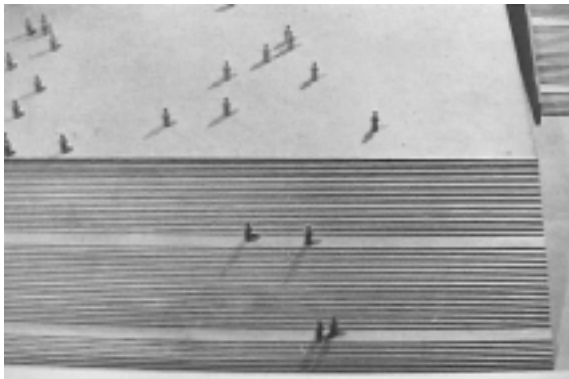
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When you enter the building you pass around the stage towers to enter the auditoria from the sides. During intermission you remain around the auditorium and can retain the feeling of being in another world.

It is very important that the audience does not enter, and walk through the building along dark corridors to a dark hall.

In the Sydney Opera House you are aware of your orientation at all times. It is important that each member of the audience has a simple, easily understood tour, from the entrance to his or her seat and out again.

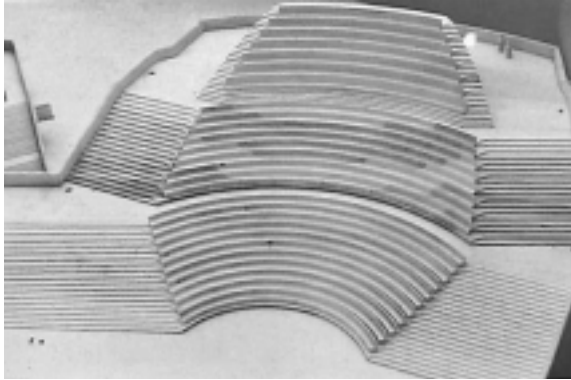
All problems regarding egress in case of fire and fire staircases are solved in a similar comprehensible manner.

Thus the house could function according to the competition programme.

The major items in the programme were a Major Hall for opera and concerts, a smaller Minor Hall for theatre and a Chamber Music Hall or room.

The question of how to cover the foyer, the auditoria, the stages and stage-towers was solved by covering these functions with large concrete shells, which follow the height of the various functions.

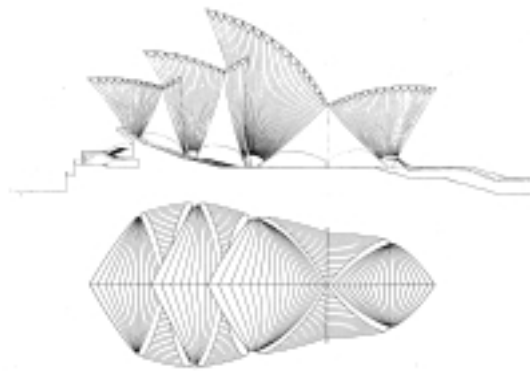
In this way very sculptural shapes were arranged side by side, so one gets a varied picture of the complex, according to which way you move in or around the structure.



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All parts play together in a rich variation of shapes, the exact feeling I enjoyed from seeing my native Kronborg.

If the work in producing the base and arranging all the functions in this lower part of the building had been a very difficult one, the work regarding the remainder of this building was no less so. Whenever an obstacle was encountered we often had to change tack completely to find another way to solve the problems. This happened a lot of times.

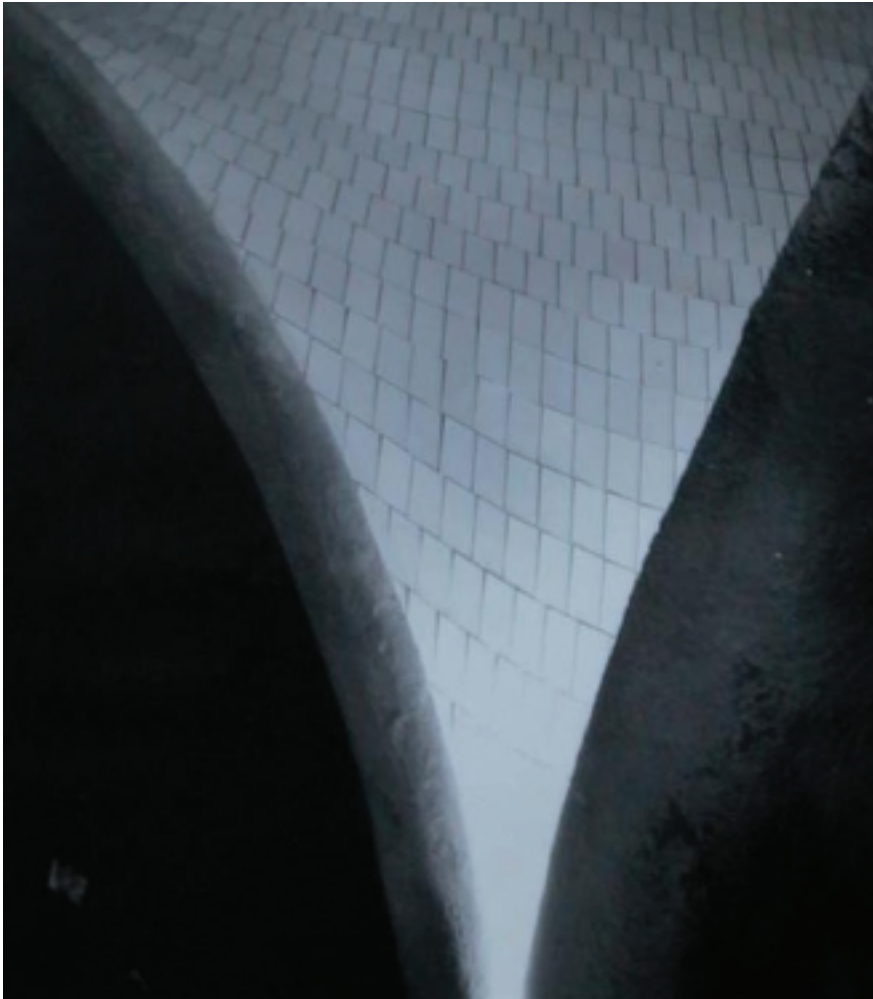
It was unlike making any other building. A parallel to the automobile industry would be, not to develop and produce another car-model, but rather to develop the first lunar landing module. For instance in the case of the exterior cladding of the shells, it was impossible to determine the geometry of the tiling, until full size mock-ups had been made.

We made full-scale mock-ups or models, which were important tools, which, together with the drawings, enabled us to solve specific problems.

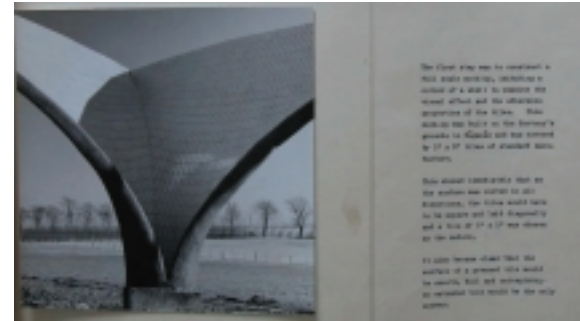
For instance the first mock up of the tiling clearly showed that our initial solution did not work.



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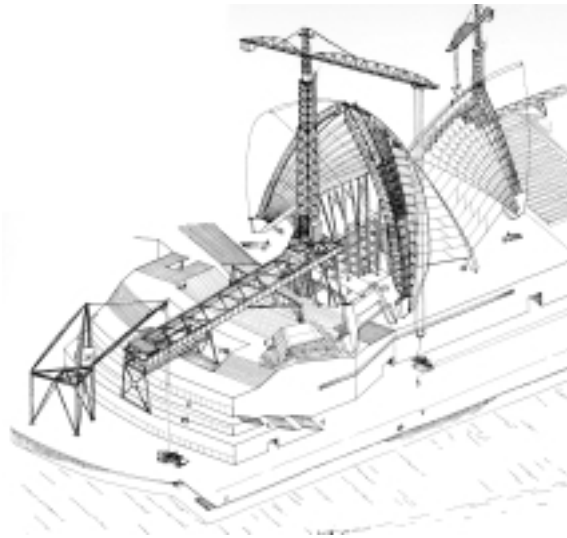


The first step was to construct a  
full scale model, measuring a  
total of 4.5m x 3.5m to ensure the  
correct effect and the reflective  
properties of the skin. The  
model was built in the factory's  
grounds in Harlow and the screen  
is 17 x 17' area of stainless steel  
panels.

The model demonstrated that in  
the winter and spring the steel  
structure, the skin would begin  
to be heated and the structure  
and a film of 17 x 17' was chosen  
for the screen.

It was found that the  
surface of a general film would  
be suitable, but the complexity  
of vertical film would be the only  
option.

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This caused us to rethink the problem and eventually come up with a solution, which resulted in the tiled elements covering the exterior of the shells today.

This solution was again depending upon the solution of how to construct the shells themselves. So as was often the case, one solution was depending upon others and vice-versa.

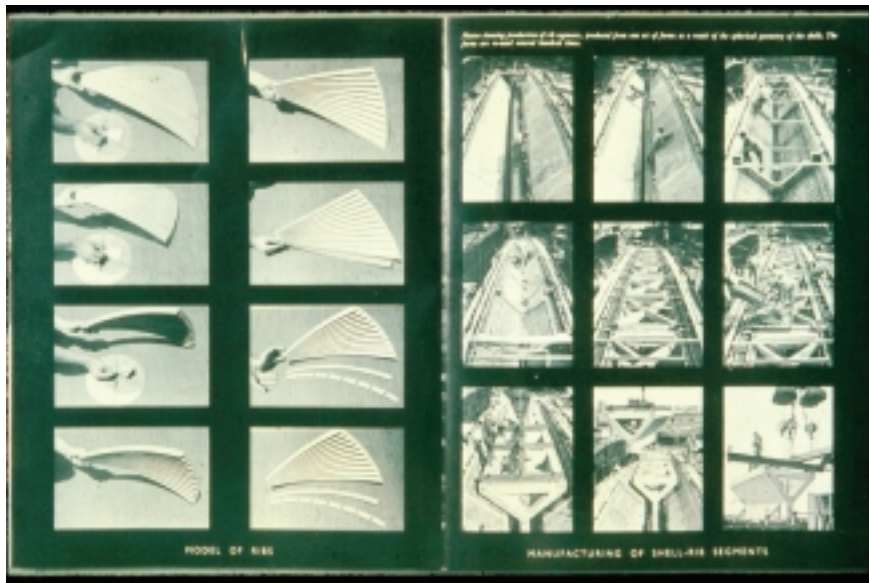
Initially, no definite geometry for the shells had been established, but, as work progressed, the shells were developed according to a spherical geometry and we suddenly had a common denominator, the same spherical surface to deal with, with a similar curvature throughout.

This was an elegant solution to a construction, which would otherwise have had to be done with a large amount of scaffolding and shuttering, both for the interior and exterior shape of the shells.

Now the shells could be sub-divided into ribs, which again could be divided into smaller elements, which could be cast within formwork representing the largest rib-entity. Thus it was possible to pre-cast the concrete-shells in smaller pieces and assemble these pieces on location.



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The elements were erected by very advanced methods and joined by post-tensioning to complete the shells, putting them together as building blocks.

This again gave way for a very logical and orderly geometry for the tile lids that were to cover the entire surface of the shells.

The tiles were a major item in the building. It is important that such a large, white sculpture in the harbour setting catches and mirrors the sky with all its varied lights dawn to dusk, day to day, throughout the year.

The citation from the American architect Louis Kahn: "The sun did not know how beautiful its light was, until it was reflected off this building", describes the importance of this surface and of the decision to make the surface white.

One of the judges, Eero Saarinen who was aware of this, told me at one stage, after the result of the competition was made public: "keep it white", because the Harbour (surrounding buildings) is dark, with all its dark, red or brown brick-structures.



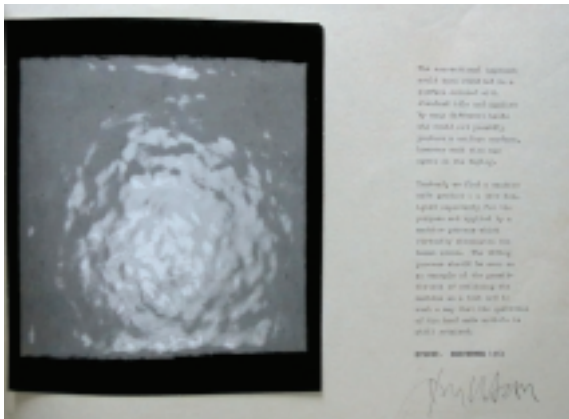
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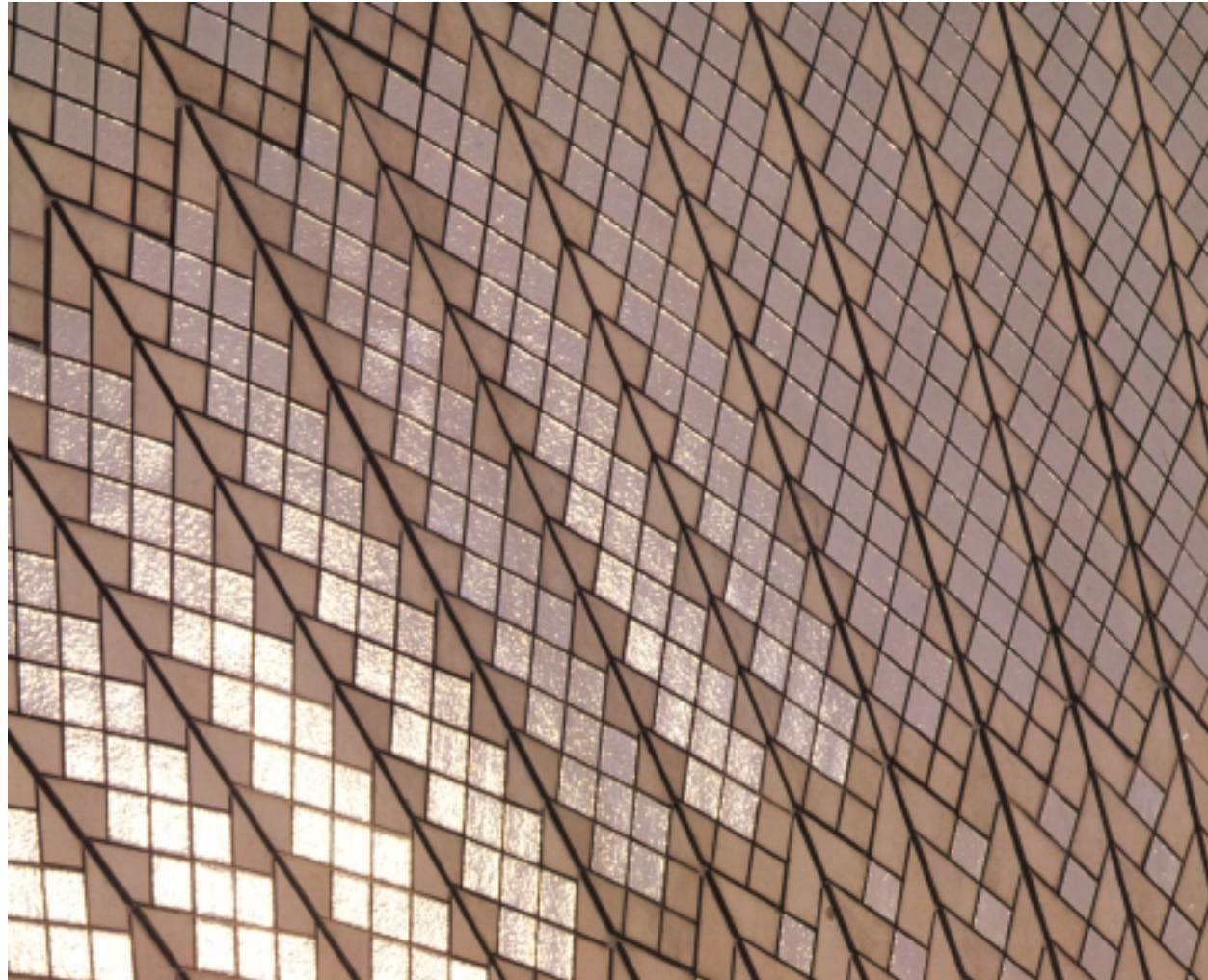
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To develop these tiles I worked with one of the best ceramic factories in the world, Höganäs in Sweden.

The Höganäs factory generally produced stoneware tiles for the paper-mill industry. In the paper-mills the boiling water with the pulp is channelled through huge ducts lined with this type of stoneware tile. The ducts are then flushed with ice-cold water from the rivers. This extremely harsh treatment puts any material through a tough test, and it was therefore natural that the people who could produce tiles, able to survive this treatment, should be involved in the development of the tiles for the SOH.

The factory, after many trials, came up with tiles made according to a certain technique, where the raw tile is painted with a sauce or slick of the same material, is fired, and overlaid with a glossy, transparent glaze before it is fired the final time.









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This gave a surface, which had a beautiful lustre or sheen, a surface that would retain its visual qualities even when the tile became dirty. A normal ceramic tile with a normal glaze has a relatively dull surface, as if it is made from white cardboard, and when dirty it completely loses its lustre.

By sub-dividing the tile surface into glossy tile lids, with matte tiles at the edges, I achieved my aim, to have the structure expressing the architecture and vice-versa. You find a similar situation in Gothic Cathedrals, where the structure is also the architecture. The same is seen in Chinese and Islamic architecture, although with different expressions. The architecture with the ribs is much more expressive than if the shells had been cast in-situ, with the resulting flat unstructured surfaces.

This effect was also developed for the base or plateau, where we structured the ceiling above the audience in the access areas, in the foyer and in the concourse areas. It spans completely without columns, as I wanted an open area with a ceiling of structural ribs. These ribs shaped so they elegantly express the forces within the structure. They express the harmony in the structure.

This resulted in a building where all spans are clearly expressed by ribs and folds. So you have a house where all the large surfaces are easily read or comprehended because of the geometrical order, and in the roofs the large amount of white tiles sub-divided into segments, are like the structure of a leaf which, with its ribs and infill, have an organic beauty of its own.



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The concourse area needs more light, in order for the area to have a more welcoming ambience. It is relatively dark space, due to the materials used and primarily due to the contrasting harsh sunlight at the eastern and western sides. One way to remedy this is to raise the light level in the area artificially. Another way could be to white wash the concrete surfaces of the ceiling above the area. Whitewash can be cleaned off again, or applied in such a way that it does not camouflage the concrete texture. Trials in selected areas would be needed to establish the correct procedure.

The base or plateau was clad in concrete elements with an exposed granite aggregate, which gave the base a brownish sand-like colour, as it was not possible to have such large amounts of natural stone cut from the same quarry for the surfacing of the base.

These concrete/granite elements were produced as prefabricated elements after a full sized mock up had been made, with various openings presented so that everything could be checked before final decisions were made. This is again an example of the importance of the full sized mock up as a tool for determining the best solution for the building.

We arrived at the various solutions for corners, materials, details and colours, through a combination of drawings, models, samples and mock-ups, always trying to select the finest solutions for this building and for my client.



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The fact that the engineers and we were open to new possibilities, even though that meant rejecting the old solutions was instrumental in making this a noble and harmonious building with a very forceful architectural expression.

This happened at a time where the reigning functionalism had not yet yielded to the idea of giving buildings a more humane expression. This is explained by S.Gideon in a remark he has in one of his books. He explains that the right to express oneself is back in architecture with this building.

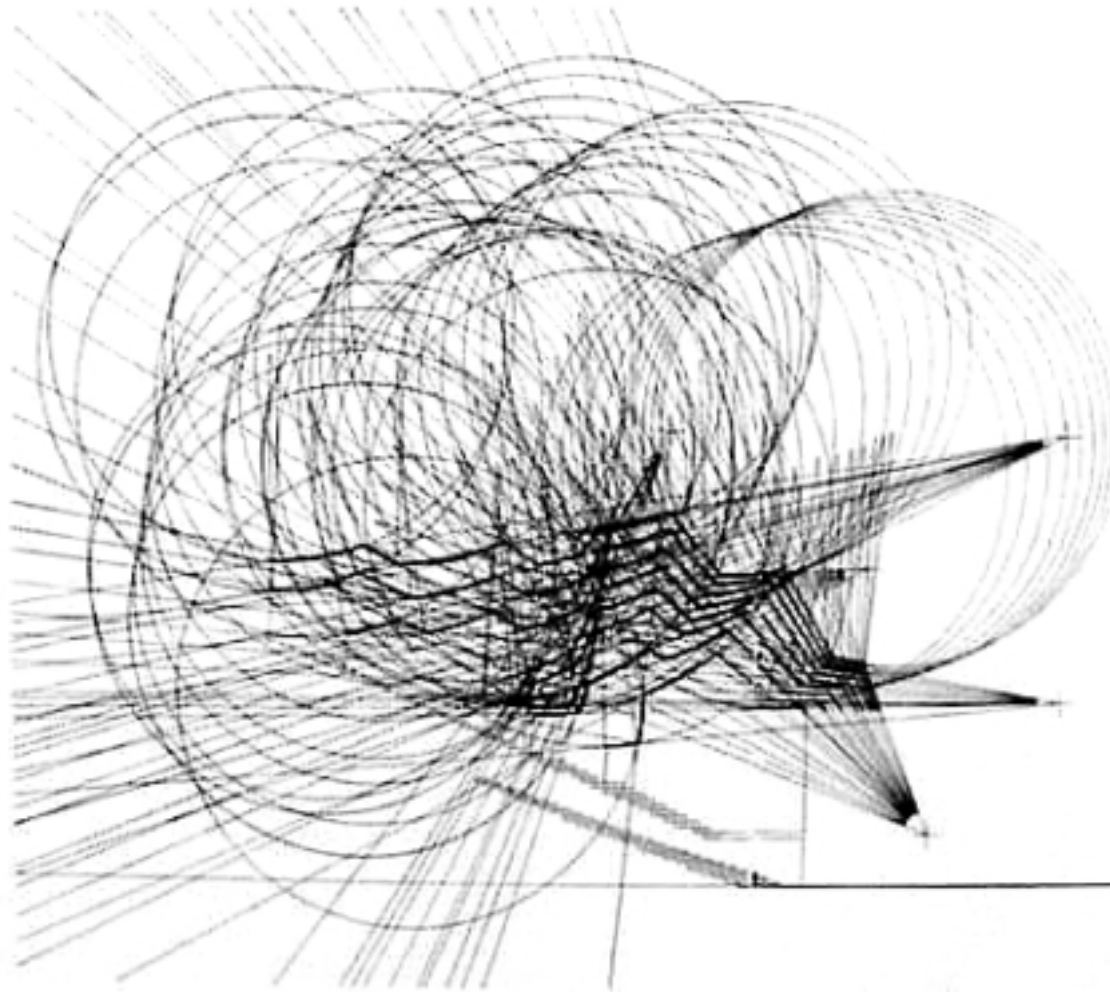
As in large cathedrals the Opera House is functional in the sense that people have a beautiful experience entering and walking up the stairs and entering the auditoria, while they are all the time oriented in the beautiful harbour and have the views of the spectacular Sydney Harbour setting.



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We had to commence building at a stage where the working drawings had not yet been completed or finalised, so construction began at the building site a long time before we had completed the drawings, and construction drawings were being produced just ahead of construction as the building grew.

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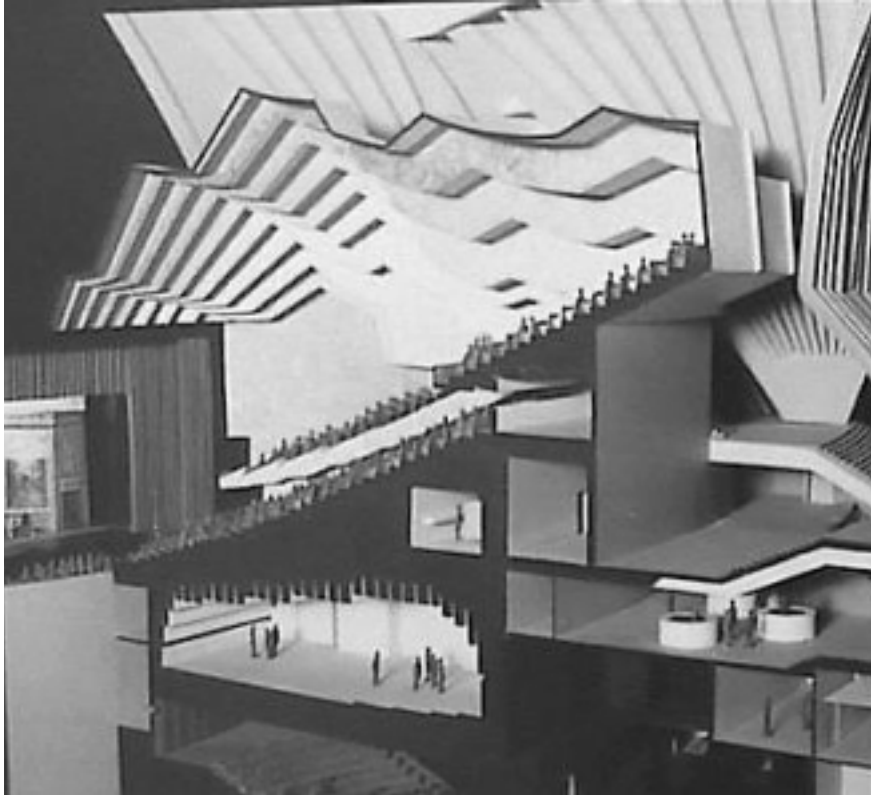
Regarding the acoustical properties for the halls, we started working on the acoustics in Europe with a Danish engineer - Jordon, and after that we tried an acoustic firm from Germany - Cremer and Gabler, who had already made more than 30 concert halls around the world, one of which was a famous hall in Berlin for Berlin's Philharmonic Orchestra.

They made models as had Jordon in scale 1 to 10 in their laboratory where they arrived at the shape which is the shape for the Sydney Opera House halls which was shown in a later scheme.

The acoustical shells were free of the covering roof - the shells. The halls acoustically had a shape that was oriented towards the stage. It was a large, plywood construction. We had arrived at a solution where we could rest all these convex slices on the underside of the acoustical shell, onto a frame around the proscenium opening, from which these acoustical members splayed out like a fan.

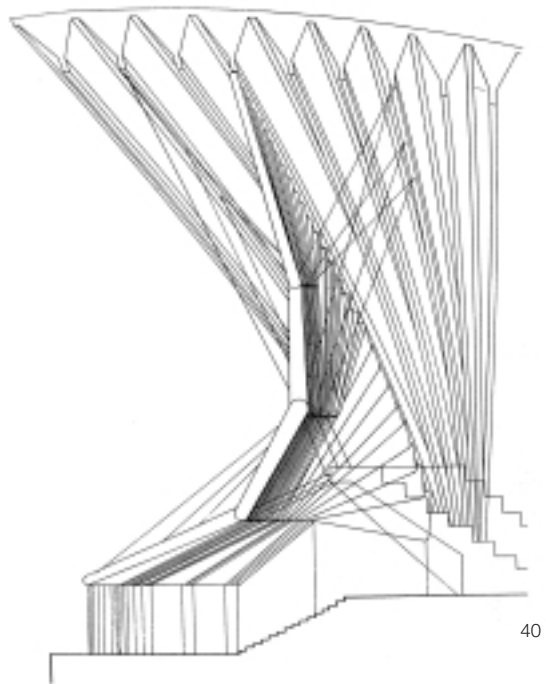
The acoustical shape was absolutely clear, both in sound and in the way that you would observe it as an audience. The smallest auditorium, minor hall, had been tested in a laboratory, and when I asked the acoustical experts if we should change the shape of the acoustical ceiling further they say "No, no don't do that because it is perfect, actually it is almost too perfect". The hall was in its way in the same evolutionary process along similar lines for the multipurpose hall used as a concert hall and an opera theatre.

Around this time the break came with a new government and a new Minister for Public Works and I was pushed aside as architect for the job. Luckily Ove Arup stayed on the job; otherwise it would never have been completed. But the two halls, as I had designed them, were scrapped by the new client and his architects. They had a new and different programme for the completion of the building, to the one I had been working on.



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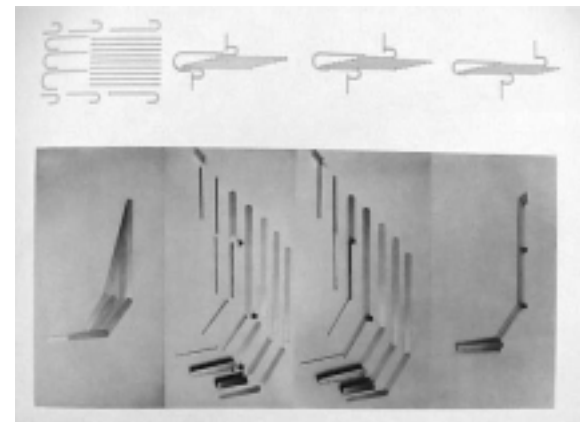
Another item that had taken considerable time was the glass walls enclosing the ends of the shells. We worked with ideas of various kinds as had Ove Arup's office. We worked for a long time with a solution where the mullions were plywood laminated with bronze but it turned out to be somewhat complicated.

At the last meeting I had with the engineer from Ove Arup's firm, Mick Lewis, I handed over the drawings for mullions made of twin pipes with a distance between them, which the sketches will show, which is somewhat similar to the solution which had been used. And upon seeing this Mick Lewis said, "Well now I can make the glass wall".

The glass wall, which has been built, is in family with the glass wall we arrived at with its feeling of its hanging from the shell, but the old solution was not playing it out, as it has been done.

According to our way of working, the glass panels were to be of equal size, facilitating production etc.

In both versions you have, as you walk around the foyer, the full unimpeded view of the Sydney Harbour. You get a fantastic feeling of openness of space after being inside the auditoria.



### **REBUILDING**

Recently there has been some talk about re-building and re-modelling the entire Sydney Opera House according to the plans I made then, back in the mid 1960s.

I really don't think it is a viable solution to remodel the whole building according to the old plans.

The Sydney Opera House has been built and it has been used in a certain way which satisfies the users and has satisfied the people of Sydney and a lot of people from abroad for many years, so it would not be correct to go back to the thoughts and ideas that were new in the early 1960's which were based on a different programme for the building.

It seems that most people love the building, and it is very difficult to imagine everything being changed, that the building should be closed down for a number of years, that work should go on at a construction site where nobody would be able to use the Opera House.

So I suggest that modifications can be made as the questions and needs arise - whenever somebody wants to remodel something, re-furnish areas you could look back at the ideas that were being developed, some of these might be viable today or at the time when the change is called for, and some of them have been outdated, because huge technological advances. So I really advise the future decision-makers to carefully contemplate all aspects of the intended modifications before changing the Opera House.

I understand from various statements that the Concert Hall has certain acoustical problems. But as it is an impressive auditorium, that the public is happy about, I suggest that an approach be made to an acoustical specialist who has made concert halls of a similar size and complexity with success. Because making an auditorium for 1200 people is not a very big problem as opposed to making one for 3000 people.

Ideally the person at the back row should have as good a sound reception and impression of what goes on the stage as the person sitting 10 rows back from the stage.

If the firm of Cremer and Gabler and their first man Nutsch are still in existence, I suggest that you approach these people as they were the acoustical experts on the Berlin Philharmonic Concert Hall, which has a similar layout as the concert hall in the Sydney Opera House, with a central stage, which was also the result of a request by the conductor Herbert von Karajan as he wanted to be seen from every side.

A part of the future considerations about the Opera House comes under the heading of general maintenance. This I feel is well documented in the report by the Minister of Public Works. But the inherent danger in large buildings, which have become popular, is that there is a tendency to want to fill too many functions and rooms into those buildings.

I have heard that the area below the stage of the major hall where elevators used to go has been turned into a studio stage/hall. This I find is a great idea because this can be seen as a necessary function in such a large cultural complex as the Sydney Opera House.

So in general I can say that I am very happy that so much with the Sydney Opera House has succeeded, and that the architects taking over the work after me, Hall, Todd & Littlemore, with the aid of Ove Arup's Company, has made the building function so well.

## **COLOURS**

In my project for the Sydney Opera House I had what you could call nature's colours on the exterior. That was the general idea - concrete, granite and ceramics. Within this landscape you had the halls that were to be richly decorated in festive colours but all this was in the developing stage and had not yet been finalised.

The geometry in the construction is such that when you paint the different parts in the colours shown in the drawings, it would be as beautiful as, for instance a large flag fluttering in the wind, where you see the pattern of the flag repeating itself in succession behind one another in a way that suggests a flag but you don't see it as a whole. Or you see it in various cross sections of nature's elements - if you cut across an onion you see the different layers - it's the colours which again leads your thoughts back to the complete item, in the same manner of expression where the elements that are decorated in a certain way when put together

give more richly varied surface structure than would have been if it had been a simple smooth surface throughout with a single flat colour.

The idea was to see a spectacular building as you arrive and as you enter the foyers you see additional colours. You also get a more intimate feeling. As you enter the Minor or Major hall this explodes into a very rich expression of colours, which uplift you in that festive mood, away from daily life, that you expect when you go to the theatre, a play, an opera or a concert.

So you have a culmination of space, of colours when you are at the meeting place between the performers and the audience. So going to the Opera House is a succession of visual and audio stimuli, which increase in intensity as you approach the building, as you enter and finally sit down in the halls, culminating with the performance.



The Minor Hall was programmed primarily for theatrical productions, which require a relatively dark or subdued colour scheme for the auditorium. In the spirit of the below illustration:

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### **HALL INTERIORS**

Ove Arup said at one stage “Why can’t the architect tolerate a steel construction instead of those hollow, plywood pipes for the acoustical ceiling”, and I responded, “I can accept to put the steel frames inside the hollow plywood tubes that make up the acoustical ceiling and thus satisfy the engineer’s requirement for strength. But we need to make full-scale models of parts of this structure to ensure that the proposed details and colours are correct.

**The Major Hall was to be used for Grand Opera and concerts, with an optimistic, light colour scheme, in the spirit of the illustration at right:**





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### **FURNITURE**

Everything about furniture, details and so on will only be briefly touched upon, because we had not yet reached the stage where we had begun to go into detail with this.

We made the working drawings just ahead of the actual construction going on at the building site so therefore development was not very far ahead of what was actually going on at the site at any one time.

This of course is not the best way to do things but on the other hand, if the decision back in the late 1950s had been that the project should have been completed entirely and then sent out for tender, then the Opera House would not have existed today. So it is thanks to the political foresight of Joseph Cahill that the building was commenced on the loose grounds it was, and that Sydney has this useful landmark today.

The reason for the time it took to develop all these things around the Opera House was that everything was so totally different from what had been seen before: everything had to be developed more or less from scratch. We could not just put bits and pieces together from a catalogue.



When you build a building like the Opera House it is like an oil painting by one of the Masters where every time you add a brush stroke it should enhance the total painting, as soon as you put something wrong in this painting, a wrong colour, a wrong shape, then the total image is of a lesser value than it would have been if the same artist had been allowed to complete the picture.

A change happened in government. Of course this was something which was bound to happen sooner or later. Unfortunately my contract with the Opera House Committee was stopped, or was not renewed. I did not have the contract with the Minister of Public Works, but with the Opera House Committee, and this contract the new Minister of Public Works did not want to renew or take over.

The Minister didn't want to use the Committee or the Committee's great expertise built up over the years in developing the Opera House. The committee was the creative force behind the Opera House.

For me as the architect and for the engineers, the Opera House committee with Mr. Haviland as chairman together with the Minister of Public Works, Mr. Ryan, was the most stimulating and patient Client I have ever had.

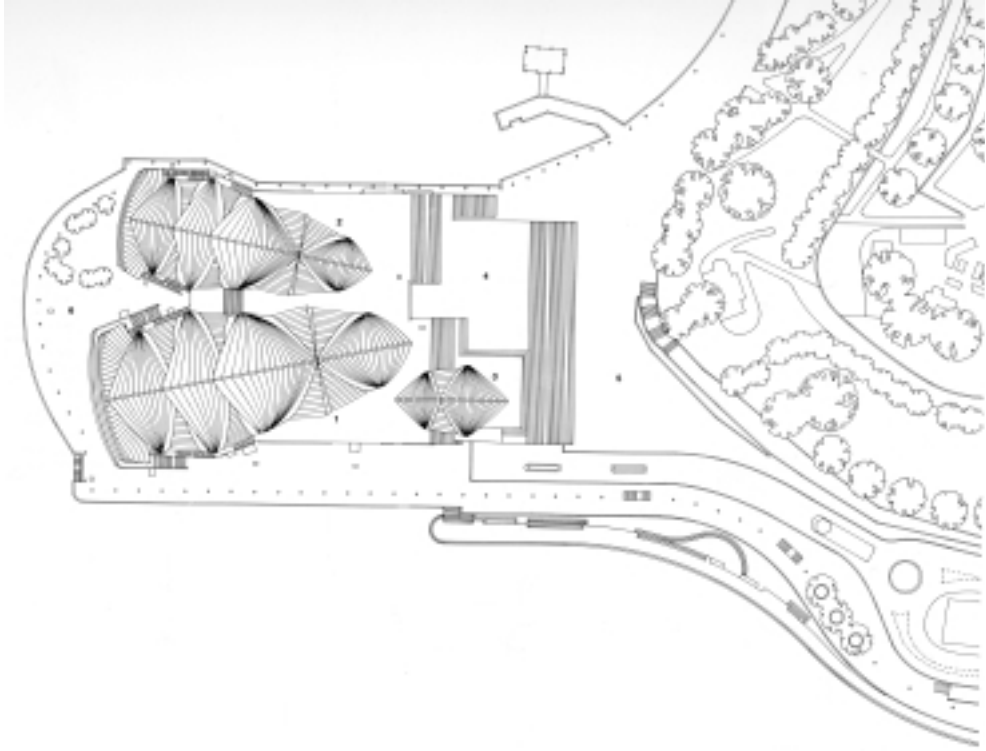
Everyone was working hard to fulfil the wish of Premier Cahill, to give a marvellous cultural centre to the citizens of Sydney.

Concerning the remodelling and maintenance of the Opera House I feel there are a number of people who have known and followed this building throughout its existence. I think it would be a good idea to place in the hands of these people and their companies the maintenance and the possible renovations, as they know the Opera House intimately through their work on the building.

These people could be used as consultants before decisions are made. Another idea was that they could come forward and tell what could be problems arising from doing this and that when you want to do something to the Opera House. Usually things that are constructed have some sort of logical history and when you know that it is easier to take the right decisions at any one time. And in this respect, Arups office is of course of key importance as they know where things are, what parts of the building can take certain loads, what has been hung in different places, the way the walls, materials etc, which are important for the total structure of the house, have been constructed and applied.

This should all be coordinated with Richard Johnson as the coordinating architect.

The Opera House today is of course not my or our building, it is as much a building made by Hall, Todd & Littlemore and it is not something which we can add on or patch up by doing this and that.



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As the present conductor of the Opera House has said the acoustics of the concert hall was very fine at the time it was built. The Sydney Symphony Orchestra came from the Town Hall to the Opera House which of course was much better but since then the Orchestra has had an opportunity to play in various great halls around the world and have seen and heard that there are possibly other and better solutions for creating a better acoustical surrounding, also for the Opera House. So what was good back in the 60's was okay then, but as people develop and as music develops, as our perception of music and place develops, our demands become higher and this development will probably in the future change a lot of features of the Opera House simply because you need to adjust to instruments, as such.

With the words of the acoustical engineer, Cramer, I would like to say that the ideal concert hall is a hall which is shaped in such a way that you do not have to adjust the sound with absorbents. By doing so you kill off some of the sound energy, whereas if you retain the brilliance you have much more sound energy travelling to the audience.

So rather than changing the acoustics by absorbing certain unwanted sounds or frequencies, it is better to adjust the physical shape of the hall in such a way that you achieve the perfect acoustical properties. It is like a violin - it has its shape because of its long evolution and it has attained that shape, through evolution toward perfection. It has not changed very much in the past couple of hundred years because it has reached the capacity or the best possible solution for this particular instrument at a certain stage in its development.

Another matter, the conservation report from the Minister of Public Works on the Opera House is very good because it goes into great detail about how to treat the Opera House from electric lights switches, to handles, to treatments of different surfaces (how to clean them etc.) and it is necessary as part of the whole picture, to contemplate all of these things. I had a letter from a person in Australia who said he was amazed and that he had never before seen a building 25 years old which was maintained so well. This was very nice for me to hear.

### **THE SPACE WITHIN**

One thing is important to remember, the Opera House, like any other building, is like a bottle - you can fill it with so much water but you cannot fill more water into the bottle than the space within.

So it is not a good idea to try and fit more rooms inside the building. If more space is needed, it should not be squeezed into some of the open spaces in the building or below the building, but the functions should be moved somewhere else in the city. I'm sure that there are many functions today, which, with the modern technological equipment that we have, might just as easily be placed elsewhere.

For instance many of the theatres and performance houses around Europe and the United States have outgrown their envelope and they have taken the consequences of this, and hired or built facilities elsewhere.

For instance for stage equipment, for all the lighting, for storage, for the workshops for rehearsal rooms and what have you, such arrangements can be found everywhere in the world, and I think, especially for the Opera House, it would be very bad for the house, and subsequently for the area around the Opera House, if it was decided to fill too many functions into the house, more functions that it can hold.

It might still be possible to locate functions underground, under the eastern part of the Forecourt. At the time of the construction of the Opera House, a large stormwater drain was encountered under what was to become the plateau for the building. This drain then had a purpose, and might still be in use, and could pose an obstacle to further expansion underground.

For the purpose of defining the area(s) to be modified in and around the building, it is necessary to relate to drawings. The drawings should represent the existing layout and situation, in plans, sections and elevations.

Some reference may be made to the drawings from the original scheme (Utzon).



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Exterior photographs can be used to illustrate ideas about signage and lighting etc.

This Design Brief does not present a number of solutions to specific design questions; these will be developed at a later stage, but tries to give the reader an idea of the architects work and working method, in creating the drawings and documents necessary for building the unique and complex structure of the Sydney Opera House.

Perhaps the Design Brief could be left 'open', in such a way that ideas and items from the past and present can be added over a number of years, as long as I can continue to work with this wonderful project in Sydney.

Jørn Utzon





# 02 THE FUTURE

## 2.1 APPROACH

The approach of Jørn Utzon to change of the Sydney Opera House is clearly stated in his letter to the chair of the Sydney Opera House Trust dated 19 August 2000.

**Dear Mr Skryznski**

**“As the architect of the Sydney Opera House, as the creative force behind its character, I sincerely believe that a large multipurpose structure such as this building, in time will undergo many natural changes.**

**The ideas as they were developed in the sixties, evolved as the result of the needs and technique at the time.**

**As time passes and needs change, it is natural to modify the building to suit the needs and technique of the day.**

**The changes, however, should be such that the original character of the building is maintained.**

**That is to say, I certainly condone changes to the Sydney Opera House. Both changes due to general maintenance and changes done due to functional changes.**

**Had I completed the Sydney Opera House as the architect in charge, the building would have developed and changed with the time ever since.**

**I am certainly happy to have been asked to be a consultant to this development. I hope that my role and involvement can be a guidance to the decision makers at the Sydney Opera House, in such a way that the maintenance, the alterations and the development can take place in such a manner that my presence in the team will assure that the character of the Sydney Opera House is emphasised.”**

**Sincerely yours,  
Jørn Utzon**

## 2.2 PRINCIPLES

The following quotations by Jørn Utzon establish a clear set of principles for managing the future of the Sydney Opera House.

These quotations have generally been drawn from part one of this document or from private transcripts of recent discussions with Jørn Utzon.

His comments are made in the context of his understanding of the House and its current and future needs.

### **Keep the approach, the openness and fluidity of movement**

**“One of the great features of the Opera House is the approach, the openness, the fluidity of people’s movements through the house, and once you clutter this you have a problem.” (1)**

### **New structures close to Sydney Opera House diminish its role as icon/ landmark**

**“One adverse effect could be from placing large new structures closer and closer to the Opera House, thereby diminishing its value as an icon for Sydney and Australia.” (2)**

**“If you clutter the new spaces around such a significant building then you obscure the building, and can obscure it to an extent that it no longer retains its value in the city or its character... it will lose its importance as an icon or as a landmark for the city.” (1)**

**New structures placed close to the Sydney Opera House will diminish its value as an icon by disturbing its chief characteristics of being free in the centre of Sydney Harbour. (1)**

### **Need to take a long-term view**

**There is a need to take a long-term view of important sites. (1)**

**Forecourt should not be cluttered**

“Forecourt should not be cluttered with new buildings at any size.” (1)

**Accommodate new approach and back of house for events under Forecourt**

“It might still be possible to locate functions underground under the eastern part of the forecourt.” (2)

“If needed some functions could be sunk below the forecourt level, in such a way as to be accessible from the forecourt, but without disturbing the visual impact of the original layout.” (1)

“...an approach from the underground parking in the Botanical Garden could emerge via an opening in or near the Tarpian wall. Facilities like dressing rooms or rooms for temporary catering for activities in the forecourt could be placed under the forecourt surface

Access from carpark through a hole in the forecourt. Space could accommodate back of house and storage for outdoor events. (4)

**Solidity of base is important**

“If you open the sides of the base to create day-light... then suddenly the base becomes an office building, and that will reduce drastically the dramatic expression of the Opera House.” (1)

**Danger in too many functions - building has limited size**

“But the inherent danger in large buildings, which have become popular, is that there is a tendency to want to fill too many functions and rooms into those buildings.” (2)

“It is not a good idea to fit more rooms inside the building... more functions than it can hold.” (2)

**Relocate non-essential functions**

“If more space is needed, I'm sure that there are many functions today, which with the modern technological equipment that we have, might just as easily be placed elsewhere.” (2)

**Concourse was intended as foyer**

The idea of the drop-off was that it was a foyer “you could increase the overall lighting.” (4)

Under cover car drop-off is important and should be kept. (4)

**Future treatment of finishes**

Refers to folded concrete beams of concourse:

“Some form of treatment of these surfaces as a whole or in parts will be necessary to conceal the defects and bring it up to a uniform and acceptable standard.” (3)

**Conservation Plan supported**

**The Conservation Plan:**

“Is very good because it goes into great detail about how to treat the Opera House from electric lights switches, to handles to treatments of different surfaces and it is necessary as part of the whole picture to contemplate all of these things.

**Look back to past - some ideas might be viable, some outdated**

“Whenever somebody wants to remodel something, re-furnish areas you could look back at the ideas that were being developed, some of these might be viable today or at the time when the change is called for and some of them have been outdated by the time that has gone by as the evolution results in high technological advances.” (2)

Refers to furniture designed for Sydney Opera House:

“I must say we can now look at it with other eyes and it might be possible that we can use some of these systems.” (4)

**Care needed before change**

“So I really advise the future decision-makers to carefully contemplate all aspects of the intended modifications before changing the Opera House as such.” (2)

**Need to adjust to changing standards**

“So what was good back in the 60’s was okay then, but as people develop and as music develops, as our perception of music and place develops, our demands become higher and this development will probably in the future change a lot of features of the Opera House simply because you need to adjust to instruments, as such. (2)

**Local history important**

“Usually things that are constructed have some sort of logical history and when this is known it is easier to take the right decisions at any one time.” (2)

**People with knowledge of the building important**

“Concerning - the remodelling and maintenance of the Opera House. I feel there are a number of people who have known and followed this building throughout its existence. I think it would be a good idea to place in the hands of these people and their companies the maintenance and the possible renovations, as they know the Opera House intimately through their work on the building. (2)

“Arups office is of course of key importance as they know where things are, what parts of the building can take certain loads, what has been hung in different places, the way the walls, materials etc, which are important for the total structure of the house have been constructed and applied. (2)

**Difficult to imagine everything being changed**

“It seems that most people love the building, and it is very difficult to imagine everything being changed, that the building should be closed down for a number of years, that work should go on at a construction site where nobody would be able to use the Opera House.” (2)

**Modifications made progressively**

“I suggest that modifications can be made as the questions and needs arise.” (2)

**Can't go back to ideas of 1960s - based on different brief**

“It would not be correct to go back to the thoughts and ideas that were new in the early 1960's which were based on a different programme for the building.” (2)

**Not viable to re-model whole building according to old plans**

“I really don't think it is a viable solution to re-model the whole building according to the old plans.” (2)

**Consider long-term costs**

Refers to original edge tile detail not executed:

“This is an example of the misunderstood idea of saving and then finding out afterwards that it is a costing a lot of money in the long run”

**Quotation references**

1. Jørn Utzon, 'Sydney Opera House, The Setting' 5 May 2000
2. Jørn Utzon, 'Sydney Opera House' 4 June 2000
3. Jørn Utzon, 'Descriptive Narrative, Sydney Opera House' January 1965
4. Jørn Utzon, Jan Utzon and Richard Johnson, 'Private Records of Discussion' Mallorca, April, October & November 1999





# 03 DESIGN PRINCIPLES

## 3.1 OBJECTIVES

The production of a definitive statement of the fundamental principles underlying the design by the original architect achieve the following objectives.

- a) It is a permanent reference for the conservation of the building and will be incorporated into the conservation plan.
- b) As part of the conservation plan it will be used to manage any proposals for change.

All proposals will be reviewed in the context of their impact on the design principles and the conservation plan.

c) It will be used to clarify original design intent particularly in the context of the many publications, and comments by those who are not authorised to speak on behalf of the original architect.

d) It will be a prime document to influence planning controls for the precinct, to preserve views, vistas, and approaches, and provide for future long-term improvements to the setting.

## 3.2 FUNDAMENTAL PRINCIPLES

There are two principles that are fundamental to the architecture of Jørn Utzon and set him dramatically apart from most of his contemporaries.

He draws inspiration from nature for organic form and creates an architecture that is predominantly experiential in character.

The following quotations drawn predominantly from part one of this document and from private transcripts of recent discussions elegantly illustrate these fundamentals.

## INSPIRATION FROM NATURE

### Organic Beauty

“and in the roofs the large amount of white tiles sub-divided into segments, are like the structure of a leaf which, with its ribs and infill, have an organic beauty of it's own.” (2)

### Naval charts and headlands

“Another inspiration I got from seeing the naval charts over Sydney, on which were shown the sandstone heads at the entrance to Sydney Harbour. These heads slope upward towards the gap, where they drop abruptly to the sea.” (2)

### Nature's colours

“I had what you would call nature's colours on the exterior. That was the general idea - concrete, granite and ceramics.” (2)

### Reflection of sunlight

“The citation from the American architect Louis Kahn: “the sun did not know how beautiful it's light was, until it was reflected off this building.” (2)

### Hall like cloud in sky

“The overall shape of the hall, a free form hanging like a cloud in the sky.” (3)

### Glass wall ribs like bird's wings

“Approaching one will notice the bronze covered vertical plywood mullions hanging as the folds of a birds wing.” (3)

### Cross-section of nature's elements

“The geometry in the construction is such that when you paint the different parts in the colours shown in the drawings, it would be as beautiful as... you see it in various cross sections of nature's elements-if you cut across an onion you see the different layers.” (2)

### Early morning and sunset colour

“I had a marvellous painter friend and he saw the morning sun, every morning and the evening sun at sunset. These moments are short and in the openings of my mind, I thought in a different way than daily colour.” (3)

## HUMAN EXPERIENCE

### Emotional response, functionalism and human expression

“This happened at a time when the reigning functionalism had not yet yielded to the idea of giving buildings a more humane expression.” (2)

### Objective is to bring joy

“The architects’ gift to society is to bring the people a big joy from the surroundings that architects create.” (1)

### Beautiful experience/oriented in Harbour

“...People have a beautiful experience entering and walking up the stairs and entering the auditoria, while they are all the time oriented in the beautiful harbour and have the views of the spectacular Sydney Harbour setting.” (2)

### Succession of visual and audio stimuli, culminating with performance

“So going to the Opera House is a succession of visual and audio stimuli, which increase in intensity as you approach the building, as you enter and finally sit down in the halls, culminating with the performance.” (2)

### Being in another world

“The large staircase at the Sydney Opera House was made 100 metres wide and the plateau on top became a very important feature for the feeling of being in another world.” (2)

“I also have had so many reactions the moment I put a foot on a staircase with steps a hundred metres wide something happens to you, something like climbing a mountain.” (4)

“This feeling of moving upwards was a determining factor in the shaping of the large platform.” (2)

“The patrons will receive on their way to the theatre halls an impression of restful and dignified surroundings with a generous spacious layout.” (3)

Concourse area should have a welcoming ambience with more light and reduced glare.

### Consideration of details like doors

“So if you open that butterfly door it opens, much faster than this door, it’s closed but halfway, and then you open it, giving you a feeling of easier access.” (4)

“I am going to make a building, here you came in and up the staircase, you are in a darkened room but the staircase is obvious for the staircase is well lit...a period passes and you came up and in front of you, you see a big tapestry by le Corbusier.” (4)

### Festive mood

“As you enter the Minor or Major hall this explodes into a very rich expression of colours, which uplift you in that festive mood, away from daily life, that you expect when you go to the theatre, a play, an opera or a concert.” (2)

#### **Feeling detached from the city**

“During intermission you remain around the auditorium and can retain the feeling of being in another world.” (2)

“After the performance the bars and lounges will present for the patrons a second opportunity to enjoy these views and will underline their feeling of being detached from the city in a world of its own.” (3)

“As we move through the glass doors and arrive at the foyer, we are introduced to the back wall of the stage, reminding us of the purpose of our visit.” (3) 1

#### **Ornamental curtain**

The ornamental curtain for the Minor hall visible from the foyer will enable the patron “during the approach to get the feeling of what they will find inside.” (3)

At the cloak room level there is access for the performers.

#### **Patrons/performers meeting**

“Unlike the normal theatre, where one literally goes to the back door for social intercourse, the patrons and performers can mingle together in the cloakroom area.” (3)

#### **Role of colour optimistic**

“When we meet for performance when we are together to be moved, in our minds and in our soul and experience what comes into our minds. Colours would support that.” (4)

“The idea was to see a spectacular building as you arrive and as you enter the foyers you see additional colours. You also get a more intimate feeling.” (2)

“To give life to the skin and hair on the human form in much the same way as the light from candles.” (3) 67

Lights in the W.C.'s and basin areas

“Give a uniform indirect light to the rooms which can be dimmed just before the curtain goes up in the theatre.” (3)

#### **Neutral and restful atmosphere**

“The materials internally will serve to underline the ideas in the planning ...and these surroundings will give a neutral and restful atmosphere for the patrons as well as for the people working in the building.” (3)

“The halls will form another world-a make believe atmosphere, which will exclude all outside impressions and allow the patrons to be absorbed into the theatre mood.” (3)

“The Major hall was to be used for Grand Opera and concerts with an optimistic, light colour scheme.” (2)

# 3.3 SYDNEY OPERA HOUSE DESIGN PRINCIPLES

Within the broad framework of drawing inspiration from nature and seeking an architecture that is experiential in character, a set of design principles specific to the Sydney Opera House can be identified.

The following principles are described in quotations by Utzon and illustrated where appropriate.

## **THE BUILDING AS SYMBOL**

## **THE BUILDING AS SCULPTURE**

## **FORM AND FUNCTION**

## **ORIENTATION AND MOVEMENT**

## **COUNTERPOINT**

## **ADDITIVE ARCHITECTURE**

- **ELEMENTS**
- **PRE-FABRICATION**
- **GEOMETRY**

## **STRUCTURAL EXPRESSION**

## **MATERIALS**

## **COLOUR**

## **LIGHT**

## **ACOUSTICS**



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## THE BUILDING AS SYMBOL

### Cultural symbol

“Everyone was working hard to fulfil the wish of Premier Cahill to give a marvellous cultural centre to the citizens of Sydney.” (2)

“The conception and the design of the Sydney Opera House is based on... the desire to create a building which will form a home for those activities essential to the cultural life of a big city.” (3)

### Symbol of the Australian Spirit

“The Australian spirit is actually mirrored in their creation of the Sydney Opera House: this could not have taken place anywhere else in the world. It is the drive behind the ‘We want to do things our own way’. (1)

“The people of Sydney have made the Opera House a signature for Sydney, which you see everywhere in the world in different editions...

...but nobody is ever in any doubt that this means Sydney and this means Australia.” (1) “In my opinion, a situation such as this, where a new building is having a great impact on a city is a very rare thing.” (1)

### Inspiration to artists

“When completed, the Sydney Opera House will serve as a home for the cultural activities of the city and will inspire artists and technicians to present to the public the highest quality performance for many years to come.” (3)

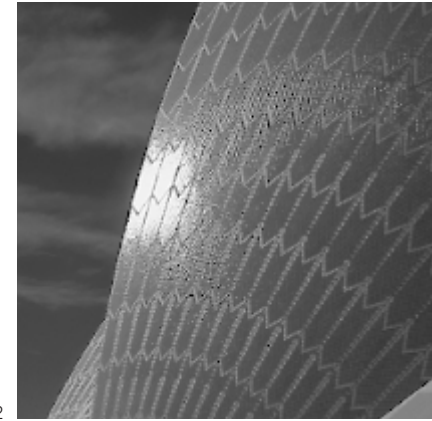




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## THE BUILDING AS SCULPTURE

**Iconic presence being  
free in Sydney Harbour**

“The character which is most prominent about the Opera House is it’s being free in the centre of the Sydney Harbour, free from all sides, visible from all sides.” (1)

“Helsingør and Sydney are in the same situation where you have a distance between the city centre and the landmark building.” (1)

“...I happened to live near the castle of Kronborg, situated in a similar position with similar surrounding between two coasts of Denmark and Sweden.” (2)

**Large sculptural building seen from all  
sides**

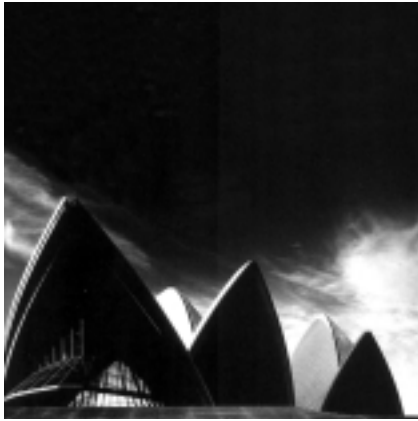
“With Kronborg in mind I was convinced that a new building in such a position as to be seen from all sides, had to be a large sculptural building.” (2)

**Sculpture in contrast to surrounding  
buildings**

“The position on a peninsula, which is overlooked from all angles makes it important to maintain an all-round elevation...the building must form a free-standing sculpture in contrast to the square buildings surrounding it.” (3)

**Sculpture captures and mirrors the sky**

“It is important that such a large white sculpture in the harbour setting catches and mirrors the sky with all its varied lights, dawn to dusk, day to day, throughout the year.” (2)



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#### **Sculpture of dynamic forms**

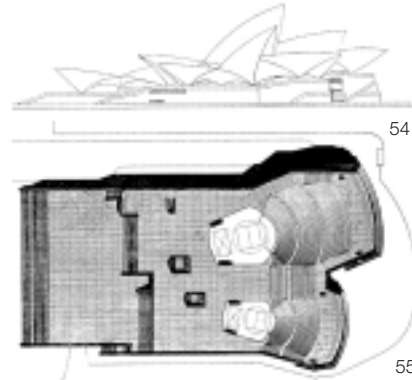
“In this way very sculptural shapes were arranged side by side, so one gets a varied picture of the complex, according to which way you move around in or around the structure.” (2)

“The patron or tourist will see the shells from below as an expanse of curved wall changing constantly.” (3)

#### **Experiences**

Referring to ascending the staircase:

“Then you see only the tops of the shells you look into the sky then you come up, and more and more you read the shells and it’s a very beautiful thing you don’t have skyscrapers on the other side.” (4)



## FORM AND FUNCTION

### Functional concept of base and shells

“The separation between the two components (base and shells) is also dictated by the functional conception.” (3)

“The mechanical parts of the theatre and the patrons areas, where they can move about freely without any stage interfering with or even being aware of the existence of the other part.”

“Within its mass (the plateau), could house all the facilities for preparing the performances with stage sets etc.”

“The audience and the performance itself, all taking place on top of the plateau.” (2)

### Possibilities for all types of cultural performances

“The Sydney Opera House with its three theatre stages offers a possibility for all levels of cultural performances. There are only a few houses in the whole world which are similarly designed.” (3)

### Plateau 12 metres to House stage set

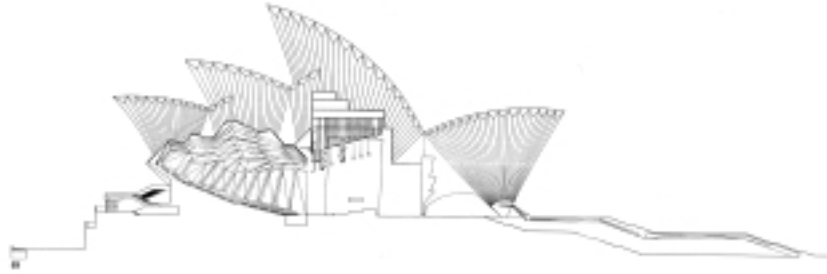
“The plateau was made 12 metres high so it was possible to have the full stage height below the stage-level, for arranging the sets prior to their being sent to the stage.” (2)

### Plateau functions as meeting place and auditorium

“This plateau also functions as a gathering place, a town square and outdoor auditorium.” (2)

“Another source of inspiration I got from an early visit to the Yucatan Peninsula in Mexico.

When they build their temples, there are often placed on large platforms with wide stairs leading to the top of the jungle canopy.” (2)



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**Shell follows height of various functions**

“The foyer, the auditoria, the stages and stage towers were solved by covering these functions with large concrete shells, which follow the height of the various functions.” (2)

**Acoustic shape determined by sound and how audience would see it**

“The acoustical shape was absolutely clear, both in sound and in the way that you would observe it as an audience.”

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## ORIENTATION AND MOVEMENT

### Oriented in harbour setting

“People approaching, walking up the stairs and entering the auditoria are all the time oriented in the beautiful harbour.” (1)

### Simple, easily understood tour

“In the Sydney Opera House you are aware of your orientation at all times. It is important that each member of the audience has a simple, easily understood tour, from the entrance to his or her seat and out again.” (2)10

“All problems regarding fire and fire staircases are solved in a similar comprehensive manner.” (2)

### Entrances face city

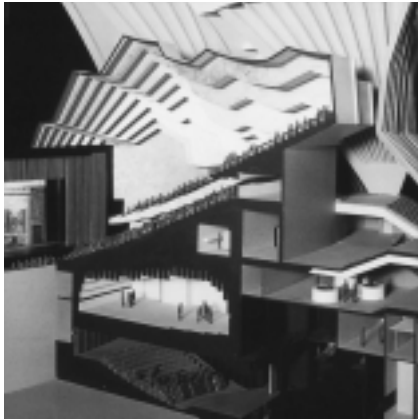
“Two halls, placed side by side, to avoid the necessity of passing one hall to get to the other. Both entrances are facing Macquarie Street and the city.” (2), (3)

### Outdoor auditoria with city backdrop

“This outdoor auditorium created by the grand staircase is of course part of the townscape and is also very dependent upon what goes on elsewhere in the city. Because as you sit on these stairs you look towards the city, and you have the city and its buildings as a background to whatever happens on the forecourt.” (1)

### Ornamental curtain defines separation of stage and auditorium

“For the Minor Hall, the ornamental curtain for the stage is rolled vertically in a large glass cylinder, which can be seen from the foyer. This way the patrons will be able to actually see the separation between the stage and the auditorium.” (3)



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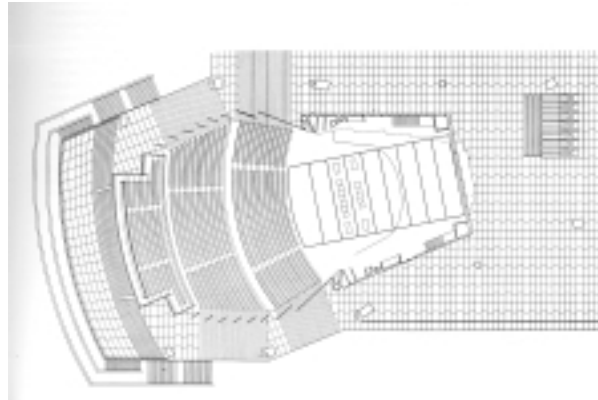
#### Hall shape oriented to stage

“The halls acoustically had a shape that was oriented towards the stage.” (2)

“The layout of the halls consists of a series of radial sections all fanning out from a focal point in the stage area.” (3)

#### Approach, openness, fluidity of peoples’ movement

“One of the great features of the Opera House is the approach, the openness, the fluidity of people’s movement through the house.” (1)



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#### Succession of visual and audio stimuli

“So going to the Opera House is a succession of visual and audio stimuli, which increase in intensity as you approach the building, as you enter and finally sit down in the halls, culminating with the performance.” (2)

#### Podium headland influence

Referring to Sydney Sandstone headlands:

“Where you walk uphill as you approach the sea to the edge of an escarpment falling away to the beach and sea below. As you approach the edge you look up into the empty sky, and only at the very last moment are you able to get a magnificent view of the sea.” (2)

#### Human experience

“As in large cathedrals the Opera House is functional in the sense that people have a beautiful experience entering and walking up the stairs and entering the auditoria.” (2)

#### Imaginary tour

“In order to fully appreciate the outside appearance of the building as well as the materials and the reasons for selecting them, it is proposed to undertake an imaginary tour around the structure as completed.” (3)

#### **Walk in open up to entering auditoria**

“The ideal way of approach and exit would be by ferry.” (3)

“For patrons arriving on foot, it is possible to walk in the open right up to the moment they will enter the foyers of the Auditoria.” (3)

“It is very important that the audience does not enter and walk through the building along dark corridors to a dark hall.” (2)

“We now pass beyond the back stage wall around the stage proper and up flights of stairs to the Major Hall and to filter back into the hall itself.” (3)

#### **Spacious car access**

“For those arriving by car, there will be a spacious area under the concourse with 6 driving lanes. The patrons will be discharged on to the curb under cover to the 4-stair access leading into the building.” (3)

#### **Disabled access**

“For patrons unable to walk, there will be provided special elevators to take them direct to the auditorium level in the vicinity of the seating.” (3)

“A total of ten lifts will service the Opera House, each lift being carefully located for a specific purpose. Lift No.1 with landings at the 12', 30' and 42' levels has a primary function of transporting disabled persons from ground floor level to the auditorium level. (Major Hall).” (3)

“Lift No.2 in the stage area (Minor Hall) has the primary function of carrying a total of 16 disabled persons from ground level to auditorium level with one intermediate stop.” (3)

#### **Flow of corridors reflect movement**

“Aesthetically we get the flow of the corridors reflected in the rhythm of the movement of the elements.” (3)

“Here again, we see the architects philosophy and if humans circulate around a building through corridors, so also your services do the same thing, and instead of making a door access from a corridor to a room for humans only and a separate hole pierced in a wall for access of services. The door is extended above the functional height for humans to accommodate the services.” (3)



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## COUNTERPOINT

### Building and surroundings

“It is the interplay between the building and its surroundings... that is important.” (1)

### Contrast white with brick and tile structures

“Keep it white”, because the Harbour (surrounding buildings) is dark, with all its dark, red or brown brick structures.” (2)

### Sculpture and square buildings

“The building must form a free-standing sculpture in contrast to the square buildings surrounding it.” (3)

### Plateau and shells

Counterpoint between the plateau and the roof is strong. The heavy mass of the plateau and the light sculptural roof. (2)

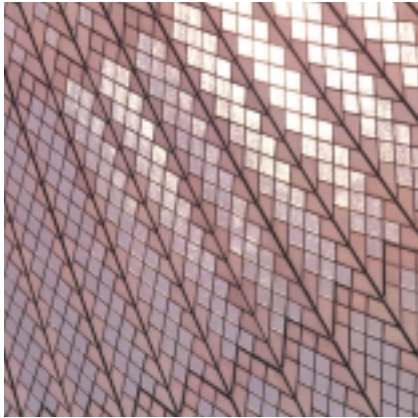
### Heavy and light

“The difference in character of the two components forming the building, the massive and imposing base, and the light and graceful shells on top of it...” (3)

### Referring to the paving:

“...its uniformity with the cladding will help to give the rock-like character desired for the base, as a contrast and anchor to the soaring roofs.” (3)





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#### **Matt and gloss**

The precast granite elements are needle hammered to give a slightly matt surface in contrast with the shiny roof tiles. (3)

#### **Neutral and rich colours**

Exterior colours were nature's colours. Within this landscape you had the halls which were to be richly decorated in festive colours. (2)

#### **Open and closed**

"As you walk around the foyer you have the full unimpeded view of the Sydney Harbour. You get a fantastic feeling of openness and space after being inside the auditoria. (2)

#### **Exterior shells and acoustic shells**

"The acoustic shells were free of the covering roof - the shells." (2)

#### **Dark and light**

"Minor Hall was programmed for theatrical productions which require a relatively dark or subdued colour scheme and the Major Hall was to be used for Grand Opera and concerts with an optimistic, lighter colour scheme." (2)

"The theatre darker and warm the concert hall more cold and light plywood." (4)

#### **Outside and inside**

"Each rehearsal room is treated in the same way as the hall, that is, we have the structure withholding the outside elements and inside we have a complete box to retain the sounds produced internally." (3)

#### **Building and furniture**

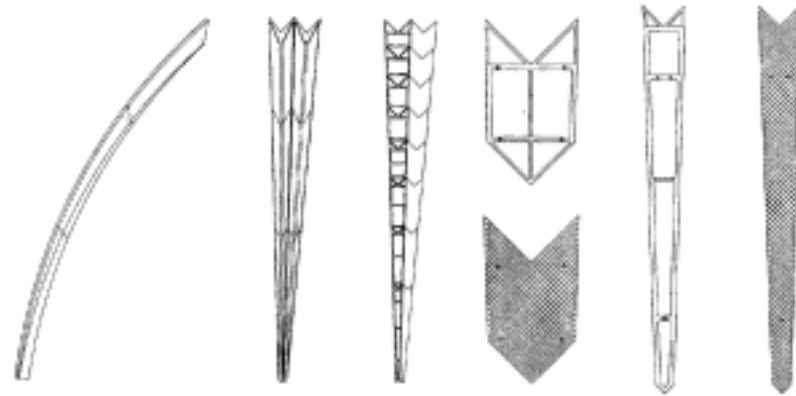
Referring to plywood panels surround the whole of the stage tower:

"This emphasises the stage tower as being part of the machinery a piece of furniture placed under the shell." (3)

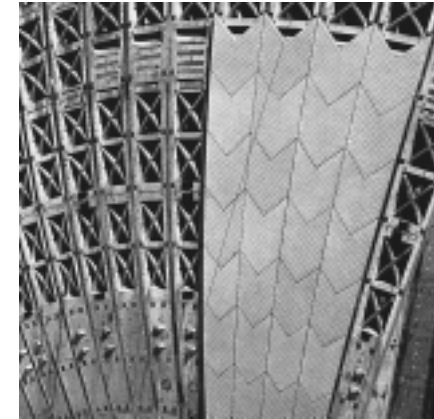
#### **Concrete and ply**

"The walls will show the concrete as it was constructed, contrasting with the moulded plywood panels which form the components of the furniture and fixings." (3)

"The cubicles themselves for coats and toilets are made of moulded plywood panels in contrast to the impression of severity left by the structure." (3)



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## ADDITIVE ARCHITECTURE - ELEMENTS

### Expression of elements, produced industrially

"The exteriors of the building stand as an expression for something basic in the concept - the idea of dividing the various parts up into equal components, which can be produced industrially and afterwards put together to form a structure of the desired form." (3)

### Shells sub-divided into ribs

#### Referring to spherical geometry:

"Now the shells could be sub-divided into ribs, which again could be divided into smaller elements, which could be cast within formwork representing the largest rib-entity." (2)

### More richly varied

"Where the elements that are decorated in a certain way when put together give much more richly varied surface structure than would be if it had been a simple smooth surface." (2)

### Reference to nature

"Or you see it in various cross sections of nature's elements - if you cut across an onion you see the different layers." (2)

### Geometry

"The wall cladding elements are nominally 4' wide and of varying lengths to 30'... over doors, windows and ventilation openings, there are special elements forming hoods for sun and weather protection. There are other variations of the basic element type forming sills, jambs, parapets, and stair balustrades." (3)

**Same form - harmony and uniformity**

“These dimensions are important... kept the same throughout all plywood elements used in the buildings, giving the necessary uniformity and harmony.” (3)

**Colour in harmony geometric concept**

“In the plateau, the ceiling of structural ribs are shaped so they elegantly express the forces with the structure. They express the harmony in the structure.” (2)

“By using this same form we have harmony and uniformity throughout giving the intrinsic whole to the building.” (3)

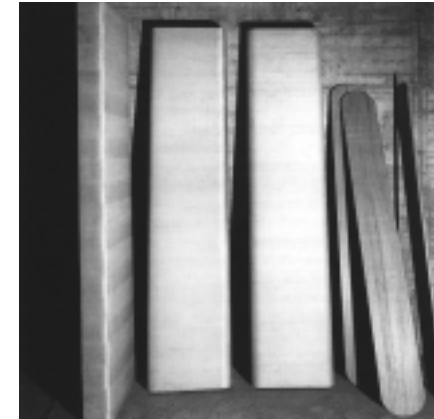
“The plywood construction will be decorated according to an idea which will bring the changing colours into harmony with the geometrical concept.” (3)

**Harmony/uniformity giving intrinsic whole to building**

“We can see the use of the same tools for the forming of the curves but extended or reduced as required to obtain the physical size of the panel. By using this same form we have harmony and uniformity throughout giving the intrinsic whole to the building.” (3)



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## ADDITIVE ARCHITECTURE - PRE-FABRICATION

### Machine-made components basic in concept

“The exteriors of the building stand as an expression for something basic in the concept... in other words the use of machine made components in the building industry.” (3)

### Concept in control of machine

“As he works with a machine that has no intrinsic thinking capacity, he must devise a manufacturing process for the machine.” (3)

### Modular coordination/ standardisation

“According to our way of working the glass panels were to be of equal size, facilitating production.” (2)

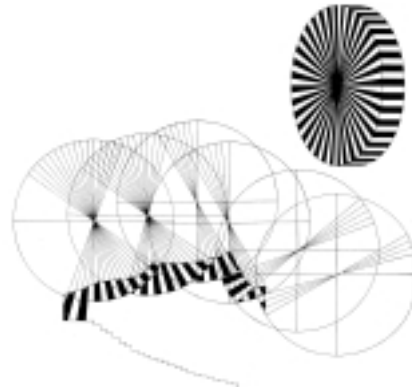
“We must find the machines to make our components and devise some means to put these elements together only limited to the size and weight of our mechanical age to erect them.” (3)

### Practical limits (size and weight) commercially produced dimensions

Referring to ply cubicles, ply beams, over rehearsal rooms, ply panels in corridors, canopy part of glass walls:

“Therefore a system was developed which made it possible to make all the glass walls within a certain module and with glazing panels in commercially produced dimensions.” (3)

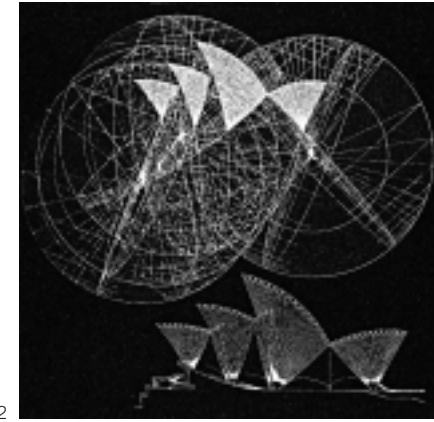
“The cubicles themselves for coats and toilets are made of moulded plywood panels...the form of the individual cubicles is within the scope of the maximum and minimum capabilities of manufactured moulded plywood panels.” (3)



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## ADDITIVE ARCHITECTURE - GEOMETRY

### Common geometric determinant

"Initially, no definitive geometry for the shells had been established but, as work progressed, the shells were developed according to a spherical geometry and we suddenly had a common denominator, the same spherical surface to deal with, with a similar curvature throughout." (2)

### Under control by strict geometry

"...the only way to attack the ...major parts of the building would be to bring them under control by a strict geometry and then divide them into uniform components, which can be produced by machine under strict control both as regards dimensions and quality." (3)

### Surfaces comprehended because of geometric order

"All large surfaces are easily read or comprehended because of the geometric order." (2)

### Simple living geometric forms

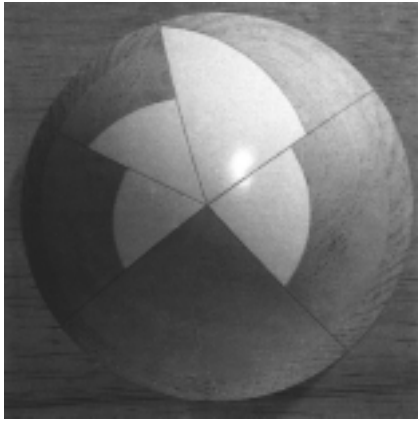
"The shapes of the shells give the building its character, which is emphasised by the fine lines defining the form of the curvature as the seams in a billowing sail."

"...from these viewpoints (broadwalk) the lines will assist his appreciation of the simple, yet living geometrical forms which otherwise might escape his comprehension." (3)

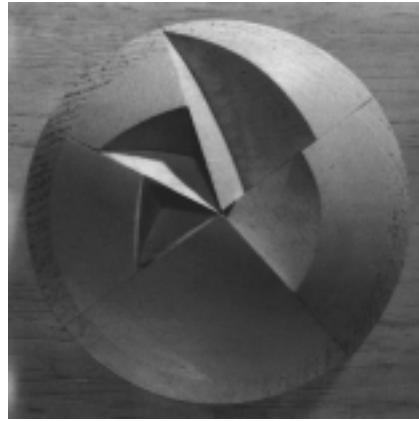
### Layout of halls based on strict geometric system

"Like the other components - the shells, the glass walls etc. - the layout of the halls is based on a strict geometrical system. The layout consists of a series of radial sections all fanning out from a focal point in the stage area." (3)

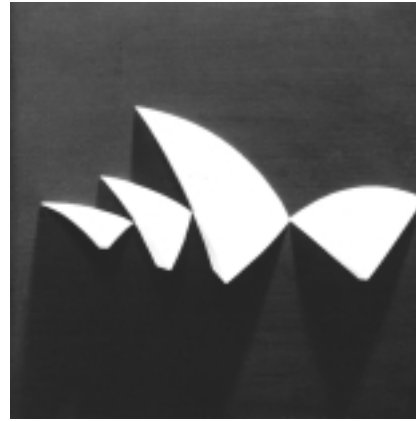
"On the northern glass walls the sweeps are controlled by the geometry of an intersecting cone-system." (3)



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#### Opens possibility for mass production

Referring to spherical geometry:

“Was an elegant solution to a construction, which would otherwise have had to be done with a large amount of scaffolding and shuttering, both for the interior and exterior shape of the shells.” (2)

#### Pre-fabrication

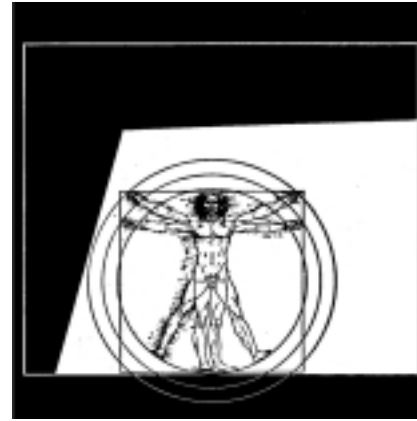
“The clearly defined geometry of the hall opens the possibility for producing all the components in mass-production”. (3)



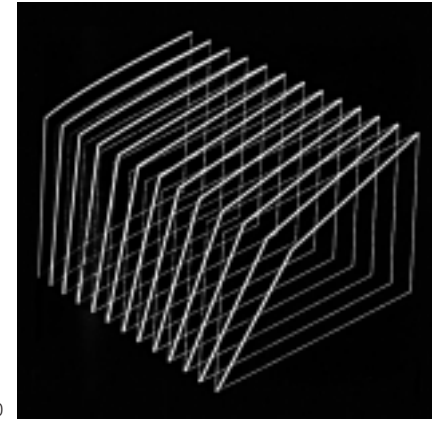
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**Geometry opens possibilities for mass production**

“The ceiling is suspended from the roof structure in the middle but instead of using straight infilling panels as in Major hall, the Minor Hall ceiling is made of plywood panels moulded to a standard curvature, a part of a cylinder with a constant radius this construction lends itself equally well to prefabrication.” (3)

“The clearly defined geometry of the hall opens the possibility for producing all the components in mass-production, in other words, the whole hall can be manufactured in small units to pre-determined tolerances and be assembled afterwards inside the building like a 3-dimensional jigsaw puzzle.” (3)

**Referring to Minor Hall:**

“The furniture for the Minor Hall will be designed on the same basis as for the Major Hall so as to take maximum advantage of the prefabrication.” (3)

“This construction lends itself equally well to prefabrication, since one mould will be able to produce all the panels to the required length.” (3)

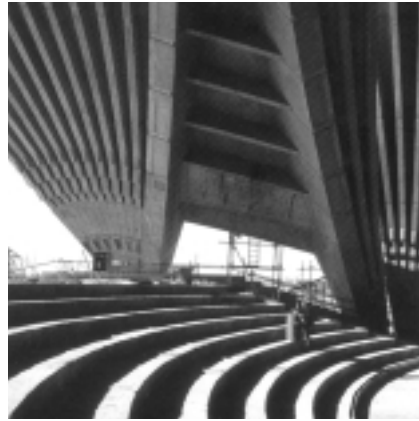
**Referring to plywood panels to corridor walls:**

“These panels are approximately 16 inches wide returning around a 2 inch radius approximately 5 inches. These dimensions are important, as they are the limit of the manufacturing process, which is kept the same throughout all plywood elements used in the building. Giving the necessary uniformity and harmony.” (3)

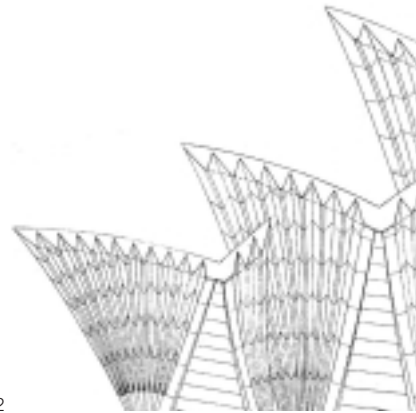
**Referring to ply corridor lining:**

“Thus mass manufacturing production of simple elements gives an economical solution providing the required aesthetics and with ease of access for maintenance.” (3)





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## STRUCTURAL EXPRESSION

### Structural expression and architecture

“The Architecture with the ribs is much more expressive than if the shells had been cast in-situ, with the resulting flat constructed surfaces.” (2)

“The top surface of the shells is covered with a weatherproof membrane, a series of precast panels matching the rib segments and covered with white glazed tiles.” (3)

“By sub-dividing of the tile surface into glossy tile lids, with matte tiles at the edges. I achieved my aim, to have the structure expressing the architecture and vice-versa. You find a similar situation in Gothic cathedrals.” (2)

“The Sydney Opera House has the same ambience as large cathedrals.” (1)1

“You find a similar situation in Gothic Cathedrals, where the structure is also the architecture. The same is seen in Chinese and Islamic architecture, although with different expressions.” (2)

### Plateau beams express forces

“This effect was also developed for the base or plateau...as I wanted an open area with a ceiling of structural ribs. These ribs are shaped so they elegantly express the forces within the structure.” (2)

### Sculptural effect

“The soffit of the podium will form the first impression of the building from this approach. This surface... shows the marked sculptural effect of the concrete folded beams spanning 165’.” (3)

### Spans expressed by ribs and folds

“This resulted in a building where all spans are clearly expressed by ribs and folds.” (2)



#### **Exposing materials**

Referring to the patrons' way to the halls:

"Exposing all the time the carefully selected materials, which it is built of." (3)

#### **Acquire patina without changing character**

Referring to external materials:

"All the materials are non-corrosive, weather resistant, durable and will age and acquire a patina without changing their character. Thereby preserving the character of the whole building through the ages." (3)

#### **Weathering**

Referring to the finish on precast granite panels:

"A process of needlehammering is carried out, giving a slightly matt surface which should also have the advantage of weathering evenly." (3)

#### **Materials define geometric concept**

"The concrete stands with an even and precise surface and the sharp and straight edges clearly define the geometric concept." (3)

"We can see through the glass to the underside of the concrete ribs of the first shell... finished in smooth concrete with sharp arrises, emphasising the towering form of the high shell and requiring no further treatment or maintenance." (3)

#### **Retain visual quality**

Regarding tiles:

"This gave a surface which had a beautiful lustre or sheen, a surface that would retain its visual quality even when the tile became dirty." (2)

#### **Natural materials**

"...the raw tile is painted with a sauce or slick of the same material, is fired and overlaid with a glassy, transparent glaze before it is fired the final time." (2)

#### **Natural colours and modular**

"The walls will be covered wholly or in part by modular sized moulded plywood panels, finished in the natural colour of the wood." (3)

#### **Simplicity in number of materials**

"The finish on paving steps and skirting is identical with the finish on the cladding. It is a fine non-slip and durable finish entirely suitable for pedestrians and traffic..." (3)

#### **Materials serve to underline ideas in planning**

"As in the exteriors, the materials internally will serve to underline the ideas in the planning." (3)

## COLOUR

### Natures colours

“In my project for the Sydney Opera House I had what you would call nature’s colours on the exterior”

That was the general idea-concrete, granite and ceramics. (2)

### White shell as contrast

Refers to the shell colour:

“Keep it white because the Harbour (surrounding buildings) is dark, with all its dark red or brown brick structures.”

### Colour reinforcing human spatial experience, movement

“So you have a culmination of space, of colours when you are at the meeting place between the performers and the audience. So going to the Opera House is a succession of visual and audio stimuli.” (2)

“The idea was to see a spectacular building as you arrive and as you enter the foyers you see additional colours. You also get a more intimate feeling.” (2)

“As you enter the Minor or Major Hall this explodes into a very rich expression of colours, which uplift you in that festive mood, away from daily life, that you expect when you go to the theatre, a play, an opera or concert.” (2)

### Counterpoint major/minor inside out

“The theatre darker and warm, the concert hall more cold and light plywood.” (4)

### Lighting compatible precinct

“The Major Hall was to be used for Grand Opera and concerts with an optimistic, light colour scheme.” (2)

“The Minor hall was programmed primarily for theatrical productions, which require a relatively dark or subdued colour scheme for the auditorium.” (2)

**Colour in transition different from daily colour**

“These moments are short (early morning and sunset) and in the openings of my mind, I thought in a different way than the daily colour and when we meet for performances we are together to be moved in our minds and in our soul and experience what comes into our minds. And these colours would support that, and it would be oriental.” (4)

**Referring to Chinese art:**

“Look here, these kinds of colours are very different from outside, only inside you have it in the caves and in the temples colours which are always on the edge of being cream to yellow and red to orange.” (4)

“The Chinese Buddhists paintings, here’s one that gives me a feeling of what it would be like to be inside the theatre. There is also the tradition in Europe of red velvet seats at that period.” (4)

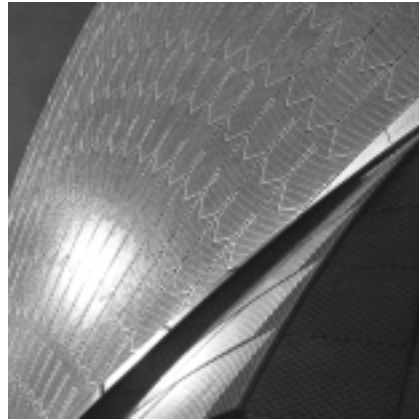
**Colour expressed geometry and function**

Referring to painting different parts of geometry of construction:

“If you cut across an onion you see the different layers-it’s the colours which again leads your thoughts back to the complete item, in the same manner of expression when the elements that one decorated in a certain way when put together give more richly varied surface structure than would have been if it had been a simple smooth surface throughout with a single flat colour.” (2)

**Practical glare**

“I agree (white outdoor furniture is wrong because only the sails should be white). Because white is no good for outdoor furniture as my eyes can’t tolerate white when I eat.” (4)



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## LIGHT

### **White sculpture - catches the sky's varied light**

"It is important that such a large white sculpture in the harbour setting catches and mirrors the sky with all its varied lights, dawn to dusk, day to day, throughout the year." (2)

### **Light to accentuate architectural form**

"You can light a sphere in such a way that you accentuate its form, or you can light it so it will appear to be flat." (4)

### **Flood light through experimentation**

"It is proposed to flood light the shells...successful flood lighting can only be achieved through experimentation on the surfaces concerned." (3)

### **Light to flatter human form of skin and hair**

"To give life to the skin and hair on the human form in much the same way as the light from candles." (3)

### **Generally indirect with custom designed fittings**

Referring to public and working areas:

"Lighting in these areas will be generally of an indirect nature although there will be situations where specially designed direct lighting fittings will be necessary." (3)

#### **Sculptural effect accentuated by light**

“Here, the soffit of the podium will form the first impression of the building from this approach, this surface emphasised by lighting, shows the marked sculptural effect of the concrete folded beams.” (3)

#### **Concealed handrail lights**

“The podium and podium steps will be lit through a system of lights concealed in the handrails.” (3)

Referring to roadway under podium:

“A special system of low level lighting has been developed which will produce a safe and attractive system of lighting to enable the mixing of pedestrians and vehicles.” (3)

#### **Lighting compatible precinct**

Referring to Major Hall:

“the broadwalk lighting of necessity must be compatible with the lighting in approach roads.” (3)

“Fittings for indirect lighting will be placed in the ceiling.” (3)

“Light fittings for Auditoria and Rehearsal Rooms must be of necessity designed in close collaboration with the acoustical engineers.” (3)

#### **Minimise reflections/ maximise view**

“Before lighting in the public lounges and bars can be finalised experiments must be carried out to ensure that internal lighting reflections on the glass walls do not destroy the night view of the harbour.” (3)

#### **Concealed fittings - wall panels**

Referring to bar and lounge areas:

“The walls will be covered wholly or in part by modular sized moulded, plywood panels, finished in the natural colour of the wood. The panels are stopped short of the ceilings and the floors, where they form a continuous fitting for concealed lights.” (3)

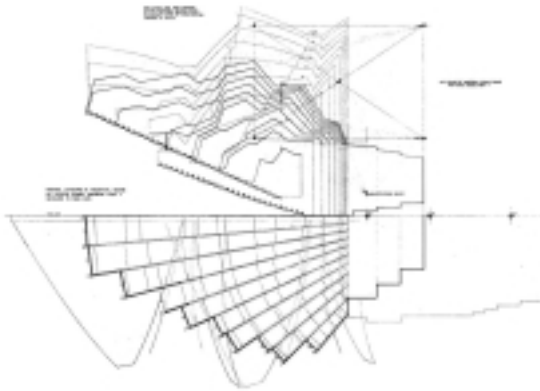
#### **Lights integrated module of panels**

Referring to toilet areas:

“The 3” gap between the ceiling and wall elements are partly for ventilation and partly for lighting. Light tubes are fixed above, giving a uniform indirect light to the rooms which can be dimmed just before the curtain goes up in the theatre.” (3)

Referring to corridor lighting:

“By the use of a dark colour above the slats and high intensity of lighting between the slats combined with their depth one will not normally be able to see any of the services above.” (3)



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## ACOUSTICS

**Two purposes - exclude noise/reflect sound**

Referring to the overall shape of the hall:

“The walls and ceilings serve two purposes, namely: -

- a) to exclude all noise from the outside
- b) to reflect the sound from the orchestra. (3)

**Acoustic shape clear both in sound and in the way you would observe it**

“The acoustical shape was absolutely clear, both in sound and in the way you would observe it as an audience.” (2)

**Halls oriented toward stage**

“The halls acoustically had a shape that was oriented towards the stage.” (2)

**Person in back row should have as good a sound reception as in front**

“Ideally the person at the back row should have as good a sound reception and impression of what goes on the stage as the person sitting 10 rows back from the stage.” (2)36

**Multi-purpose**

“The hall serves several functions, as a concert hall it will hold 2800 people with the musicians (110) positioned in the fore-stage area and with a plywood sound reflecting shell above. This shell can be dismantled, and stored away when not in use.” (3)

**Ideal not to adjust sound**

“That the ideal concert hall is a hall, which is shaped in such a way that you do not have to adjust the sound with absorbents. By doing so you kill off some of the sound energy, whereas if you retain the brilliance you have much more sound energy travelling to the audience.” (2)

**Like violin - evolution toward perfection**

Referring to the concert hall:

“It is like a violin - it has its shape because of its long evolution and it has attained that shape, through evolution towards perfection...” (2)

#### **Relationship sound and plywood length**

“So rather than changing the acoustics by absorbing certain unwanted sounds or frequencies it is better to adjust the physical shape of the hall in such a way that you achieve the perfect acoustical properties.” (2) .

#### **Box within structure principle**

“The sound reflecting effect is achieved by using large unsupported membranes of plywood which have proved superior to the conventional small size panels since the latter do not reflect the deepest notes from orchestral instruments.” (3)

#### **Advanced plywood technology**

“It therefore eliminates any convected noises through the building and allows the ceiling to reverberate in harmony with the sound produced within the room. It can be seen then, acoustically these light long spanning elements are ideal...moulded to the shapes required by the geometry, and laminated with almost any material to obtain the desired density for sound absorption and reverberations.” (3)

Each rehearsal room is treated in the same way as the hall, that is, we have the structure withholding the outside elements such as rain and sound etc. and inside we have a complete box to retain the sounds produced internally.” (3)

#### **Referring to the Major Hall:**

“The sound dampening effect will be achieved partly by the weight of the trusses or ceiling panels themselves, increased if necessary by laminations of lead, and also by filling in the open space between the sheets with mineral wool or other sound deadening material.” (3)

#### **Movable ply screens and acoustic screens for flexibility**

Referring to reducing the stage opening when hall is used for Opera:

“...Sight-lines for some of the seats in each side of the hall will be impeded. These seats will therefore be cut off by means of plywood screens rising from the floor to a certain height, at the same time serving acoustically as a sound reflecting screen.” (3)

“For the purpose of congress, the foremost part of the stage area can be brought into use of seating and the hall will seat more than 3000 people. In this case, the acoustical screen used for symphony

## 3.4 PROCESS



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Jørn Utzon's process of design integrating drawings, model samples, prototypes, materials research and close collaboration with manufacturers is central to our understanding of his work.

The following quotations illustrate this point.

### **One solution dependant on another**

**"This solution (the tiling) was again depending upon the solution of how to construct the shells themselves. So as was often the case, one solution was depending upon the other and vice-versa." (2)**

### **Lateral approach - harmonious building**

**"Whenever an obstacle was encountered we often had to change tack completely to find another way to solve the problems." (2)**

**"The fact that the engineers and we were open for new possibilities, even though that meant rejecting the old solutions, was instrumental in making this a noble and harmonious building with a very forceful architectural expression." (2)**

### **Design and construction in parallel**

**"...so construction began at the building site a long time before we had completed the drawings, and construction drawings were being produced just ahead of construction as the building grew." (2)**

**"We made the working drawings just ahead of the actual construction going on at the building site so therefore development was not very far ahead of what was actually going on at the site at any one time." (2)**

### **Background of ship building**

**"I of course had the marvellous thing that we had the shipyard adjacent... You see big ships being built with the ribs etc. In the shipyard small men made one big steam ship every six months and you would see the whole process." (4)**

**Referring to the major events in the manufacturing of the mullions**

**"Cutting the layers to shape and placing them after the architect's set-out drawings-an operation similar to the technique used on a shipyard." (3)**



#### Research into capacity of machine

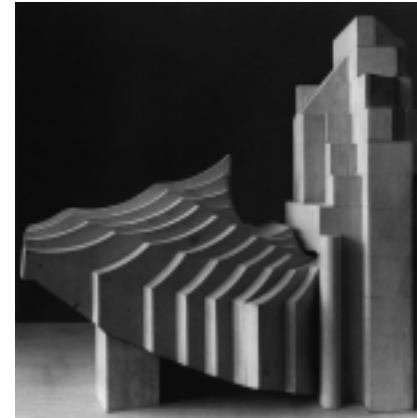
“The architect therefore has researched into the maximum capabilities for economical reasons of factory production and having found the scope of minimum and maximum capacity of the machine, he works within this discipline.” (3)

#### Materials research

“Even very well known materials have been subject to several years of special research before the architect was satisfied that the resulting product was the best possible for its use.” (3)

#### Full-size mock-ups - as both design and construction tool

“These concrete/granite elements were produced as prefabricated elements after a full size mock-up had been made, with various openings presented so that everything could be checked before final decisions were made. This is again an example of the importance of the full sized mock-up as a tool for determining the best solution for the building.” (2)



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#### Models

“The planning comprises even the smallest detail and is carried out in an unorthodox manner, where the maximum use of models and prototypes secures that nothing is introduced into the scheme, before it has been carefully investigated and has proved to be the right solution to the problem.” (3)

#### Mock-up to solve problems

##### Referring to hall interiors

“...we need to make full-scale models of parts of this structure to ensure that the proposed details and colours are correct.” (2)

“It was impossible to determine the geometry of the tiling until full-size mock-ups had been made.” (2)

“Mock-ups were important tools which, together with the drawings, enabled us to solve specific problems.”

“For instance the first mock-up for the tiling clearly showed that our initial solution did not work.” (2)

“We arrived at the various solutions for corners, materials, details and colours, through a combination of drawings, models, samples and mock-up, always trying to select the finest solutions for this building and for my client.” (2)

#### **Work in collaboration with manufacturer**

##### **Referring to wall cladding:**

“These construction and finishing techniques were developed in collaboration with a manufacturer over a period of 18 months and involved the preparation of many samples and the construction of full size mock-ups, before a result suitable to the rigorous requirements of the architect could be achieved.” (3)

##### **Referring to glass walls...**

“...mock-ups of vital connections and details have been and one still being produced in cooperation with specialist manufacturers.” (3)

#### **Running in period**

##### **Referring to Major Hall:**

“The main shape will be fully tested in a model and necessary variations in respect of surface reflection can later be made by changing the surface materials during the 6-months running-in period after the completion.” (3)

“...these lights will be installed in carefully selected places based on knowledge gleaned from experimental work.” (3)

#### **Experimentation**

“Successful flood lighting can only be achieved through experimentation on the surface concerned.” (3)

#### **Quotation references**

1. Jørn Utzon, ‘Sydney Opera House, The Setting’ 5 May 2000
2. Jørn Utzon, ‘Sydney Opera House’ 4 June 2000
3. Jørn Utzon, ‘Descriptive Narrative, Sydney Opera House’ January 1965
4. Jørn Utzon, Jan Utzon and Richard Johnson, ‘Private Records of Discussion’ Mallorca, April, October & November 1999

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NSW GOVERNMENT  
**Department of Planning**

# Sydney Harbour Catchment

## Sydney Regional Environmental Plan

2005



Sydney Harbour Catchment – Sydney Regional Environmental Plan

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## 1

## overview

The Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (the Harbour REP) provides an improved and clearer planning framework and better environmental outcomes for Sydney Harbour.

Sydney Harbour, including Parramatta River and its tributaries, is a major natural, cultural, recreational and commercial asset for both Sydneysiders and visitors alike. The continuing growth and importance of Sydney has resulted in increasing pressures on the harbour and its foreshores. As such, it is critical to have a clear and consistent planning framework to protect and enhance the unique attributes of the Harbour.

The Harbour REP achieves this by consolidating and replacing or amending previous and current planning instruments, overcoming inconsistencies in the planning framework and providing for a more robust and strategic approach to decisions affecting the use of the harbour and its catchment.

The Harbour REP aims to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways.

Following extensive consultation and public exhibition of the Draft Harbour REP in June to August 2004 the Harbour REP was revised and improved in response to submissions received.

### What the Harbour REP does

The Harbour REP consolidates, replaces or amends a number of planning instruments applying to the Harbour. The REP provides an improved and clearer planning framework to achieve better environmental outcomes for the Harbour and its catchment. It consolidates and replaces the following instruments:

- Sydney Regional Environmental Plan No. 22 – Parramatta River (SREP 22)
  - Sydney Regional Environmental Plan No. 23 – Sydney and Middle Harbours (SREP 23),
- and amends
- State Environmental Planning Policy No. 56 – Sydney Harbour Foreshores and Tributaries (SEPP 56).

The Harbour REP includes the water-based planning controls from SREP 23 as they applied to the Sydney and Middle Harbours and the land based controls of SREP 22. The Harbour REP has also amended Sydney Regional Environmental Plan No. 26 – City West (SREP 26) as far as it related to the zoning of waterways.

The Harbour REP has amended SEPP 56 and includes its master planning provisions as they applied to the Harbour and its tributaries. It also identifies a number of strategically important foreshore sites.

The waterways of the Lane Cove River and the Inner Harbour (Rozelle Bay, Blackwattle Bay, White Bay, Johnstons Bay) did not previously fall within any planning instrument but are now covered by the Harbour REP.

## How and where the Harbour REP applies

The Harbour REP applies to the hydrological catchment of the harbour. It also defines and contains specific provisions for the 'Foreshores and Waterways Area' (which is generally the area 'one-street back' from the foreshore), strategic foreshore sites, heritage items and wetlands protection areas.

Owing to the diversity of issues and geographical extent of the Harbour and its tributaries, the Harbour REP applies to the Harbour in a range of ways. The most significant provisions of the Harbour REP are described below. Any references to schedules, parts and clauses relate to the Harbour REP.

- **Hydrological Catchment:** the Harbour REP establishes a set of planning principles that are to be taken into consideration by councils in the preparation of environmental planning instruments, for the hydrological catchment of the Harbour, including areas as far afield as Blacktown and Baulkham Hills.
- **Foreshores and Waterways Area:** the Harbour REP contains a set of matters for consideration for the Foreshores and Waterways Area. The Foreshores and Waterways Area covers the waterways of the Harbour and its tributaries as well as land within the immediate foreshore area (being land between the foreshore and an area generally 'one-street back' from the foreshore, inclusive of all strategic foreshore sites).
- **Heritage Items:** The Harbour REP has heritage provisions to conserve and protect those heritage items in the waterway and within the land-water interface that are not covered by council's planning instruments.
- **Wetlands Protection Areas:** The Harbour REP has wetland protection

provisions to conserve and protect any wetland habitats (which include mangroves, seagrasses, salt marshes, sedgelands, wet meadows and mudflats) and a 40 metre buffer zone to address movement, growth and seasonal variation.

- **Strategic Foreshore Sites:** Several foreshore sites that are considered to be strategically significant in terms of their prominent location, size and/or potential for redevelopment have been identified in the Harbour REP. Specific controls (including master planning provisions) apply to these sites.

## Harbour REP

The Harbour REP will be used by councils for the preparation of environmental planning instruments, consent authorities for the assessment of development applications that fall within the foreshores and waterways area, proponents in the preparation of their development applications and plans and the Minister for the assessment of development proposals.

# 2

## structure of the Harbour REP

The Harbour REP is divided into six parts with five schedules (including a series of maps) and a dictionary.

**Part 1** – establishes the aims of the plan, the area to which the plan applies, the relevant consent authority, the relationship of the Harbour REP to other environmental planning instruments and the transitional arrangements upon gazettal of the Harbour REP.

**Part 2** – provides the planning principles for the Harbour catchment for which councils must take into consideration when preparing their environmental planning instruments.

**Part 3** – is a set of planning controls for any development within the foreshores and waterways area, including waterways zoning and matters for consideration.

**Part 4** – provides specific requirements (including master planning provisions) for the 28 strategic foreshore sites.

**Part 5** – contains heritage provisions to conserve and protect those heritage items in the waterway and within the land-water interface that are not covered by council's planning instruments.

**Part 6** – has provisions for the conservation and protection of wetland habitats.

**Schedule 1** – lists the maps incorporated into the plan.

**Schedule 2** – lists types of development to be referred to the Foreshores and Waterways Planning and Development Advisory Committee.

**Schedule 3** – lists a range of minor development that does not warrant the preparation of a master plan on a Strategic Foreshore Site.

**Schedule 4** – lists heritage items in the Parramatta River area, Sydney and Middle Harbour Areas and the Lane Cove

River area. These items are found in the waterway area and within the land/water interface.

**Schedule 5** – establishes any changes that have been made to other environmental planning instruments upon gazettal of the Harbour REP.

### PART 1 – Preliminary

The preliminary section of the Harbour REP establishes the aims of the plan, the area to which the plan applies, the relevant consent authority, the relationship of the Harbour REP to other environmental planning instruments and the transitional arrangements for incomplete planning upon gazettal of the Harbour REP.

### Consent authorities

The Harbour REP determines who the consent authority is for different development types within the Foreshores and Waterways areas. The Harbour REP defines three categories of development for the purposes of determining the relevant consent authority (see Dictionary at end of plan):

- *Land-based development* – being development wholly above Mean High Water Mark (MHWM) or development for any of the purposes listed in the definition, eg, sea walls or boat sheds.
- *Water-based development* – being development wholly below MHWM or development for any of the purposes listed in the definition eg dredging, private marinas or single moorings.
- *Land/water interface development* – being development for any of the purposes listed in the definition eg commercial marinas or boat repair facilities.

The relevant council is the consent authority for land-based development and land–water interface development. The Minister administering the *Ports Corporatisation and Waterways Management Act 1995* is the consent authority for water-based development. The Minister for Planning is the consent authority only where an Environmental Planning Instrument nominates the Minister as the consent authority (whether within or outside of a council's Local Government Area (see Clause 5).

### Transitional provision

The Harbour REP includes a transitional provision that saves (and does not impose the provisions of the Harbour REP on) any environmental planning instruments, master plans, development control plans and development applications that have been exhibited, substantially completed or finalised prior to the gazettal of this REP.

Additionally, any master plan either exhibited or adopted under SEPP56 is taken as being exhibited or adopted under the Harbour REP

## PART 2 – Planning Principles

The Harbour REP contains a set of planning principles relating to land within the Sydney Harbour catchment, land within the Foreshores and Waterways Area and heritage conservation. These principles consider issues relating to visual amenity, environmental impacts, maintaining a balance between public access and a working Harbour and the conservation of heritage items and places of heritage significance.

The planning principles need to be taken into consideration in the preparation of environmental planning instruments and development control plans under Part 3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the preparation of environmental studies and master plans for the purposes of the Act.

This will ensure that all strategic land use decisions with the potential to impact on the harbour are made having regard to such impacts.

The catchment planning principles include a number of natural resource management principles that relate to water quality and quantity, implementation of the actions outlined in the *Sydney Harbour Catchment Blueprint* (Department of Land and Water Conservation, 2003), soil management (salinity and acid sulfate soils) and the protection and rehabilitation of wetlands, remnant native vegetation (including riparian vegetation) and the enhancement of ecological connectivity.

## PART 3 – Foreshores and Waterways Area

As the Foreshores and Waterways Area covers the Harbour's waterways and the area of land with the greatest relationship to and potential impact on the Harbour, the Harbour REP contains detailed provisions to guide development decisions in this area.

### Zoning

The Harbour REP zones the entire waterways of the harbour and its tributaries. This plan does not affect any existing land-based zoning under any other environmental planning instruments, such as councils' local environmental plans. These comprehensive waterways zones have been specifically tailored to suit the differing environmental characteristics and land uses of the Harbour. This has resulted in a stronger zoning system that provides greater clarity and certainty for applicants and consent authorities in development considerations and applications.

The different waterway zones, with the exception of Zone 8a - National Parks, have been displayed in a matrix to demonstrate permissible uses with or without consent and prohibited development for each zone.

Details of each zone covered by the Harbour REP are as follows:

#### ■ Zone W1 – Maritime Waters

The Zone W1 – Maritime Waters covers the main navigation channels, public transport, port and maritime industry activities of the Harbour and permits

a wide range of waterway activities and facilities. The zone includes the important marine precincts and transport nodes of Sydney Cove, Darling Harbour, White Bay, Rozelle Bay, Blackwattle Bay, Mort Bay, Breakfast Point, Berrys Bay and parts of Balls Head Bay, Neutral Bay and Gore Cove. The main navigation channels from the Heads to Parramatta are also included in the zone.

■ **Zone W2 – Environment Protection**

The Zone W2 – Environment Protection provides for the protection, rehabilitation and long term management of the natural and cultural values of the waterways and adjoining foreshores. The zone covers a range of areas including significant estuarine ecosystems and habitats in parts of Manly Cove and Middle Harbour, estuarine and wetlands habitats along the Parramatta River, and significant riverine environments of the Lane Cove River and Duck Creek.

■ **Zone W3 – Naval Waters**

The Zone W3 – Naval Waters restricts the use of the waterway incompatible with naval interests. The zone applies to waters around Garden Island, Clark Island, Shark Island, Steel Point, Rushcutters Bay, Bradleys Head, Chowder Bay, Hunters Bay, Spectacle Island and Balls Head Bay.

■ **Zone W4 – Aviation**

The Zone W4 – Aviation gives priority to and protects waters required for marine aviation activities, to ensure these activities safely coexist with other activities and facilities. The zone covers a large area of the waters between Shark Island and Rose Bay.

■ **Zone W5 – Water Recreation**

The Zone W5 – Water Recreation is a public recreation zone which gives priority to public use and access to the water through appropriate water recreation facilities, including charter and tourism facilities and commercial marinas. Generally, the adjoining land is in public ownership and is intensively used by the general public, for example, parks and public roads. The zone includes a number of important public

beaches (such as Balmoral Beach), commercial marina precincts (such as The Spit) and bays containing existing water recreation facilities and activities (such as parts of Hen and Chicken Bay and Canada Bay).

While many waterfronts have been modified, new development will need to protect any remnant natural features, retain important views and harmonise with the landscape. As water recreation facilities and marinas generally occupy a large amount of the waterway they will need to meet a demonstrated need and avoid conflicts with other water users.

The following three Scenic Waters zones (Zone W6, W7 and W8) apply to a 30 metre fringe measured from Mean High Water Mark.

■ **Zone W6 – Scenic Waters – Active Use**

The Active Use fringe zone is a multi-purpose zone which has the potential to cater for a wide range of private and commercial water-dependent uses, including boat storage. The zone primarily adjoins residential land with highly modified foreshores and already contains a number of private waterside facilities, such as parts of Balmain, Cremorne and Seaforth.

While there are few major physical constraints to locating structures in the zone the aim is to ensure new development is minimal, appropriate to the landscape setting and does not conflict with other water users. While scarce in this zone, remnant natural shorelines and intertidal public access is to be protected and take precedence over proposals for improved private water access.

■ **Zone W7 – Scenic Waters – Casual Use**

The Casual Use fringe zone can cater for unobtrusive private waterside structures of a scale and location that does not dominate the landscape setting to meet casual boating needs. Boat storage facilities, such as boatsheds, mooring pens and private marinas are inappropriate in this zone. This is primarily because of the potential bulk of buildings and of some berthed vessels to block views or diminish the visual quality of the site or locality. In some



areas permanent berthing is physically constrained due to the rough wave environment or inadequate water depth.

The Casual Use fringe zone usually adjoins residential land with scenic foreshores and is characterised by predominantly open unobstructed water (examples include parts of Hunters Hill, Woolwich, Northbridge, Drummoyne and Mosman). Scenic values are derived from the natural intertidal areas such as rock platforms, long continuous seawalls of visual interest or steep vegetated shores.

■ **Zone W8 – Scenic Waters – Passive Use**

The Passive Use fringe zone aims to give effect to the inter-tidal public access zones and gives priority to protecting the environmental and scenic values of predominantly natural shores and waters. The Passive Use zone may adjoin residential land (such as land at Hunters Hill along the Lane Cove River) or public open space (such as Cremorne Point and land along the Parramatta River at Putney). Often waters are too shallow for private landing facilities. Low-impact uses associated with ground-hugging structures, such as small boat launching from skids, will be considered if they do not impede intertidal public access or prejudice the natural environment.

■ **Zone 8(a) – National Parks**

This zone applies to a number of islands including Fort Denison and Rodd, Goat, Clark and Shark Islands.

### **Matters for consideration**

The Harbour REP contains a set of matters for consideration applying to the Foreshores and Waterways Area. These need to be considered by consent authorities in assessing development applications under Part 4 of the Environmental Planning and Assessment Act and by public authorities and others in carrying out proposed activities under Part 5 of the Act. The matters for consideration are aimed at ensuring better and consistent development decisions in the immediate harbour area in relation to matters such as ecological and scenic quality, built form and design, maintenance of views, public access, and recreational and working harbour uses.

### **Boat storage facilities**

The Harbour REP aims to retain a viable working harbour which supports commercial marinas in appropriate locations around the harbour and retains and enhances public access to and along the foreshores and waterways through limiting the 'privatisation' of the foreshores and waterways.

This has been achieved through distinguishing between 'commercial marinas' and 'private marinas' (see definitions). The intent is to identify those marinas that generally support public recreational use of the foreshore and waterway and working harbour functions (eg, commercial marinas that provide facilities and services available to the boating public) and those that can alienate the foreshore and waterway through private use only (eg, private marinas that are for the exclusive use of the residents of an adjoining residential development).

The Harbour REP lifts the 'moratorium' that resulted from the prohibition of large marinas (30 berths or more) under SREP 23 and NSW Maritime deferring consideration of all applications for land owner's consent for development applications for large marinas. The prohibition of large marinas has been removed through the zoning provisions permitting commercial marinas in several zones around the Harbour and the release of NSW Maritime's new Land Owner's Consent Manual. See discussion on 'Boat Storage Policy and Land Owners Consent Manual' in Section 3 of this document.

The distribution of boat storage facilities around the Harbour is controlled by the zoning provisions to ensure they are permissible in appropriate locations. Commercial marinas are permissible with consent in four zones (W1, W4, W5 and W6). Private marinas are limited to built-up residential waterfronts and are therefore permissible with consent in one zone only (W6). The Harbour REP has also included a provision that makes a limited number of commercial marinas and boating repair facilities permissible in the Environment Protection zone.

### Contaminated sediments

Often sediments in the waterways adjacent to contaminated sites are also contaminated and may be mobilised through works such as dredging, removal of old jetties/wharves and construction/maintenance of seawalls or through the increase in recreational activities adjacent to residential development. The Harbour REP recognises the potential environmental impacts and human health risks associated with the disturbance of contaminated sediments in the waterway. Any development of contaminated lands should determine whether sediments in the adjacent waterway are contaminated and a means of minimising disturbance of those sediments.

### Foreshores and Waterways Planning and Development Advisory Committee

The Harbour REP retains the committee originally established under SREP 22 as a forum to advise consent authorities on proposals for foreshore and waterway developments. The committee is comprised of representatives of NSW Maritime (formerly recognised as Waterways Authority), Department of Planning and the relevant consent authority. The role of the committee is to provide advice on a range of matters including development proposals listed in Schedule 2, local environmental plans, master plans prepared under the REP, development control plans, guidelines for waterfront land, and plans of management prepared under the *National Parks and Wildlife Act 1974* and the *Fisheries Management Act 1994*.

### PART 4 – Strategic Foreshore Sites

Part 4 has been largely derived from SEPP 56 and identifies several foreshore sites that are considered to be strategically significant in terms of their prominent location, size and/or potential for redevelopment. There are 28 strategic foreshore sites in total and these are shown on the 'Strategic Foreshore Sites Map' and individually on Map Sheets 1 to 28.

Specific controls (including master planning provisions) apply to these sites. This is consistent with the previous provisions of SEPP 56 (see discussion below on

master plan provisions). The list of strategic foreshore sites is generally an amalgam of Schedule 1 and 2 sites in SEPP 56, with the exception of some completed sites that have been removed from the list.

### Master plans

The Harbour REP requires a master plan to be prepared prior to consent being granted for most forms of development on a Strategic Foreshore Site. The sites identified in Sheet 1 (City Foreshores Area) and Sheet 2 (Garden Island) of the Strategic Foreshores Sites Map are an exception, as a master plan need only be prepared if the Minister so directs.

The Minister can waive compliance with the requirement for a master plan for a Strategic Foreshore Site, while certain minor development (listed in Schedule 3) does not require a master plan.

The Harbour REP defines what a Master Plan is and sets out the procedures for preparing, exhibiting, adopting and amending a Master Plan.

### PART 5 – Heritage Protection

The Harbour REP lists those heritage items that are listed on the State Heritage Register and any item assessed as being of state heritage significance in a relevant heritage study or listed on the *Heritage Act 1977* Section 170 Register. Schedule 4 lists a total of 139 heritage items, which includes only those items that are either in the waterway, at the land–water interface, or that have a historic relationship with the waterway. They include navigation structures, wharves, shipwrecks and the Harbour islands. Most of these items were identified as heritage items in the Sydney Regional Environmental Plan No. 23 – Sydney and Middle Harbours (SREP 23). Others are water-related items that were identified either in the Parramatta River Heritage Study or the Lane Cove and Inner Harbour Regional Environmental Study. Any item listed in a council planning instrument has been excluded from the Harbour REP to avoid duplication.

The Harbour REP includes a series of provisions to be taken in to consideration by consent authorities before granting development consent and public authorities before carrying out activities. The heritage provisions generally reflect the current model



heritage provisions prepared by the Heritage Office and aim to protect places and items of Aboriginal and non-Aboriginal heritage significance and views associated with the heritage significance of heritage items.

## PART 6 – Wetlands Protection Areas

For the first time, comprehensive mapping has been undertaken of wetlands in Sydney Harbour and its tributaries. The Harbour REP identifies 'wetlands protection areas' comprising wetland habitats (which include mangroves, seagrasses, saltmarshes, sedgeland, wet meadows and mudflats) and a 40 metre buffer zone to address movement, growth and seasonal variation. These areas are displayed on the "Wetlands Protection Area Map" (Sheets 1 to 16).

The Harbour REP requires consent for certain types of development on land within a wetlands protection area that may have a detrimental impact on a wetland. These provisions list a set of matters that are generally aimed at preserving and protecting the Harbour's wetland habitats, which are to be considered by the consent authority when assessing an application for such development.

### Little Penguin critical habitat

Critical habitat for the endangered population of Little Penguins at Manly was declared under the *Threatened Species Conservation Act 1995* in December 2002. Section 26 of the Environmental Planning and Assessment Act requires that a declared critical habitat be mapped and identified in the relevant planning instrument.

The declared critical habitat consists of two areas, Area A and Area B as shown on the 'Little Penguin Critical Habitat Map'. Restrictions on development in these areas are detailed in the *Threatened Species Conservation Act Regulations 1995*. Potential habitat areas are also shown but these do not constitute part of the declared critical habitat.

## Maps

Schedule 1 lists a series of maps prepared to support the Harbour REP. These include:

- **Little Penguin Critical Habitat map** - identifies the two areas (Area A and Area B) of declared critical habitat and areas of potential Little Penguin habitat;
- **Foreshores and Waterways Area map** (Sheets 1 to 5) – defines the Foreshores and Waterways Area, which generally follows the first street back from the waterway with some minor variation in a number of locations, and includes Strategic Foreshores Sites in their entirety;
- **Heritage Map** – displays the 139 heritage items listed in Schedule 4, which includes items that are either in the waterway, at the land-water interface, or that have a historic relationship with the waterway;
- **Special Purposes (Boat Repair Facilities and Commercial Marinas) Map** (Sheets 1 to 3) – identifies three existing working harbour locations where commercial marina and/or boat repair facilities are permissible within the W2 zone in order to ensure maintenance of working harbour character and function;
- **Strategic Foreshores Sites Map** (28 sheets) – displays all 28 strategic foreshore sites;
- **Sydney Harbour Catchment Map** – defines the boundary of the Sydney Harbour catchment;
- **Wetlands Protection Area Map** (16 sheets) – Wetland protection areas comprising wetland habitats (which include mangroves, seagrasses, salt marshes, sedgeland, wet meadows and mudflats) and a 40 metre buffer zone to address movement, growth; and
- **Zoning Map** (16 sheets) – identifies the location and distribution of the nine waterway zones.

## 3

## related documents

A number of recently prepared documents that relate to the planning and management of Sydney Harbour and its tributaries are discussed below.

### Development Control Plan for Sydney Harbour Foreshores and Waterways Area

A development control plan (DCP) for the Sydney Harbour Foreshores and Waterways Area has been prepared to support the Harbour REP. The DCP is a revision of the previous DCP for Sydney Harbour and Parramatta River (which supported the repealed SREPs 22 and 23) to ensure consistency with this REP. The DCP also includes updated assessment criteria, including visual impact assessment guidelines for marinas. The DCP applies to the Foreshores and Waterways Area as identified in the Harbour REP.

Department of Planning is currently undertaking a comprehensive review of the DCP. This review aims to ensure that the DCP fully reflects all recent policy documents and provides the most up-to-date and complete set of design principles and performance standards.

### Boat Storage Policy and Land Owner's Consent Manual

In response to demand from the boating industry and the community for a more strategic approach to managing storage facilities for recreational boats, Department of Planning and NSW Maritime Authority jointly prepared a *Boat Storage Policy for Sydney Harbour* (released June 2004). This document sets out the NSW Government's strategic policy for dealing with various

forms of boat storage on the Harbour, including marinas, single moorings, private wharves and jetties, and dry boat storage.

One of the key actions flowing from the Boat Storage Strategy is the lifting of the 'moratorium' on commercial marina development in Sydney Harbour and its tributaries. The moratorium arose due to the prohibition of large marinas (more than 30 berths) under SREP 23 and NSW Maritime Authority deferring consideration of all applications for land owner's consent (to lodge development applications relating to large marinas) until completion of its new *Land Owner's Consent Manual: Policies relating to the Development, use and occupation of waterway and foreshore land Sydney Harbour and Tributaries – Botany Bay – Newcastle Harbour – Port Kembla Harbour* (NSW Maritime Authority, April 2005).

The moratorium has now been lifted with the gazettal of the Harbour REP and the release of the NSW Maritime Authority's Land Owner's Consent Manual. Together, these initiatives include more detailed development controls for all marinas, guidelines for the construction of boat storage structures and marinas, and provisions that provide greater clarity and certainty to consent authorities, applicants (including the boating industry) and the boating and general public on how decisions for boat storage will be made. The Harbour REP and the Land Owner's Consent Manual also promote improved marina design and environmental outcomes.



## 4

## references

- *Acid Sulfate Soil Manual* (New South Wales Acid Sulfate Soil Management Advisory Committee, August 1998)
- *Australian Water Quality Guidelines for Fresh and Marine Waters*, (Australian and New Zealand Environment and Conservation Council and Agriculture and Resource Management Council of Australia and New Zealand, 2000)
- *Boat Storage Policy for Sydney Harbour* (Department of Planning, and NSW Maritime Authority, June 2004)
- *Draft City Foreshores Area Strategy* (prepared by PlanningNSW, January 2003)
- *Floodplain Management Manual: the Management of Flood Liable Land* (Department of Land and Water Conservation, 2001)
- *Land Owner's Consent Manual: Policies relating to the Development, use and occupation of waterway and foreshore land Sydney Harbour and Tributaries – Botany Bay – Newcastle Harbour – Port Kembla Harbour* (NSW Maritime Authority, April 2005)
- *Parramatta River Heritage Study*, (Department of Environment and Planning, 1986)
- *Regional Environmental Study for Lane Cove River and Inner Harbour* (Sinclair Knight Merz, November 2000)
- *Review of Statutory Planning Framework for Sydney Harbour and the Parramatta River* undertaken by Environmental Resources Management Australia (December 2000)
- *Sydney and Middle Harbours Heritage Study*, (Godden Mackay, 1991, unpublished)
- *Sydney Harbour and Parramatta River, Development Control Plan for Sydney Regional Environmental Plan No. 22 Parramatta River and Sydney Regional Environmental Plan No. 23 Sydney and Middle Harbours*, (Department of Urban Affairs and Planning and the Office of Marine Administration, 1998)
- *Sydney Harbour Catchment Blueprint* (Department of Land and Water Conservation, February 2003)
- *Water Quality and River Flow Interim Environmental Objectives for Sydney Harbour and Parramatta River Catchment* (Environment Protection Authority, 1999)



New South Wales

# **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following regional environmental plan under the *Environmental Planning and Assessment Act 1979*. (S01/00671/PC)

Minister for Planning

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## **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

under the

Environmental Planning and Assessment Act 1979

### **Part 1 Preliminary**

#### **1 Name of plan**

This plan is *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.

#### **2 Aims of plan**

- (1) This plan has the following aims with respect to the Sydney Harbour Catchment:
  - (a) to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained:
    - (i) as an outstanding natural asset, and
    - (ii) as a public asset of national and heritage significance, for existing and future generations,
  - (b) to ensure a healthy, sustainable environment on land and water,
  - (c) to achieve a high quality and ecologically sustainable urban environment,
  - (d) to ensure a prosperous working harbour and an effective transport corridor,
  - (e) to encourage a culturally rich and vibrant place for people,
  - (f) to ensure accessibility to and along Sydney Harbour and its foreshores,
  - (g) to ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity,
  - (h) to provide a consolidated, simplified and updated legislative framework for future planning.

- (2) For the purpose of enabling these aims to be achieved in relation to the Foreshores and Waterways Area, this plan adopts the following principles:
- (a) Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good,
  - (b) the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores,
  - (c) protection of the natural assets of Sydney Harbour has precedence over all other interests.

### **3 Land to which plan applies**

- (1) This plan applies to land within the Sydney Harbour Catchment, as shown edged heavy black on the Sydney Harbour Catchment Map, being part of the Sydney Region declared by order published in Gazette No 38 of 7 April 1989 at page 1841.
- (2) Within the Sydney Harbour Catchment, particular provisions of this plan apply to:
- (a) the Foreshores and Waterways Area, and
  - (b) various strategic foreshore sites, as shown on the Strategic Foreshore Sites Map, and
  - (c) various heritage items, as shown on the Heritage Map, and
  - (d) various wetlands protection areas, as shown on the Wetlands Protection Area Map.

### **4 Interpretation**

- (1) Words and expressions used in this plan that are defined in the dictionary at the end of this plan have the meanings set out in that dictionary.
- (2) Notes included in the text of this plan do not form part of this plan.

### **5 Consent authority**

- (1) The consent authority for land-based development and land/water interface development is the council of the local government area in which, or nearest to which, the land on which the development is proposed to be carried out, except as provided by subclauses (2) and (3).
- (2) The consent authority for land-based development and land/water interface development is the Minister if:
- (a) the land on which the development is proposed to be carried out is within a local government area, and

- (b) another environmental planning instrument specifies the Minister as the consent authority for the same kind of development if it were to be carried out on that land.
- (3) The consent authority for land-based development and land/water interface development is the Minister if:
  - (a) the land on which the development is proposed to be carried out is not within a local government area, and
  - (b) another environmental planning instrument specifies the Minister as the consent authority for the same kind of development if it were to be carried out on the nearest land that is within a local government area.
- (4) Except to the extent to which some other environmental planning instrument provides, the consent authority for water-based development is the Minister administering the *Ports Corporatisation and Waterways Management Act 1995*.

## **6 Maps**

- (1) This plan incorporates each of the maps referred to in Schedule 1.
- (2) For the purposes of section 26 (2) of the Act, the Critical Habitat Area Map referred to in Schedule 1 identifies land that is declared to be critical habitat under Part 3 of the *Threatened Species Conservation Act 1995*.
- (3) In Schedule 1, a reference to a map is a reference to a map deposited in the head office of the Department.

## **7 Relationship with other environmental planning instruments**

- (1) Subject to this clause, this plan supplements, and does not derogate from, any other environmental planning instrument applying to land to which this plan applies.
- (2) In the event of an inconsistency between this plan and any other environmental planning instrument applying to land to which this plan applies, whether made before or after this plan:
  - (a) in relation to land other than the land referred to in paragraph (b), this plan applies to the extent of the inconsistency, and
  - (b) in relation to land within the Luna Park site within the meaning of *State Environmental Planning Policy No 56—Sydney Harbour Foreshores and Tributaries*, that policy applies to the extent of the inconsistency,subject to section 36 of the Act.

Clause 8 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Part 1 Preliminary

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- (3) Clause 7 (3) of *State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development* does not apply to any building that has frontage to a waterway.
- (4) Clause 8 (1) of *State Environmental Planning Policy No 55—Remediation of Land* does not derogate from or affect the provisions of this plan concerning master plans.

## **8 Repeal of certain environmental planning instruments**

The following environmental planning instruments are repealed:

- (a) *Sydney Regional Environmental Plan No 22—Parramatta River*,
- (b) *Sydney Regional Environmental Plan No 23—Sydney and Middle Harbours*.

## **9 Amendment of certain environmental planning instruments**

Each environmental planning instrument referred to in Schedule 5 is amended as set out in that Schedule.

## **10 Public utilities**

Nothing in this plan is to be construed as restricting or prohibiting or enabling the consent authority to restrict or prohibit the carrying out of development of any description specified in Schedule 1 to the *Environmental Planning and Assessment Model Provisions 1980* on land within the Foreshores and Waterways Area.

## **11 Transitional provision**

- (1) Clause 12 (2) (a) does not apply to:
  - (a) the preparation of any regional environmental plan that had been publicly exhibited under section 47 of the Act before the commencement of this plan, or
  - (b) the preparation of any local environmental plan that had been publicly exhibited under section 66 of the Act before the commencement of this plan, or
  - (c) the preparation of any development control plan that had been publicly exhibited under the regulations before the commencement of this plan.
- (2) Any development application lodged before the commencement of this plan, but not finally determined before its commencement, is to be determined as if this plan had been exhibited pursuant to section 47 of the Act but had not been made.

- (3) Subclause (2) does not apply to a development application in respect of which the applicant has notified the consent authority in writing that the application should be determined in accordance with this plan.
- (4) Any master plan that had been exhibited or adopted before the commencement of this plan for the purposes of *State Environmental Planning Policy No 56—Sydney Harbour Foreshores and Tributaries* is taken to have been exhibited or adopted, as the case requires, for the purposes of this plan.
- (5) This plan does not apply:
  - (a) to an activity within the meaning of Part 5 of the Act in respect of which an application for approval made to a determining authority within the meaning of that Part has been made, but not finally determined, immediately before the commencement of this plan, or
  - (b) to an activity within the meaning of Part 5 of the Act which was approved by a determining authority within the meaning of that Part before the commencement of this plan and which commences pursuant to that approval not later than 3 years after the commencement of this plan.

## Part 2 Planning principles

### 12 Objective

- (1) The objective of this Part is to provide a set of clear planning principles for land within the Sydney Harbour Catchment.
- (2) These principles are to be considered and, where possible, achieved:
  - (a) in the preparation of environmental planning instruments and development control plans under Part 3 of the Act, and
  - (b) in the preparation of environmental studies and master plans for the purposes of the Act.

### 13 Sydney Harbour Catchment

The planning principles for land within the Sydney Harbour Catchment are as follows:

- (a) development is to protect and, where practicable, improve the hydrological, ecological and geomorphological processes on which the health of the catchment depends,
- (b) the natural assets of the catchment are to be maintained and, where feasible, restored for their scenic and cultural values and their biodiversity and geodiversity,
- (c) decisions with respect to the development of land are to take account of the cumulative environmental impact of development within the catchment,
- (d) action is to be taken to achieve the targets set out in *Water Quality and River Flow Interim Environmental Objectives: Guidelines for Water Management: Sydney Harbour and Parramatta River Catchment* (published in October 1999 by the Environment Protection Authority), such action to be consistent with the guidelines set out in *Australian Water Quality Guidelines for Fresh and Marine Waters* (published in November 2000 by the Australian and New Zealand Environment and Conservation Council),
- (e) development in the Sydney Harbour Catchment is to protect the functioning of natural drainage systems on floodplains and comply with the guidelines set out in the document titled *Floodplain Development Manual 2005* (published in April 2005 by the Department),
- (f) development that is visible from the waterways or foreshores is to maintain, protect and enhance the unique visual qualities of Sydney Harbour,

- (g) the number of publicly accessible vantage points for viewing Sydney Harbour should be increased,
- (h) development is to improve the water quality of urban run-off, reduce the quantity and frequency of urban run-off, prevent the risk of increased flooding and conserve water,
- (i) action is to be taken to achieve the objectives and targets set out in the *Sydney Harbour Catchment Blueprint*, as published in February 2003 by the then Department of Land and Water Conservation,
- (j) development is to protect and, if practicable, rehabilitate watercourses, wetlands, riparian corridors, remnant native vegetation and ecological connectivity within the catchment,
- (k) development is to protect and, if practicable, rehabilitate land from current and future urban salinity processes, and prevent or restore land degradation and reduced water quality resulting from urban salinity,
- (l) development is to avoid or minimise disturbance of acid sulfate soils in accordance with the *Acid Sulfate Soil Manual*, as published in 1988 by the Acid Sulfate Soils Management Advisory Committee.

#### **14 Foreshores and Waterways Area**

The planning principles for land within the Foreshores and Waterways Area are as follows:

- (a) development should protect, maintain and enhance the natural assets and unique environmental qualities of Sydney Harbour and its islands and foreshores,
- (b) public access to and along the foreshore should be increased, maintained and improved, while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation,
- (c) access to and from the waterways should be increased, maintained and improved for public recreational purposes (such as swimming, fishing and boating), while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation,
- (d) development along the foreshore and waterways should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands and foreshores,
- (e) adequate provision should be made for the retention of foreshore land to meet existing and future demand for working harbour uses,

- (f) public access along foreshore land should be provided on land used for industrial or commercial maritime purposes where such access does not interfere with the use of the land for those purposes,
- (g) the use of foreshore land adjacent to land used for industrial or commercial maritime purposes should be compatible with those purposes,
- (h) water-based public transport (such as ferries) should be encouraged to link with land-based public transport (such as buses and trains) at appropriate public spaces along the waterfront,
- (i) the provision and use of public boating facilities along the waterfront should be encouraged.

## **15 Heritage conservation**

The planning principles for heritage conservation are as follows:

- (a) Sydney Harbour and its islands and foreshores should be recognised and protected as places of exceptional heritage significance,
- (b) the heritage significance of particular heritage items in and around Sydney Harbour should be recognised and conserved,
- (c) an appreciation of the role of Sydney Harbour in the history of Aboriginal and European settlement should be encouraged,
- (d) the natural, scenic, environmental and cultural qualities of the Foreshores and Waterways Area should be protected,
- (e) significant fabric, settings, relics and views associated with the heritage significance of heritage items should be conserved,
- (f) archaeological sites and places of Aboriginal heritage significance should be conserved.



## Part 3 Foreshores and Waterways Area

### Division 1 Development control

#### 16 Zones indicated on Zoning Map

- (1) For the purposes of this plan, land is within one of the following zones, as shown on the Zoning Map:
  - Zone No W1—Maritime Waters
  - Zone No W2—Environment Protection
  - Zone No W3—Naval Waters
  - Zone No W4—Aviation
  - Zone No W5—Water Recreation
  - Zone No W6—Scenic Waters: Active Use
  - Zone No W7—Scenic Waters: Casual Use
  - Zone No W8—Scenic Waters: Passive Use
  - Zone No 8 (a)—National Parks
- (2) A zone boundary that is shown on the Zoning Map as following the water's edge is taken to follow the mean high water mark.
- (3) Land within Zone No W6, W7 or W8 comprises the waters between the mean high water mark and a line running parallel to, and 30 metres to the seaward of, the mean high water mark.
- (4) This clause does not affect the zoning under any other environmental planning instrument of any land within the Foreshores and Waterways Area that is not included in a zone pursuant to this clause.

#### 17 Zoning objectives

- (1) The objectives of a zone are set out in the Table to this clause.
- (2) Except as otherwise provided by this plan, the consent authority must not grant development consent to any development unless satisfied that it is consistent with the aims of this plan and the objectives of the zone in which it is proposed to be carried out.

#### Table

##### Zone No W1 Maritime Waters

The objectives of this zone are as follows:

- (a) to give preference to and protect waters required for the effective and efficient movement of commercial

shipping, public water transport and maritime industrial operations generally,

- (b) to allow development only where it is demonstrated that it is compatible with, and will not adversely affect the effective and efficient movement of, commercial shipping, public water transport and maritime industry operations,
- (c) to promote equitable use of the waterway, including use by passive recreation craft.

**Zone No W2 Environment Protection**

The objectives of this zone are as follows:

- (a) to protect the natural and cultural values of waters in this zone,
- (b) to prevent damage or the possibility of longer term detrimental impacts to the natural and cultural values of waters in this zone and adjoining foreshores,
- (c) to give preference to enhancing and rehabilitating the natural and cultural values of waters in this zone and adjoining foreshores,
- (d) to provide for the long-term management of the natural and cultural values of waters in this zone and adjoining foreshores.

**Zone No W3 Naval Waters**

The objectives of this zone are as follows:

- (a) to ensure effective implementation of the *Control of Naval Waters Act 1918* of the Commonwealth,
- (b) to restrict development incompatible with naval interests,
- (c) to allow development only where it can be demonstrated that naval interests will not be jeopardised.

**Zone No W4 Aviation**

The objectives of this zone are as follows:

- (a) to give preference to and protect waters required for marine aviation activities,
- (b) to ensure that marine aviation activities safely coexist with other activities and facilities,

- (c) to allow development only where it is demonstrated that it is compatible with and will not adversely affect marine aviation activities.

**Zone No W5      Water Recreation**

The objectives of this zone are as follows:

- (a) to give preference to and increase public water-dependent development so that people can enjoy and freely access the waters of Sydney Harbour and its tributaries,
- (b) to allow development only where it is demonstrated that the public use of waters in this zone is enhanced and will not be compromised now or in the future,
- (c) to minimise the number, scale and extent of artificial structures consistent with their function,
- (d) to allow commercial water-dependent development, but only where it is demonstrated that it meets a justified demand, provides benefits to the general and boating public and results in a visual outcome that harmonises with the planned character of the locality,
- (e) to minimise congestion of and conflict between people using waters in this zone and the foreshore,
- (f) to protect and preserve beach environments and ensure they are free from artificial structures,
- (g) to ensure that the scale and size of development are appropriate to the locality, and protect and improve the natural assets and natural and cultural scenic quality of the surrounding area, particularly when viewed from waters in this zone or from areas of public access.

**Zone No W6      Scenic Waters: Active Use**

The objectives of this zone are as follows:

- (a) to allow a range of public and private water-dependent development close to shore only where it can be demonstrated that such development minimises alienation of waters in this zone from public use and is not constrained by shallow water depth, navigational conflicts or severe wave action,
- (b) to minimise the number and extent of structures over waters in this zone through mechanisms such as the

sharing of structures between adjoining waterfront property owners,

- (c) to ensure remnant natural features, aquatic habitat (including wetlands) and public access along the intertidal zone are not damaged or impaired in any way by development,
- (d) to minimise any adverse effect on views to and from waters in this zone and on the scenic values of the locality as a result of the size of vessels capable of being accommodated within the development.

**Zone No W7 Scenic Waters: Casual Use**

The objectives of this zone are as follows:

- (a) to allow certain water-dependent development close to shore to meet casual boating needs and other water access needs,
- (b) to allow such development only where it can be demonstrated that it achieves a predominantly open and unobstructed waterway and does not dominate the landscape setting,
- (c) to restrict development for permanent boat storage in locations that are unsuitable due to the adverse visual impact of such development or to physical constraints such as shallow water depth, severe wave action or unsafe navigation,
- (d) to ensure that the scale and size of development are appropriate to the location and protect and improve the natural and cultural scenic quality of the surrounding area, particularly when viewed from waters in this zone and areas of public access,
- (e) to maintain and enhance views to and from waters in this zone,
- (f) to minimise the number and extent of structures over waters in this zone through mechanisms such as the sharing of structures between adjoining waterfront property owners,
- (g) to ensure remnant natural features, aquatic habitat (including wetlands) and public access along the intertidal zone are not damaged or impaired in any way by development.

**Zone No W8      Scenic Waters: Passive Use**

The objectives of this zone are as follows:

- (a) to give preference to unimpeded public access along the intertidal zone, to the visual continuity and significance of the landform and to the ecological value of waters and foreshores,
- (b) to allow low-lying private water-dependent development close to shore only where it can be demonstrated that the preferences referred to in paragraph (a) are not damaged or impaired in any way, that any proposed structure conforms closely to the shore, that development maximises open and unobstructed waterways and maintains and enhances views to and from waters in this zone,
- (c) to restrict development for permanent boat storage and private landing facilities in unsuitable locations,
- (d) to allow water-dependent development only where it can be demonstrated that it meets a demonstrated demand and harmonises with the planned character of the locality,
- (e) to ensure that the scale and size of development are appropriate to the locality and protect and improve the natural assets and natural and cultural scenic quality of the surrounding area, particularly when viewed from waters in this zone or areas of public access.

**Zone No 8 (a)      National Parks**

The objectives of this zone are as follows:

- (a) to identify those islands in Sydney Harbour that are reserved under the *National Parks and Wildlife Act 1974*,
- (b) to permit the use of those islands for any purpose authorised in respect of them pursuant to the *National Parks and Wildlife Act 1974*,
- (c) to facilitate public access to Clark Island, Fort Denison, Goat Island, Rodd Island and Shark Island,
- (d) to facilitate development on Clark Island, Fort Denison, Goat Island, Rodd Island and Shark Island in a manner that is compatible with the plan of management prepared under the *National Parks and Wildlife Act 1974* in respect of Sydney Harbour National Park.

**18 Development control in the waterways**

- (1) Except as otherwise provided by this plan, in relation to land within a zone to which a column of the Table to this clause applies:
- (a) the development (if any) that may be carried out without development consent is indicated by the letter “P”, and
  - (b) the development (if any) that may be carried out only with development consent is indicated by the letter “Y”, and
  - (c) the development (if any) that is prohibited is indicated by the letter “N”.
- (2) Despite subclause (1), development not referred to in the Table to this clause may be carried out with development consent, but only if the consent authority is satisfied that the development:
- (a) is not inconsistent with the aims of this plan or the objectives of the zone in which it is proposed to be carried out, and
  - (b) is not inconsistent with any other environmental planning instrument that applies to the land, and
  - (c) will not otherwise have any adverse impacts.

**Table**

	<b>W1</b>	<b>W2</b>	<b>W3</b>	<b>W4</b>	<b>W5</b>	<b>W6</b>	<b>W7</b>	<b>W8</b>
Advertisements	N	N	N	N	N	N	N	N
Advertising structures	N	N	N	N	N	N	N	N
Aids to navigation	P	P	P	P	P	P	P	P
Aviation facilities	Y	N	Y	Y	N	N	N	N
Boat launching ramps (Public)	Y	Y	Y	Y	Y	Y	Y	Y
Boat lifts (other than boat lifts for storage of vessels above water)	Y	N	Y	Y	Y	Y	Y	Y
Boat lifts for the storage of vessels above water	N	N	N	N	N	N	N	N
Boat repair facilities	Y	N	Y	Y	Y	Y	Y	Y
Boat sheds (private)	N	N	N	N	N	Y	N	N
Charter and tourism facilities	Y	N	Y	Y	Y	Y	N	N
Commercial marinas	Y	N	N	Y	Y	Y	N	N
Commercial port facilities	Y	N	Y	Y	N	N	N	N
Community facilities	Y	Y	Y	Y	Y	Y	Y	Y

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	<b>W1</b>	<b>W2</b>	<b>W3</b>	<b>W4</b>	<b>W5</b>	<b>W6</b>	<b>W7</b>	<b>W8</b>
Demolition (other than demolition of a heritage Item)	P	P	P	P	P	P	P	P
Dredging	Y	Y	Y	Y	Y	Y	Y	Y
Flora and fauna enclosures	Y	Y	P	P	P	P	P	P
General restoration works	P	P	P	P	P	P	P	P
Houseboats	N	N	N	N	N	N	N	N
Intertidal dredging	N	N	N	N	N	N	N	N
Maintenance dredging	P	Y	P	P	P	P	P	P
Mooring pens	N	N	N	N	N	Y	N	N
Naval activities	P	P	P	P	P	Y	Y	Y
Private landing facilities	N	N	N	N	N	Y	Y	N
Private landing steps	Y	Y	Y	Y	Y	Y	Y	Y
Private marinas	N	N	N	N	N	Y	N	N
Public boardwalks	Y	Y	Y	Y	Y	Y	Y	Y
Public water recreational facilities	Y	Y	Y	Y	Y	Y	Y	Y
Public water transport facilities	Y	Y	Y	Y	Y	Y	Y	Y
Reclamation works	N	N	N	N	N	N	N	N
Recreational or club facilities	Y	Y	Y	Y	Y	Y	Y	Y
Residential development	N	N	N	N	N	N	N	N
Single mooring (other than associated with a commercial marina or a boating industry facility)	P	P	P	P	P	P	P	P
Skids	Y	N	N	N	Y	Y	Y	Y
Slipways	N	N	N	N	N	Y	Y	Y
Swimming enclosures (private)	N	N	Y	Y	N	Y	Y	N
Swimming pools	N	N	N	N	N	N	N	N
Telecommunications facilities	Y	Y	Y	Y	Y	Y	Y	Y
Tourist facilities	N	N	N	N	N	N	N	N

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	<b>W1</b>	<b>W2</b>	<b>W3</b>	<b>W4</b>	<b>W5</b>	<b>W6</b>	<b>W7</b>	<b>W8</b>
Uses and activities prohibited under the <i>Control of Naval Waters Act 1918</i> of the Commonwealth	n/a	n/a	N	n/a	n/a	n/a	n/a	n/a
Water-based restaurants and entertainment facilities	N	N	N	N	N	N	N	N
Waterfront access stairs	N	N	N	N	N	N	N	N

## **19 Development control within national parks**

Except as otherwise provided by this plan, in relation to land within Zone No 8 (a):

- (a) the following kinds of development may be carried out without development consent:
  - (i) development for the purposes of aids to navigation,
  - (ii) development for purposes for which development is authorised to be carried out in a national park under the *National Parks and Wildlife Act 1974*,
- (b) development for any other purpose is prohibited.

## **Division 2 Matters for consideration**

### **20 General**

The matters referred to in this Division (together with any other relevant matters):

- (a) are to be taken into consideration by consent authorities before granting consent to development under Part 4 of the Act, and
- (b) are to be taken into consideration by public authorities and others before they carry out activities to which Part 5 of the Act applies.

### **21 Biodiversity, ecology and environment protection**

The matters to be taken into consideration in relation to biodiversity, ecology and environment protection are as follows:

- (a) development should have a neutral or beneficial effect on the quality of water entering the waterways,
- (b) development should protect and enhance terrestrial and aquatic species, populations and ecological communities and, in particular, should avoid physical damage and shading of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),



- (c) development should promote ecological connectivity between neighbouring areas of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),
- (d) development should avoid indirect impacts on aquatic vegetation (such as changes to flow, current and wave action and changes to water quality) as a result of increased access,
- (e) development should protect and reinstate natural intertidal foreshore areas, natural landforms and native vegetation,
- (f) development should retain, rehabilitate and restore riparian land,
- (g) development on land adjoining wetlands should maintain and enhance the ecological integrity of the wetlands and, where possible, should provide a vegetative buffer to protect the wetlands,
- (h) the cumulative environmental impact of development,
- (i) whether sediments in the waterway adjacent to the development are contaminated, and what means will minimise their disturbance.

## **22 Public access to, and use of, foreshores and waterways**

The matters to be taken into consideration in relation to public access to, and use of, the foreshores and waterways are as follows:

- (a) development should maintain and improve public access to and along the foreshore, without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation,
- (b) development should maintain and improve public access to and from the waterways for recreational purposes (such as swimming, fishing and boating), without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation,
- (c) if foreshore land made available for public access is not in public ownership, development should provide appropriate tenure and management mechanisms to safeguard public access to, and public use of, that land,
- (d) the undesirability of boardwalks as a means of access across or along land below the mean high water mark if adequate alternative public access can otherwise be provided,
- (e) the need to minimise disturbance of contaminated sediments.

### **23 Maintenance of a working harbour**

The matters to be taken into consideration in relation to the maintenance of a working harbour are as follows:

- (a) foreshore sites should be retained so as to preserve the character and functions of a working harbour, in relation to both current and future demand,
- (b) consideration should be given to integrating facilities for maritime activities in any development,
- (c) in the case of development on land that adjoins land used for industrial and commercial maritime purposes, development should be compatible with the use of the adjoining land for those purposes,
- (d) in the case of development for industrial and commercial maritime purposes, development should provide and maintain public access to and along the foreshore where such access does not interfere with the use of the land for those purposes.

### **24 Interrelationship of waterway and foreshore uses**

The matters to be taken into consideration in relation to the interrelationship of waterway and foreshore uses are as follows:

- (a) development should promote equitable use of the waterway, including use by passive recreation craft,
- (b) development on foreshore land should minimise any adverse impact on the use of the waterway, including the use of the waterway for commercial and recreational uses,
- (c) development on foreshore land should minimise excessive congestion of traffic in the waterways or along the foreshore,
- (d) water-dependent land uses should have priority over other uses,
- (e) development should avoid conflict between the various uses in the waterways and along the foreshores.

### **25 Foreshore and waterways scenic quality**

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways are as follows:

- (a) the scale, form, design and siting of any building should be based on an analysis of:
  - (i) the land on which it is to be erected, and
  - (ii) the adjoining land, and
  - (iii) the likely future character of the locality,

- (b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries,
- (c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.

## **26 Maintenance, protection and enhancement of views**

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of views are as follows:

- (a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour,
- (b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items,
- (c) the cumulative impact of development on views should be minimised.

## **27 Boat storage facilities**

The matters to be taken into consideration in relation to boating facilities are as follows:

- (a) development should increase the number of public boat storage facilities and encourage the use of such facilities,
- (b) development should avoid the proliferation of boat sheds and other related buildings and structures below the mean high water mark,
- (c) development should provide for the shared use of private boat storage facilities,
- (d) development should avoid the proliferation of private boat storage facilities in and over the waterways by ensuring that all such facilities satisfy a demonstrated demand,
- (e) boat storage facilities should be as visually unobtrusive as possible,
- (f) in the case of permanent boat storage, the safety and utility of the development should not be adversely affected by the wave environment, and the development should avoid adverse impacts on safe navigation and single moorings.

### **Division 3 Foreshores and Waterways Planning and Development Advisory Committee**

#### **28 Foreshores and Waterways Planning and Development Advisory Committee**

- (1) There is constituted by this clause the Foreshores and Waterways Planning and Development Advisory Committee the functions of which are as follows:
  - (a) to advise a consent authority on matters relevant to any decision required to be made by the consent authority under this plan or the Act,
  - (b) to advise a public authority or person carrying out certain development that does not require development consent on relevant matters before such development is carried out,
  - (c) to advise the Director-General of the Department of Environment and Conservation, at his or her request, on any matter relating to the preparation of a plan of management for land that is reserved under the *National Parks and Wildlife Act 1974*,
  - (d) to advise the Director-General of the Department of Primary Industries on any matter relating to the preparation of a plan of management for any land whose development may have an impact on an aquatic reserve within the meaning of the *Fisheries Management Act 1994*,
  - (e) to exercise any other functions conferred on it by this plan or any other environmental planning instrument.
- (2) The Advisory Committee is to consist of 3 members appointed by the Director-General.
- (3) Of the members of the Advisory Committee:
  - (a) one is to be an officer of the Waterways Authority nominated by the Authority, and
  - (b) one is to be an officer of the Department selected by the Director-General, and
  - (c) one is to be:
    - (i) in respect of a function exercised by the Advisory Committee in relation to a matter for which the council of a local government area is the consent authority, a person nominated by the council, or
    - (ii) in respect of a function exercised by the Advisory Committee in relation to a matter for which the Minister is the consent authority, a person nominated by the Minister.

- (4) If a function of the Advisory Committee is not being exercised in respect of land within a local government area, but is being exercised in respect of any land that is reserved under the *National Parks and Wildlife Act 1974*, the Advisory Committee is to include an officer of the Department of Environment and Conservation selected by the Director-General of that Department instead of the member referred to in subclause (3) (c).
- (5) The Director-General is to appoint one of the members of the Committee to be the Chairperson of the Advisory Committee.
- (6) The procedures for the calling of meetings of the Advisory Committee and for the conduct of business at those meetings are, subject to this plan and to any direction of the Director-General, to be as determined by the Advisory Committee.

#### **29 Consultation required for certain development applications**

- (1) The consent authority must not grant development consent to the carrying out in the Foreshores and Waterways Area of development listed in Schedule 2, unless:
  - (a) it has referred the development application to the Advisory Committee, and
  - (b) it has taken into consideration any submission received from the Advisory Committee within 30 days after the date on which the application was forwarded to the Committee.
- (2) In the case of an application to carry out development for more than one purpose, of which one or more is listed in Schedule 2 and one or more is not, the consent authority is only required to refer to the Advisory Committee that part of the application relating to development for a purpose so listed.
- (3) This clause does not apply to development that consists solely of alterations or additions to existing buildings or works and that, in the opinion of the consent authority, is minor and does not, to any significant extent, increase the scale, size or intensity of use of those buildings or works.

#### **30 Consultation available for other matters**

- (1) The person or body by whom a draft local environmental plan, draft development control plan or draft master plan for land having frontage to a waterway is prepared must refer a copy of the plan to the Advisory Committee before the plan is publicly exhibited.
- (2) The Director-General should refer a copy of any draft development control plan for land to which this plan applies prepared by the Director-General to the Advisory Committee before it is adopted.

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- (3) If the Department or any other government agency prepares any guidelines for development control affecting land having frontage to the waterway (whether or not the guidelines are in the form of a plan of management), the Director-General must, and the government agency should, refer a copy of the draft guidelines to the Advisory Committee before they are adopted.
- (4) The Director-General must, and a council or government agency concerned should, have regard to any submission received from the Advisory Committee within 30 days after the date on which the draft local environmental plan, draft development control plan, draft master plan or draft guidelines were forwarded to the Advisory Committee.

**31 Referral of development proposals not requiring development consent**

- (1) This clause applies to the following development:
  - (a) development listed in Schedule 2, and
  - (b) development that requires the provision of services (including water, sewerage or stormwater systems).
- (2) Before carrying out any development to which this clause applies which does not require development consent, the person, whether or not a public authority, carrying out the development must:
  - (a) give notice of the proposed development:
    - (i) in the case of development listed in Schedule 2, to the Advisory Committee, or
    - (ii) in the case of development that requires the provision of services, to the public authority responsible for providing the service concerned, and
  - (b) consider any matters concerning the development raised by those bodies which have been notified to the person not later than 30 days after the giving of such notice.

**Division 4 Special provisions**

**32 Subdivision of existing and future public domain identified on master plans**

- (1) This clause applies to the subdivision of land:
  - (a) that is in (or forms part of land in) the Foreshores and Waterways Area, and
  - (b) that has frontage to (or forms part of land having frontage to) Sydney Harbour, and

- (c) that is (or forms part of land that is) identified as existing or future public domain by a master plan adopted under this or any other environmental planning instrument.
- (2) Development consent to the subdivision of land is not to be granted unless the consent authority is satisfied that public access to and along the foreshore has been or will be secured by appropriate arrangements made under the Act, under this plan or under any other environmental planning instrument.
- (3) Any such arrangements may (without limitation) include the zoning of the land for public open space, dedication of the land as a public reserve or the granting of easements or rights of way.

**33 Commercial marinas within Zone No W1**

The consent authority must not grant development consent to development for the purpose of a commercial marina on land within Zone No W1 unless it is satisfied that access between the marina and the foreshore will not be provided on or across land within Zone No W2, W3, W7 or W8.

**34 Boat repair facilities and commercial marinas in Zone No W2**

- (1) The objects of this clause are as follows:
  - (a) to maintain the working harbour character and functions of certain existing boat repair facilities by retaining the sites of those facilities for maritime purposes,
  - (b) to ensure that any development carried out on those sites, including any alteration or extension of those facilities, does not substantially increase the scale of those facilities or the intensity of their use.
- (2) Despite any other provision of this plan, development for the purposes of a boat repair facility or commercial marina may be carried out, but only with development consent, on a site shown edged heavy black on the Special Purposes (Boat Repair Facilities and Commercial Marinas) Map.

**35 Homebush Bay—Rhodes Peninsula bridge**

Despite any other provision of this plan, development for the purposes of a pedestrian and cycle bridge over Homebush Bay, between Homebush Bay West and Rhodes Peninsula, may be carried out, in accordance with the provisions of the *Homebush Bay West Development Control Plan* with respect to such a bridge, but only with development consent.

**36 Development on land comprising acid sulfate soils**

- (1) This clause applies to such of the land in the Foreshores and Waterways Area as is within Zone No W1, W2, W3, W4, W5, W6, W7, W8 or 8 (a).
- (2) Works that involve the excavation, dredging, filling or contouring of land to which this clause applies, or the extraction of soil or other extractive material from such land, may be carried out only with development consent.
- (3) Despite subclause (2), such works may be carried out without development consent if:
  - (a) a copy of a preliminary assessment of the proposed works undertaken in accordance with the *Acid Sulfate Soils Assessment Guidelines* has been given to the consent authority, and
  - (b) the consent authority has provided written advice to the person carrying out the works confirming that results of the preliminary assessment indicate the proposed works need not be carried out pursuant to an acid sulfate soils management plan prepared in accordance with the *Acid Sulfate Soils Assessment Guidelines*.
- (4) The consent authority must not grant development consent as required by this clause unless it has considered:
  - (a) the adequacy of an acid sulfate soils management plan prepared for the proposed development in accordance with the *Acid Sulfate Soils Assessment Guidelines*, and
  - (b) the likelihood of the proposed development resulting in the discharge of acid water, and
  - (c) any comments received from the Department within 21 days of the consent authority having sent the Department a copy of the development application and of the related acid sulfate soils management plan.
- (5) This clause requires development consent for the carrying out of works:
  - (a) by councils or county councils (within the meaning of the *Local Government Act 1993*), or
  - (b) by private drainage boards (within the meaning of the *Water Management Act 2000*),despite any other provision of this plan and despite clause 10 of *State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development*.
- (6) This clause does not apply to or in respect of works carried out by or on behalf of the Waterways Authority or Sydney Ports Corporation.



- (7) In this clause:

***acid sulfate soils*** means actual or potential acid sulfate soils, as defined in the *Acid Sulfate Soils Assessment Guidelines*.

***Acid Sulfate Soils Assessment Guidelines*** means the *Acid Sulfate Soils Assessment Guidelines* as published by the NSW Acid Sulfate Soils Management Advisory Committee and adopted for the time being by the Director-General.

**37 Development within 20 metres of boundary of Zone No W2**

Despite any other provision of this plan, a consent authority may grant development consent to the development of land that is within 20 metres of the boundary of Zone No W2 and another zone for a purpose for which development may be carried out in either Zone No W2 or the adjoining zone.

**38 Development on land in waterways adjoining national parks**

Development for any purpose for which development is authorised to be carried out under the *National Parks and Wildlife Act 1974* may be carried out without development consent in the waterway adjoining land that is reserved under that Act, where the development spans the mean high water mark and is part of any other development or activity being carried out on that land.

**39 Development and activities in vicinity of national parks**

- (1) If of the opinion that development in any part of the waterway would be likely to affect land that is reserved under the *National Parks and Wildlife Act 1974*:
- (a) a consent authority must not grant development consent for any such development, and
  - (b) a public authority must not carry out any such development, unless it has given notice of the proposed development to the Director-General of the Department of Environment and Conservation and has considered any comments received from that Director-General within 30 days after the day on which notice of the proposal was given.
- (2) Any such notice by a consent authority must be sent to the Director-General of the Department of Environment and Conservation within 2 days after the date of lodgment of the relevant development application.

## **Part 4 Strategic foreshore sites**

### **Division 1 Requirement for master plan**

#### **40 Application of Division**

- (1) This Division applies to development that is carried out on a strategic foreshore site.
- (2) In this Division, a reference to a strategic foreshore site extends to the whole of any structure (such as a wharf):
  - (a) that is located partly on land within the site and partly on waters adjacent to the site, and
  - (b) that is related to the site.

#### **41 Requirement for master plans**

- (1) Development consent must not be granted for the carrying out of development on a strategic foreshore site unless:
  - (a) there is a master plan for the site, and
  - (b) the consent authority has taken the master plan into consideration.
- (2) The Minister may waive compliance with the requirements of subclause (1):
  - (a) if satisfied that preparation of a master plan is unnecessary because of:
    - (i) the nature of the proposed development, or
    - (ii) the fact that the proposed development will affect only a small proportion of the site, or
    - (iii) the adequacy of other planning controls applying to the proposed development, or
  - (b) for such other reason as the Minister considers sufficient, so long as the Minister is satisfied that the proposed development will not compromise the application of the planning principles set out in clauses 13, 14 and 15.
- (3) If the Minister is not the consent authority, the Minister is to notify the relevant consent authority, in writing, of a waiver of the requirements of subclause (1).
- (4) A master plan does not have to be prepared for the City Foreshores Area or for Garden Island, as shown on the Strategic Foreshore Sites Map, unless the Minister so directs.

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- (5) This clause does not apply to minor development specified in Schedule 3.

## **Division 2 Master plans**

### **42 Master plans to which Part applies**

This Division applies to and in respect of any master plan that is required by Division 1 to be prepared for any land.

### **43 Appropriate authority**

For the purposes of this Part, the *appropriate authority* is:

- (a) the Minister, in relation to any land for which the Minister is the consent authority for any development (whether or not the relevant council or any other public authority is the consent authority for other development), and
- (b) the relevant council, in relation to any other land.

### **44 Nature of master plans**

A *master plan* is a document (consisting of written information, maps and diagrams):

- (a) that outlines provisions relating to development of land to which the master plan applies, and
- (b) that explains how the principles in Part 2 and in any other relevant environmental planning instrument are addressed.

### **45 Land for which master plan to be prepared**

- (1) A master plan for a strategic foreshore site for which the Minister is the appropriate authority may be prepared for the whole of the site or for part only of the site.
- (2) A master plan for a strategic foreshore site for which the relevant council is the appropriate authority must be prepared for the whole of the site unless the Minister directs that it may be prepared for part only of the site.
- (3) Such a direction must not be given unless the Minister is satisfied that the adoption of a master plan for the specified part will not compromise the application of the planning principles set out in clauses 13, 14 and 15.

**46 Preparation of master plans**

- (1) A draft master plan may be prepared by or on behalf of the owner or lessee of the land concerned, the relevant council or the Director-General.
- (2) A draft master plan is to be prepared following consultation with the appropriate authority and is to illustrate and explain, where appropriate, proposals for the following:
  - (a) design principles drawn from an analysis of the site and its context,
  - (b) phasing of development,
  - (c) distribution of land uses including foreshore public access and open space,
  - (d) pedestrian, cycle and motor vehicle access and circulation networks,
  - (e) parking provision,
  - (f) subdivision pattern,
  - (g) infrastructure provision,
  - (h) building envelopes and built form controls,
  - (i) heritage conservation (including the protection of archaeological relics and places, sites and objects of Aboriginal heritage significance), implementing the guidelines set out in any applicable conservation policy or conservation management plan,
  - (j) remediation of the site,
  - (k) provision of public facilities,
  - (l) provision of open space, its function and landscaping,
  - (m) the impact on any adjoining land that is reserved under the *National Parks and Wildlife Act 1974*,
  - (n) protection and enhancement of the natural assets of the site and adjoining land,
  - (o) protection and enhancement of the waterway (including water quality) and any aquatic vegetation on or adjoining the site (such as seagrass, saltmarsh, mangroves and algal communities).
- (3) The requirement for consultation under subclause (2) does not apply if the draft master plan is prepared by or on behalf of the relevant council or the Director-General.

- (4) If a draft master plan is prepared by or on behalf of the relevant council or the Director-General, the relevant council or the Director-General is required to consult with the owner or lessee of the land concerned.

#### **47 Consultation**

- (1) A draft master plan submitted to the appropriate authority by or on behalf of the owner or lessee of the land concerned, the relevant council or the Director-General must be advertised in a newspaper circulating in the locality and exhibited for not less than 21 days for public comment.
- (2) A draft master plan (other than a draft master plan prepared by the Director-General) must be submitted to the Director-General for comment and the views of relevant public authorities and community organisations sought.
- (3) If the appropriate authority is the Minister, a draft master plan must be submitted to the relevant council for comment.
- (4) Any comments made by the Director-General or the relevant council must be taken into consideration prior to finalising the draft master plan.
- (5) The appropriate authority must take into account any written submissions made about the content of the draft master plan during the exhibition period.

#### **48 Adoption of master plans**

- (1) A draft master plan must be submitted to the appropriate authority for adoption.
- (2) The Director-General may recommend that a draft master plan be adopted without any variations or that it be adopted with such variations as the Director-General considers appropriate.
- (3) The Minister may adopt a draft master plan for land for which a council is the appropriate authority under clause 43 (b) if the council has rejected, or has not adopted, that plan within 6 months after the date on which it was submitted to the council for adoption.
- (4) The Minister must seek the views of the relevant council concerning the draft master plan before the Minister adopts it.
- (5) A draft master plan becomes a master plan if it is adopted by the appropriate authority or by the Minister under subclause (3).
- (6) When a master plan is adopted, the appropriate authority must advertise the adoption of the master plan in a newspaper circulating in the locality.

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**49 Amendment of master plans**

- (1) A master plan may be amended by another master plan.
- (2) An amendment to a master plan may be dealt with concurrently with a development application.

**50 Availability of master plans**

A copy of each master plan must be available for inspection at the head office of the Department and the relevant council.

**51 Master plans not required for land dedicated or reserved under National Parks and Wildlife Act 1974**

Nothing in this plan:

- (a) requires a master plan to be prepared:
  - (i) for land that is reserved under the *National Parks and Wildlife Act 1974*, or
  - (ii) for waterfront land that is adjacent to, and managed in the same manner as, land that is reserved under the *National Parks and Wildlife Act 1974*, or
- (b) prohibits the carrying out of development on land that is reserved under the *National Parks and Wildlife Act 1974* otherwise than in accordance with such a plan.

## Part 5 Heritage provisions

### Division 1 General

#### 52 General

The matters referred to in this Part (together with any other relevant matters):

- (a) are to be taken into consideration by consent authorities before granting consent to development under Part 4 of the Act, and
- (b) are to be taken into consideration by public authorities and others before they carry out activities to which Part 5 of the Act applies.

#### 53 Objectives

The objectives of this plan in relation to heritage are:

- (a) to conserve the environmental heritage of the land to which this Part applies, and
- (b) to conserve the heritage significance of existing significant fabric, relics, settings and views associated with the heritage significance of heritage items, and
- (c) to ensure that archaeological sites and places of Aboriginal heritage significance are conserved, and
- (d) to allow for the protection of places which have the potential to have heritage significance but are not identified as heritage items.

**Note.** Attention is drawn to the provisions of the *Heritage Act 1977* and the *National Parks and Wildlife Act 1974* under which an approval or permit under either or both of those Acts may be required for certain activities, whether or not development consent is required by this clause.

### Division 2 Protection of heritage items

#### 54 Land to which Part applies

This Part applies to and in respect of the land shown on the Heritage Map and to the heritage items identified on that map.

**Note.** The heritage items are also listed in Schedule 4.

#### 55 Protection of heritage items

- (1) The following development may be carried out only with development consent:
  - (a) demolishing or moving a heritage item,

- (b) altering a heritage item by making structural or non-structural changes to its exterior, including changes to its detail, fabric, finish or appearance,
  - (c) altering a heritage item by making structural changes to its interior,
  - (d) disturbing or damaging a place of Aboriginal heritage significance or an Aboriginal object,
  - (e) erecting a building on, or subdividing, land on which a heritage item is located.
- (2) Development consent is not required by this clause if:
- (a) in the opinion of the consent authority:
    - (i) the proposed development is of a minor nature or consists of maintenance of the heritage item, and
    - (ii) the proposed development would not adversely affect the significance of the heritage item, and
  - (b) the proponent has notified the consent authority in writing of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development will comply with this subclause and that development consent is not otherwise required by this plan.
- (3) Development consent is not required by this clause for the following development in a cemetery or burial ground if there will be no disturbance to human remains, to relics in the form of grave goods or to a place of Aboriginal heritage significance:
- (a) the creation of a new grave or monument, or
  - (b) an excavation or disturbance of land for the purpose of carrying out conservation or repair of monuments or grave markers.
- (4) Before granting development consent as required by this clause, the consent authority must assess the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item concerned.
- (5) The assessment must include consideration of a heritage impact statement that addresses at least the following issues (but is not to be limited to assessment of those issues, if the heritage significance concerned involves other issues):
- (a) the heritage significance of the item as part of the environmental heritage of the land to which this Part applies, and



- (b) the impact that the proposed development will have on the heritage significance of the item and its setting, including any landscape or horticultural features, and
  - (c) the measures proposed to conserve the heritage significance of the item and its setting, and
  - (d) whether any archaeological site or potential archaeological site would be adversely affected by the proposed development, and
  - (e) the extent to which the carrying out of the proposed development would affect the form of any historic subdivision.
- (6) The consent authority may also decline to grant development consent until it has considered a conservation management plan, if it considers the development proposed should be assessed with regard to such a plan.

#### **56 Advertised development**

The following development is identified as advertised development:

- (a) the demolition of a heritage item, and
- (b) the carrying out of any development allowed by clause 60.

### **Division 3 Protection of places of potential heritage significance**

#### **57 Development affecting matters of Aboriginal heritage significance**

- (1) Before granting development consent for development that is likely to have an impact on a place of Aboriginal heritage significance or a potential place of Aboriginal heritage significance, or that will be carried out on an archaeological site of a relic that has Aboriginal heritage significance, the consent authority:
- (a) must consider an Aboriginal heritage impact assessment that has been prepared in accordance with any relevant guidelines established by the Department of Environment and Conservation and that documents the views of local Aboriginal communities, and
  - (b) except where the proposed development is integrated development by virtue of the requirement for consent under section 90 of the *National Parks and Wildlife Act 1974*, must notify the local Aboriginal communities (in such way as it thinks appropriate) and the Director-General of the Department of Environment and Conservation of its intention to do so and take into consideration any comments received in response within 28 days after the relevant notice is sent.

- (2) The notice referred to in subclause (1) (b) must be sent to the local Aboriginal communities and the Director-General of the Department of Environment and Conservation by the consent authority within 2 days after the date of lodgment of the relevant development application.

**58 Development affecting matters of non-Aboriginal heritage significance**

- (1) Before granting development consent for development that will be carried out on an archaeological site or a potential archaeological site of a relic that has non-Aboriginal heritage significance (whether or not it is, or has the potential to be, also the site of a relic of Aboriginal heritage significance), the consent authority:
- (a) must consider a heritage impact statement explaining how the proposed development will affect the conservation of the site and any relic known or reasonably likely to be located at the site, and
  - (b) must notify the Heritage Council of its intention to do so and take into consideration any comments received in response within 28 days after the notice is sent.
- (2) The notice referred to in subclause (1) (b) must be sent to the Heritage Council by the consent authority within 2 days after the date of lodgment of the relevant development application.
- (3) This clause does not apply:
- (a) if the proposed development does not involve disturbance of below-ground deposits, and if the consent authority is of the opinion that the heritage significance of any above-ground relics would not be adversely affected by the proposed development, or
  - (b) if the proposed development is integrated development by virtue of:
    - (i) the requirement for consent under section 90 of the *National Parks and Wildlife Act 1974*, or
    - (ii) the requirement for approval under section 57 of the *Heritage Act 1977*.

**Division 4 Miscellaneous**

**59 Development in vicinity of heritage items**

- (1) Before granting development consent to development in the vicinity of a heritage item, the consent authority must assess the impact of the proposed development on the heritage significance of the heritage item.

- (2) This clause extends to development:
  - (a) that may have an impact on the setting of a heritage item, for example, by affecting a significant view to or from the item or by overshadowing, or
  - (b) that may undermine or otherwise cause physical damage to a heritage item, or
  - (c) that will otherwise have any adverse impact on the heritage significance of a heritage item.
- (3) The consent authority may refuse to grant development consent unless it has considered a heritage impact statement that will help it assess the impact of the proposed development on the heritage significance, visual curtilage and setting of the heritage item.
- (4) The heritage impact statement should include details of the size, shape and scale of, setbacks for, and the materials to be used in, any proposed buildings or works and details of any modification that would reduce the impact of the proposed development on the heritage significance of the heritage item.

## **60 Conservation incentives**

The consent authority may grant development consent to the use for any purpose of a building that is a heritage item, or of the land on which such a building is erected, even though the use would otherwise not be allowed by this plan, if:

- (a) it is satisfied that the retention of the heritage item depends on the granting of development consent, and
- (b) the proposed use is in accordance with a conservation management plan which has been endorsed by the consent authority, and
- (c) the granting of development consent to the proposed use would ensure that all necessary conservation work identified in the conservation management plan is carried out, and
- (d) the proposed use would not adversely affect the heritage significance of the heritage item or its setting, and
- (e) the proposed use would not adversely affect the amenity of the surrounding area otherwise than to an insignificant extent.

## Part 6 Wetlands protection

### 61 Objectives

The objectives of this plan in relation to wetlands are:

- (a) to preserve, protect and encourage the restoration and rehabilitation of wetlands, and
- (b) to maintain and restore the health and viability of wetlands, and
- (c) to prevent the fragmentation of wetlands, and
- (d) to preserve the scenic qualities of wetlands, and
- (e) to ensure that wetlands continue to perform their natural ecological functions (such as the provision of wetland habitat, the preservation of water quality, the control of flooding and erosion).

**Note.** Attention is drawn to the provisions of the *National Parks and Wildlife Act 1974* under which approval under that Act may be required for certain activities (such as the disturbance of Aboriginal objects or places) whether or not development consent is required by this clause. Attention is also drawn to the requirements of the *Fisheries Management Act 1994* for all dredging proposals to be referred to the Minister administering that Act.

### 62 Requirement for development consent

- (1) Development within a wetlands protection area may be carried out only with development consent.
- (2) Development consent is not required by this clause:
  - (a) for anything (such as dredging) that is done for the sole purpose of maintaining an existing navigational channel, or
  - (b) for any works that restore or enhance the natural values of wetlands (including works to restore or enhance plant communities, water levels, water flows or soil composition), being works:
    - (i) that are carried out to rectify damage arising from a contravention of this plan, and
    - (ii) that are not carried out in association with any other development, and
    - (iii) that have no significant impact on the environment beyond the site on which they are carried out.
- (3) Development consent is not required by this clause for any other development if:
  - (a) in the opinion of the consent authority:
    - (i) the proposed development is of a minor nature, and

- (ii) the proposed development would not adversely affect the wetland or wetlands protection area, and
  - (b) the proponent has notified the consent authority in writing of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development will comply with this subclause and that development consent is not otherwise required by this plan.
- (4) This clause does not apply to development carried out by or on behalf of the Waterways Authority or Sydney Ports Corporation.
- (5) This clause does not apply to development that is prohibited by any other environmental planning instrument.

**63 Matters for consideration**

- (1) The matters referred to in this clause (together with any other relevant matters):
- (a) are to be taken into consideration by consent authorities before granting consent to development under Part 4 of the Act, and
  - (b) are to be taken into consideration by public authorities and others before they carry out activities to which Part 5 of the Act applies.
- (2) The matters to be taken into consideration in relation to any development are as follows:
- (a) the development should have a neutral or beneficial effect on the quality of water entering the waterways,
  - (b) the environmental effects of the development, including effects on:
    - (i) the growth of native plant communities,
    - (ii) the survival of native wildlife populations,
    - (iii) the provision and quality of habitats for both indigenous and migratory species,
    - (iv) the surface and groundwater characteristics of the site on which the development is proposed to be carried out and of the surrounding areas, including salinity and water quality and whether the wetland ecosystems are groundwater dependent,
  - (c) whether adequate safeguards and rehabilitation measures have been, or will be, made to protect the environment,

- (d) whether carrying out the development would be consistent with the principles set out in *The NSW Wetlands Management Policy* (as published in March 1996 by the then Department of Land and Water Conservation),
- (e) whether the development adequately preserves and enhances local native vegetation,
- (f) whether the development application adequately demonstrates:
  - (i) how the direct and indirect impacts of the development will preserve and enhance wetlands, and
  - (ii) how the development will preserve and enhance the continuity and integrity of the wetlands, and
  - (iii) how soil erosion and siltation will be minimised both while the development is being carried out and after it is completed, and
  - (iv) how appropriate on-site measures are to be implemented to ensure that the intertidal zone is kept free from pollutants arising from the development, and
  - (v) that the nutrient levels in the wetlands do not increase as a consequence of the development, and
  - (vi) that stands of vegetation (both terrestrial and aquatic) are protected or rehabilitated, and
  - (vii) that the development minimises physical damage to aquatic ecological communities, and
  - (viii) that the development does not cause physical damage to aquatic ecological communities,
- (g) whether conditions should be imposed on the carrying out of the development requiring the carrying out of works to preserve or enhance the value of any surrounding wetlands.

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## Schedule 1 Maps incorporated in plan

(Clause 6)

***Critical Habitat Area Map***, being the map entitled “Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005—Little Penguin Critical Habitat Map”.

***Foreshores and Waterways Area Map***, being the map entitled “Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005—Foreshores and Waterways Area Map”.

***Heritage Map***, being the map entitled “Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005—Heritage Map”.

***Special Purposes (Boat Repair Facilities and Commercial Marinas) Map***, being the map entitled “Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005—Special Purposes (Boat Repair Facilities and Commercial Marinas) Map”, comprising the sheets marked as follows:

Sheet 1—Davis Marina

Sheet 2—Manly Boatshed

Sheet 3—Sailors Bay Boatshed

***Strategic Foreshore Sites Map***, being the map entitled “Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005—Strategic Foreshore Sites Map”, comprising the sheets marked as follows:

Sheet 1—City Foreshores Area

Sheet 2—Garden Island

Sheet 3—North Head

Sheet 4—St Patrick’s Estate, North Head Peninsula

Sheet 5—Manly Wharf

Sheet 6—Middle Head

Sheet 7—Taronga Zoological Gardens

Sheet 8—HMAS Platypus

Sheet 9—Luna Park

Sheet 10—SRA land, Lavender Bay

Sheet 11—BP site, Berrys Bay

Sheet 12—Coal Loader site, Balls Head

Sheet 13—HMAS Waterhen

Sheet 14—Woolwich Defence Land

Sheet 15—Gladesville Hospital site

Sheet 16—ADI site, Ryde

Sheet 17—Shepherds Bay, Meadowbank

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Schedule 1 Maps incorporated in plan

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Sheet 18—Naval Stores site, Ermington

Sheet 19—Leeds Street, Rhodes

Sheet 20—Rivendell Adolescent Unit

Sheet 21—Concord Repatriation General Hospital

Sheet 22—The Dame Eadith Walker Hospital

Sheet 23—AGL site, Mortlake

Sheet 24—Cockatoo Island, Spectacle Island and Snapper Island

Sheet 25—Caltex site, Ballast Point

Sheet 26—Fletcher site, Blackwattle Bay

Sheet 27—Strickland House, Vaucluse

Sheet 28—HMAS Watson, South Head

***Sydney Harbour Catchment Map***, being the map entitled “Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005—Sydney Harbour Catchment Map”.

***Wetlands Protection Area Map***, being the map entitled “Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005—Wetlands Protection Area Map”.

***Zoning Map***, being the map entitled “Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005—Zoning Map”.



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## **Schedule 2      Development to be referred to Foreshores and Waterways Planning and Development Advisory Committee**

(Clauses 29 and 31)

Development for any of the following purposes:

- advertisements
- advertising structures
- aviation facilities
- boat launching ramps
- boat lifts
- boat repair facilities
- boat sheds
- charter and tourism boating facilities
- commercial marinas
- commercial port facilities
- commercial or retail use of land below or partly below mean high water mark
- dredging
- flora and fauna enclosures
- houseboats
- inclinators
- private landing facilities (including jetties, wharves and pontoons)
- private marinas
- public boardwalks
- public water recreational facilities
- public water transport facilities
- reclamation works
- recreational or club facilities
- residential use of land below or partly below mean high water mark
- retaining walls
- sea walls
- skids
- swimming enclosures
- water-based restaurants and entertainment facilities

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Schedule 2      Development to be referred to Foreshores and Waterways Planning and  
Development Advisory Committee

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waterfront access stairs

Demolition (including demolition, in its extended meaning, in relation to heritage items)

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## Schedule 3 Minor development

(Clause 41)

### 1 Change of use

A different use of an existing building resulting from a change of use of the building.

### 2 Extension or variation of operating or trading hours

Any intensification of a use resulting from an extension or other variation of operating or trading hours.

### 3 Temporary uses

A temporary use for 2 years or less (not being the use of a temporary structure referred to in item 6).

### 4 Internal building work

Structural or non-structural alterations (such as commercial or retail fitouts) within an existing building.

### 5 External building work

- (1) Erection or installation of any telecommunications device (such as an aerial, antenna, microwave dish or satellite dish) other than a device that, when erected or installed, would be visible from a waterway.
- (2) Erection or installation of any awning or canopy.
- (3) Erection or installation of any minor structure (such as a flue, solar panel or flag pole).
- (4) Minor structural or non-structural alterations (such as the enclosure of a balcony, changes to a window or door or the installation of an automatic telling machine) to the outside of an existing building.

### 6 Temporary structures

- (1) The erection of a temporary structure for a period of not more than 60 days, whether consecutive or not, in any period of 12 months.
- (2) In this clause, *temporary structure* includes a booth, tent or other temporary enclosure (whether or not part of the booth, tent or enclosure is permanent), and also includes a mobile structure.

**7 Development within the public domain**

- (1) The provision and use of outdoor seating or tables or street furniture (such as benches, bollards, public artwork installations, street lights, telephone kiosks and tree surrounds) on a footpath, or in a plaza or other public place.
- (2) The use of the public domain for temporary purposes (such as the conduct of a festival, performance or promotion or the exhibition of artwork) for a period of not more than 30 days, whether consecutive or not, in any period of 12 months.
- (3) The construction of an access way for pedestrians or vehicles and any associated works.

**8 Signage**

The erection, installation or display of any signage (such as signage for building or business identification or for business or product advertisement) other than signage that, when erected, installed or displayed, would be visible from a waterway.

**9 Advertising**

The erection of any advertising structure, or the display of any advertisement, other than an advertising structure or advertisement that, when erected or displayed, would be visible (whether from a waterway or otherwise) outside the premises in which it is situated.

**10 Demolition**

- (1) The demolition of any building or other structure, other than a building or structure that is identified as a heritage item or an item of the environmental heritage in an environmental planning instrument or in a heritage study prepared by or on behalf of a consent authority.
- (2) The demolition of any structure whose erection is minor development pursuant to some other provision of this Schedule, except where the demolition forms part of or is associated with State significant development.

**11 Strata and community subdivision**

- (1) Any strata or neighbourhood subdivision of land with respect to any building or work for which a development consent is in force, except where the land forms part of the public domain or is situated over water.

(2) In this clause:

***neighbourhood subdivision*** means subdivision by means of a neighbourhood plan, a neighbourhood plan of consolidation or a neighbourhood plan of subdivision within the meaning of the *Community Land Development Act 1989*.

***strata subdivision*** means subdivision by means of a strata plan, a strata plan of consolidation or a strata plan of subdivision within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

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## Schedule 4 Heritage items

(Dictionary)

### Part 1 Heritage items in Parramatta River Area

**Note.** Further details on these items can be found in the *Parramatta River Regional Environmental Study—Heritage Study*. “S” (State significance) identifies those items that are listed on the State Heritage Register, that have been assessed in a relevant heritage study as being of State heritage significance or that are listed in a register kept under section 170 of the *Heritage Act 1977*.

Item no	Local government area	Name or description of heritage item	Address	S = State significance
1	—	Cockatoo Island		S
2	—	Spectacle Island		S
3	—	Snapper Island		
4	—	Balmain to Greenwich Tunnel, including docking facilities and service buildings	Under harbour, from Long Nose Point, Balmain to Manns Point, Greenwich	S
5	Leichhardt	Long Nose Point Wharf	Louisa Road, Birchgrove	
6	Leichhardt	Boat sheds only, Louisa Road	Louisa Road, opposite steps to Deloitte Avenue, Birchgrove	
7	Leichhardt	Elliott Street Wharf	Elliott Street, Balmain	
8	Leichhardt	Punch Street Wharf	Punch Street, Balmain	
9	Leichhardt	Cove Street Wharf	Cove Street, Balmain	
10	Leichhardt	Former Callan Park Hospital Wharf	Rozelle Hospital, Rozelle	
11	Leichhardt	Leichhardt Wharf	Leichhardt Park, Leichhardt	
12	Leichhardt	Stone retaining walls	Iron Cove	
13	Canada Bay	Stone retaining walls	Five Dock Bay	

<b>Item no</b>	<b>Local government area</b>	<b>Name or description of heritage item</b>	<b>Address</b>	<b>S = State significance</b>
14	Canada Bay	Stone retaining walls	Hen and Chicken Bay	
15	—	Rodd Island	Iron Cove	S
16	Canada Bay	Thompson Street Wharves	Thompson Street and Henley Marine Drive, Drummoyne	
17	—	Iron Cove Bridge	Iron Cove	
18	Canada Bay	Wharves/Reclaimed Land, access from Peppercorn Reserve and Salton Reserve	St Georges Crescent, Drummoyne	
19	Canada Bay	Wolseley Street Wharf	Wolseley Street, Drummoyne	
20	Canada Bay	Clovelly House boat shed	Drummoyne Avenue, Drummoyne	
21	Canada Bay	Federation House boat shed	Drummoyne Avenue, Drummoyne	
22	—	Gladesville Bridge, including abutments		S
23	Canada Bay	Stone Wharf, Blackwall Point	11 Bortfield Drive, Chiswick	
24	Canada Bay	Abbotsford Jetty	Great North Road, Abbotsford	
25	Canada Bay	Newington College boat shed and grounds	Checkley Street, Abbotsford	
26	Canada Bay	Site of former swimming baths at Hen and Chicken Bay	Bayview Park, Concord	
27	Canada Bay	Former Cabarita Wharf	Cabarita Park, Cabarita	
28	Canada Bay	Sanders Marina	Cabarita Park, Cabarita	
29	Canada Bay	Federation House boat shed only	87 Llewellyn Street, Rhodes	

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<b>Item no</b>	<b>Local government area</b>	<b>Name or description of heritage item</b>	<b>Address</b>	<b>S = State significance</b>
30	Canada Bay	Stone Wharf	91 Llewellyn Street, Uhrs Point, Rhodes	
31	—	Ryde Bridge	Church Street, Ryde to Concord Road, Rhodes	
32	—	Ryde Railway Bridge	Northern Railway Line, bridge between Rhodes and Meadowbank	
33	Auburn	Log Ponds and Wharves to Timber Yards	Bennelong Point, Homebush Bay	
34	Auburn	Newington Arms Depot Wharf	Newington Arms Depot, Silverwater	
35	Parramatta	Shell Oil Refinery Wharf	Duck River	
36	Parramatta	Industrial Wharves	33 Grand Avenue, Camellia	
37	Parramatta	Former Spurway Street Wharf	Spurway Street, Ermington	
38	Parramatta	Former McDonald Farm Wharf	George Kendall Reserve, Ermington	
39	Parramatta	Wharf and Reserve	George Kendall Reserve, Ermington	
40	Parramatta	Former Pennant Hills Wharf	Wharf Road, Ermington	
41	Ryde	Former Log Road and Private Wharf	Continuation of Cobham Street, Melrose Park, West Ryde	
42	Ryde	Timber Wharves	Either side of Ryde Railway Bridge, Ryde	



<b>Item no</b>	<b>Local government area</b>	<b>Name or description of heritage item</b>	<b>Address</b>	<b>S = State significance</b>
43	Ryde	Private Wharf	Below Rothesay Avenue, Meadowbank	
44	Ryde	Former Ryde Wharf	Parsonage and Belmore Streets, Ryde	
45	Ryde	Former Swimming Baths	End of Regent Street and Osborne Avenue, Ryde	
46	Ryde	Naval Refit Centre	Waterview Street, Putney	S
47	Ryde	Putney Wharf	Putney Parade, Putney	
48	Ryde	Scots College boat shed	3 Delmar Parade, Gladesville	
49	Ryde	Former Gladesville Wharf	Wharf Road, Looking Glass Point, Gladesville	
50	Ryde	Sydney Grammar School boat shed	88 Wharf Road, Gladesville	
51	Ryde	Punt Road Wharf	Punt Road, Gladesville	
52	—	Searles Monument	The Brothers, off Blackwall Point, Henley, Parramatta River	S

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## Part 2 Heritage items identified in Sydney and Middle Harbour Areas

**Note.** Further details on these items can be found in the *Sydney and Middle Harbours Heritage Study* or the State Historic Shipwrecks Register.

Item no	Local government area	Name or description of heritage item	Address	S = State significance
1	Sydney	Ferry Wharves	Alfred Street, Circular Quay	S
2	Sydney	Man O'War Steps	Farm Cove Crescent, Sydney	S
3	Sydney	Remains of the former Andrew (Boy) Charlton Pool	Mrs Macquarie's Road, Sydney	
4	Sydney	Site of Robinson's Baths	Mrs Macquarie's Road, Sydney	
5	Sydney	Former Woolloomooloo Deep Sea Wharves Nos 6, 7, 8, 9 and 11, and Cargo Sheds at Cowper Wharf Road and Lincoln Crescent, Woolloomooloo, and the land and the waterway between Wharf No 11 and the other Wharves	Cowper Wharf Road and Lincoln Crescent, Woolloomooloo	S

<b>Item no</b>	<b>Local government area</b>	<b>Name or description of heritage item</b>	<b>Address</b>	<b>S = State significance</b>
6	Sydney	Garden Island Precinct:	Off Cowper Wharf	S
		(a) Former Residences for Overseers	Road, Garden Island	
		(b) Building 37—Rigging Shed, including Chapel		
		(c) Buildings 31 and 32—Registry Offices		
		(d) Building 88—Battery Shed		
		(e) Buildings 95 and 99—Workshop and Factory		
		(f) Building 89—Naval Stores		
		(g) Building 27—Office Building		
		(h) Buildings 16/17 and 18/19/20—Residences		
		(i) Building 98—Core Shop		
		(j) Building 25—Boat Shed		
		(k) Buildings 7 and 8—Workshop and Store		

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Schedule 4 Heritage items

<b>Item no</b>	<b>Local government area</b>	<b>Name or description of heritage item</b>	<b>Address</b>	<b>S = State significance</b>
		(l) Figurehead of the Ship “Windsor Castle”		
		(m) Figurehead of the Ship “Consuela”		
		(n) Former Garden		
		(o) Former “Clarens” Garden Remains		
7	Ku-ring-gai	Remains of Roseville Baths	99 Babbage Road, Roseville	
8	Ku-ring-gai	Remains of old Roseville Bridge	Babbage Road, Roseville	
9	Ku-ring-gai	Site of Echo Point Farm (including slipway)	Echo Point Park, Babbage Road, Roseville	
10	Lane Cove	Electricity Tunnel	Foreshore of Manns Point Reserve, Greenwich	
11	Lane Cove	Boat shed and slips	O’Connell and Albert Streets, Greenwich	
12	Leichhardt	Site and remains of former Morts Dock	Foreshore of park, Balmain	
13	Leichhardt	Site and remains of ferry wharf	Yeend Street, Balmain	
14	Leichhardt	Urban Transit Authority Ferry Maintenance Depot	Alexander and Waterview Streets, Balmain	S
15	Leichhardt	Site of Rowntree’s Floating Dock	Hart Street and The Avenue, Balmain	
16	Leichhardt	Remains of former Tasmanian Ferry Terminal	Yeend Street, Balmain	

<b>Item no</b>	<b>Local government area</b>	<b>Name or description of heritage item</b>	<b>Address</b>	<b>S = State significance</b>
17	Leichhardt	Tidal Pool	13 Simmons Street, Balmain	
18	Manly	Manly Wharf	The Esplanade, Manly	S
19	Manly	Grotto Point lighthouse and remains of former wharf	Grotto Point, Balgowlah	
20	Manly	Little Manly Cove Pool	Stuart Street, Manly	
21	Manly	Fairlight Pool	Lauderdale Avenue, Fairlight	
22	Manly	Site and remains of Brightside cargo wharf	Stuart Street, Manly	
23	Manly	Site and remains of harbour side pool and steps	Stuart Street, Manly	
24	Manly	Remains of Manly Public Baths	East Esplanade, Manly	
25	Mosman	Stone Wharf	National Park, Bradley's Head	
26	North Sydney	Sydney Harbour Queen	Moored in Berrys Bay, Waverton (formerly moored west of Luna Park, Milsons Point)	
27	North Sydney	Site of Cavill's Baths	Foreshore of Lavender Bay	
28	North Sydney	Lavender Bay ferry wharf	Walker Street, Kirribilli	
29	South Sydney	Site of Ithaca Road ferry wharf	Ithaca Road, Elizabeth Bay	
30	Warringah	Bantry Bay Public Powder Magazine	Foreshores of Bantry Bay, Killarney Heights	
31	Warringah	Flat Rock Landing Place	Killarney Drive, Killarney Heights	

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<b>Item no</b>	<b>Local government area</b>	<b>Name or description of heritage item</b>	<b>Address</b>	<b>S = State significance</b>
32	Warringah	Former Killarney Picnic Ground (including wharf)	Partially Garigal National Park, partially Mosman Rowing Club, Killarney Drive, Killarney Heights	
33	Willoughby	Site and remains of wharfage	Fig Tree Point, Hallstrom Close, Northbridge	
34	Willoughby	Remains of H C Press picnic ground and public baths	Cammeray Road, Castle Cove	
35	Willoughby	Willis Road wharf	Willis Road, Castle Cove	
36	Willoughby	Sailors Bay boat shed	Clive Park, Northbridge	
37	Willoughby	Former Horsley's boat shed and sea wall (now a house)	217B Edinburgh Road, Castlecrag	
38	Willoughby	Site and remains of early wharfage (now occupied by Castlecrag marina)	Rockley Street, Castlecrag	
39	Willoughby	Stone walls	297A Edinburgh Road, Castlecrag	
40	Willoughby	Remains of Municipal Baths, structures and access steps	241 Edinburgh Road, Castlecrag	
41	Willoughby	Stone walls, steps and baths	213–217B Edinburgh Road, Castlecrag	
42	Woollahra	HMAS Rushcutter slipways	9 New Beach Road, Darling Point	
43	Woollahra	Ferry Pier	Military Road, Watsons Bay	
44	Woollahra	West Parsley Bay obelisk	65 Fitzwilliam Road, Vaucluse	

<b>Item no</b>	<b>Local government area</b>	<b>Name or description of heritage item</b>	<b>Address</b>	<b>S = State significance</b>
45	Woollahra	East Parsley Bay obelisk	Between properties 36A and 38, The Crescent, Vaucluse	
46	Woollahra	Remains of Bath House and site of jetty	Darling Point Road, Darling Point	
47	Woollahra	Pilot Station	Marine Parade and Salisbury Street, Watsons Bay	
48	Woollahra	Green Point obelisk	Off Pacific Street, Watsons Bay	
49	Woollahra	Site of former Rose Bay Flying Boat Base	Lyne Park, Rose Bay	
50	Woollahra	Watsons Bay Pool	Marine Parade, Watsons Bay	
51	Woollahra	Remains of old Watsons Bay Pool	Marine Parade and Salisbury Street, Watsons Bay	
52	Woollahra	Gladswood House private jetty	11 Gladswood Gardens, Double Bay	
53	Woollahra	Chinese boat shed	20 Wolseley Road, Point Piper	
54	Woollahra	Remains of Vaucluse Point ferry wharf	83 Fitzwilliam Street, Vaucluse	
55	Woollahra	Remains of Western Rose Bay ferry wharf	New South Head Road, Rose Bay	
56	Woollahra	Group of remains of wharf, baths and waterfront relics, including former Tivoli Pier and former Thorne's (or Claremont) Wharf	Bayview Hill Road, Rose Bay	
57	Woollahra	Camp Cove tide gauge	Cliff Street, Camp Cove	

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Schedule 4 Heritage items

<b>Item no</b>	<b>Local government area</b>	<b>Name or description of heritage item</b>	<b>Address</b>	<b>S = State significance</b>
58	Woollahra	Vaucluse Baths	68 Wentworth Road, Vaucluse	
59	Woollahra	Site of Public Baths	Lyne Park, Rose Bay	
60	Woollahra	Parsley Bay Ferry Wharf	The Crescent, Vaucluse	
61	Woollahra	Former Nielsen Wharf remains	Steel Point, Vaucluse	
62	Woollahra	Shark Beach promenade and amenities	Nielsen Park, Steel Point, Vaucluse	
63	Woollahra	Hermit Bay Wharf, slipway and landing	Vaucluse Road, Vaucluse	
64	Woollahra	Site of wharf	Wingadal Place, Point Piper	
65	Woollahra	Site of Village Point Wharf (Kutti Beach Ferry Wharf)	Wharf Road, Vaucluse	
66	Woollahra	Site of Public Wharf (now occupied by new wharf)	Bay Street, Double Bay	
67	—	Sydney Harbour Bridge, including approaches and viaducts (road and rail)	Port Jackson	S
68	—	Glebe Island Bridge, including abutments	Blackwattle Bay	S
69	—	Fort Denison, Sydney Harbour	Sydney Harbour	S



<b>Item no</b>	<b>Local government area</b>	<b>Name or description of heritage item</b>	<b>Address</b>	<b>S = State significance</b>
70	—	Goat Island, including: former harbour master's residence, pathway from magazine precinct to water police station precinct, former ordinance magazine, former laboratory (original cooperage), former cooperage, wall gate and sentry post (entry to magazine area), former barracks, former kitchen, Andersons Council, lime kiln, Barney's Cut, former water police station	Sydney Harbour	S
71	—	Navigation light Tower—western channel (Georges Head)	Sydney Harbour	
72	—	Navigation light tower—eastern channel (Bottle and Glass Rocks)	Sydney Harbour	
73	—	Wreck of the "Itata" and wrecks of other unnamed vessels	Salt Pan Creek, Middle Harbour	
74	—	Wreck of Maritime Services Board Hopper Barge	Foreshores of Berrys Bay, Sydney Harbour	
75	—	Navigation light tower	Off Shark Island, Sydney Harbour	
76	—	Wreck of the "Catherine Adamson"	Old Man's Hat, North Harbour, Sydney Harbour	
77	—	Wreck of the "Centennial"	Taylor's Bay, Sydney Harbour	

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Schedule 4 Heritage items

Item no	Local government area	Name or description of heritage item	Address	S = State significance
78	—	Wreck of the “Centurion”	Cannae Point, North Head, Sydney Harbour	
79	—	Wreck of the “Currajong”	Off Bradleys Head, Sydney Harbour	
80	—	Wreck of the “Edward Lombe”	Middle Harbour	
81	—	Wreck of the “Fame”	Sow and Pigs Shoal, Sydney Harbour	
82	—	Shark Island	Sydney Harbour	
83	—	Clark Island	Sydney Harbour	
84	—	Wreck of Hopper Barge	150 metres east of Clark Island	
85	—	The Spit Bridge	Spit Road, Balgowlah/ Mosman	S

### Part 3 Heritage items in Lane Cove River Area

**Note.** Further details on these items can be found in the *Regional Environmental Study for Lane Cove River and Inner Harbour*.

Item no	Local government area	Name or description of heritage item	Address	S = State significance
1	Hunter’s Hill	Remains of Bath	Boronia Park, Hunters Hill	
2	Hunter’s Hill	Hunters Hill Wharf and Waiting Shed	453 Ferry Street, Hunters Hill	

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## **Schedule 5      Amendment of other environmental planning instruments**

(Clause 9)

### **5.1 State Environmental Planning Policy No 35—Maintenance Dredging of Tidal Waterways**

#### **Schedule 1**

Omit the following:

*Sydney Regional Environmental Plan No 22—Parramatta River*

*Sydney Regional Environmental Plan No 23—Sydney and Middle  
Harbours*

Insert at the end of the Schedule:

*Sydney Regional Environmental Plan (Sydney Harbour Catchment)  
2005*

### **5.2 State Environmental Planning Policy No 56—Sydney Harbour Foreshores and Tributaries**

#### **[1] Clause 4 Land to which this Policy applies**

Insert after clause 4 (1):

(1A) Despite subclause (1), this Policy does not apply to any land other than land edged heavy black on the sheet of the map marked “Schedule 1—Map 16—Luna Park”.

**Note.** Pursuant to section 7 (1) of the *Callan Park (Special Provisions) Act 2002*, this Policy, as in force immediately before the commencement of that Act, continues to apply to Callan Park, subject to the other provisions of that section.

#### **[2] Clause 10 Consent authority**

Omit the clause.

### **5.3 Sydney Regional Environmental Plan No 24—Homebush Bay Area**

#### **[1] Clause 2 Land to which plan applies**

Omit clause 2 (2).

**[2] Schedule 2 Definitions**

Insert at the end of the definition of *Homebush Bay Area Map*:

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005—Foreshores and Waterways Area Map

**5.4 Sydney Regional Environmental Plan No 26—City West**

**Clause 2 Area covered by this plan**

Insert “and such of that land as is within waters to which *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* applies” after “on that map”.

**5.5 Sydney Regional Environmental Plan No 29—Rhodes Peninsula**

**Clause 4 How environmental planning instruments affect the Rhodes Peninsula**

Omit “*State Environmental Planning Policy No 56—Sydney Harbour Foreshores and Tributaries*” from clause 4 (5).

Insert instead “*Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*”.

**5.6 Concord Local Environmental Plan No 103 (Heritage)**

**Clause 4 Relationship to other environmental planning instruments**

Omit “clause 21 of *State Environmental Planning Policy No 56—Sydney Harbour Foreshores and Tributaries*” from clause 4 (3).

Insert instead “clause 43 of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*”.

**5.7 Drummoyne Local Environmental Plan 1986**

**[1] Clause 7B What is complying development?**

Omit clause 7B (3) (c).

**[2] Clause 27 Covenants, agreements etc**

Omit “where the development is within land to which clause 11 of the *Sydney Regional Environmental Plan No 22—Parramatta River* applies, or” from clause 27 (1).

## **5.8 Mosman Local Environmental Plan 1998**

### **Clause 27 Foreshore scenic protection area**

Omit “*Sydney Regional Environmental Plan No 23—Sydney and Middle Harbours*” wherever occurring.

Insert instead “*Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*”.

## **5.9 North Sydney Local Environmental Plan 1989**

### **Clause 73 Former BP Site, Coal Loader Site and Caltex Site, Balls Head**

Omit “*Sydney Regional Environmental Plan No 23—Sydney and Middle Harbours*” from clause 73 (2).

Insert instead “*Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*”.

## **5.10 North Sydney Local Environmental Plan 2001**

### **Clause 38 Development within the foreshore building area**

Omit clause 38 (1) (c). Insert instead:

- (c) recognise and implement the aims and objectives of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*, and

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## Dictionary

(Clause 4)

**Aboriginal object** means any deposit, object or material evidence (other than a handicraft made for sale) relating to present or past Aboriginal habitation, and includes Aboriginal remains.

**advertisement** has the same meaning as it has in *State Environmental Planning Policy No 64—Advertising and Signage*.

**advertising structure** has the same meaning as it has in *State Environmental Planning Policy No 64—Advertising and Signage*.

**Advisory Committee** means the Foreshores and Waterways Planning and Development Advisory Committee constituted by clause 28.

**aid to navigation** means any buoy, sign, light or other structure (whether located wholly on land, wholly on the waterway or partly on land and partly on the waterway) that is designed to assist the safe and efficient movement of vessels on the waterway.

**archaeological site** means the site of one or more relics.

**aviation facility** means an area of the waterway set aside, or a structure provided, for the purpose of aircraft landing or taking off.

**boat launching ramp** means a structure designed primarily for the launching of trailer-borne recreational vessels, and includes associated car parking facilities.

**boat lift** means a device used for lifting or steering a vessel out of water, but does not include such a device if it forms part of a boat repair facility or commercial marina.

**boat repair facility** means any building, structure or facility used primarily for the construction, maintenance, repair, sale or hire of boats, whether or not including the storage of boats or other vessels, but does not include a commercial marina.

**boat shed** means a building or other structure, associated with a private residence, that is used for the storage and routine maintenance of one or more boats, and includes any skid used in connection with any such building or other structure.

**charter and tourism boating facility** means any structure used for charter boating or tourism boating purposes, being a structure that is open only to users or operators of the structure, and having a direct structural connection between the foreshore and the waterway, but does not include a private marina or commercial marina.

**commercial marina** means a permanent boat storage facility (whether located wholly on land, wholly on the waterway or partly on land and partly on the waterway) together with any associated facilities, including:

- (a) any facility for the construction, repair, maintenance, storage, sale or hire of boats, and
- (b) any facility for providing fuelling, sewage pump-out or other services for boats, and
- (c) any facility for launching or landing boats, such as slipways or hoists, and

(d) any associated car parking, commercial, tourist or recreational or club facility that is ancillary to a boat storage facility, and

(e) any associated single mooring,

but does not include a boat repair facility or a private marina.

**commercial port facility** means any structure used in connection with the carrying of goods or persons by water from one port to another for business or commercial purposes, being a structure having a direct structural connection between the foreshore and the waterway.

**community facility** means a building or place that provides for the physical, social, cultural, religious or intellectual development or welfare of the community.

**conservation** means preservation, protection, restoration or enhancement.

**conservation management plan** means a document, prepared in accordance with the guidelines issued by the Director of the Heritage Office:

(a) that identifies various places, buildings, works, relics, moveable objects and precincts as having State or local heritage significance, and

(b) establishes conservation policies and management mechanisms for the retention of that significance.

**demolish** a heritage item means wholly or partly destroy, dismantle or deface the heritage item.

**dredging** means the removal of material from the sea or harbour bed or the bed of a river, being an activity for the purpose of constructing a new or deeper navigational area or channel or re-opening a discontinued navigational area or channel, but does not include intertidal dredging or maintenance dredging.

**earthwork** means the addition or removal of any solid material on, to or from the land or any other work, being an activity that substantially alters the existing ground level or character of the surface of that land.

**flora and fauna enclosure** means a net or other structure used for the purpose of protecting or encouraging the growth of flora and fauna, including a structure used for the observation of flora and fauna or for the maintenance of the net or other structure.

**foreshore** includes land with a water frontage and land that is separated from the waterfront by a public reserve, road or open space.

**Foreshores and Waterways Area** means the land shown edged heavy black on the Foreshores and Waterways Area Map.

**general restoration works** means works carried out for the purpose of restoring or enhancing the natural values of a foreshore or waterway.

**height** of a building means the vertical distance (measured in metres) between:

(a) the natural surface level of the ground on which the building is situated or, if the ground has been excavated, the natural surface level of the adjoining public domain, and

- (b) the topmost point of the building (including plant, lift over-runs and telecommunications devices installed on top of the building).

**heritage impact statement** means a document consisting of:

- (a) a statement demonstrating the heritage significance of a heritage item, and
- (b) an assessment of the impact that proposed development will have on that significance, and
- (c) proposals for measures to minimise that impact.

**heritage item** means:

- (a) a building, work, archaeological site or place:
  - (i) that is specified in an inventory of heritage items prepared for the purposes of this plan, being an inventory that is available at the head office of the Department, and
  - (ii) that is situated on a site described in Schedule 4 and identified on the Heritage Map, or
- (b) a place:
  - (i) that is specified in an inventory of heritage items prepared for the purposes of this plan, being an inventory that is available at the head office of the Department, and
  - (ii) that is described in the inventory as a place of Aboriginal heritage significance.

**Note.** The items listed in paragraph (a) include only those that are not otherwise heritage items under some other environmental planning instrument.

**heritage significance** means historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value.

**houseboat** means a vessel or structure that floats on, or is fixed in, the waterway and that is used for the purpose of providing permanent residential accommodation.

**intertidal dredging** means the removal of material from the sea or harbour bed in the intertidal zone, but does not include dredging or maintenance dredging.

**intertidal zone** means the area between the zero tide (that is, where the tide measures zero on the Fort Denison Tide Gauge, or -0.925 metres Australian Height Datum) and the highest astronomical tide (that is, where the tide measures 2.1 metres above zero on the Fort Denison Tide Gauge, or 1.175 metres Australian Height Datum).

**land-based development** means any development carried out wholly above the mean high water mark, and development for any of the following purposes:

- (a) boat sheds,
- (b) reclamation works,
- (c) sea walls,
- (d) swimming pools,



(e) waterfront access stairs,

but does not include land/water interface development or water-based development.

**land/water interface development** means development for any of the following purposes:

- (a) boat repair facilities,
- (b) boat launching ramps,
- (c) commercial marinas,
- (d) water-based restaurants and entertainment facilities,
- (e) water recreational facilities,
- (f) when carried out wholly or partly in the waterway:
  - (i) dwellings of any type (including serviced apartments),
  - (ii) commercial premises,
  - (iii) tourist facilities,
  - (iv) shops and retailing,
  - (v) restaurants,
  - (vi) recreational or club facilities (whether used for activities based on land or on water),
  - (vii) car-parking,

and includes land-based development and water-based development when carried out as part of development for a purpose referred to above.

**maintenance** means the ongoing protective care of a heritage item, but does not include alterations (such as carrying out extensions or additions) or the introduction of new materials or technology.

**maintenance dredging** means removal of material from the sea or harbour bed or the bed of a river where the activity is for the purpose of maintaining the previously established harbour or river depth.

**master plan** means a master plan, as in force for the time being, adopted under Division 3 of Part 4.

**mean high water mark** means the position where the plane of the mean high water level of all ordinary local high tides intersects the foreshore, which is taken for the purposes of this plan to be 1.48 metres above zero on the Fort Denison Tide Gauge, or 0.555 metres Australian Height Datum.

**mooring pen** means an arrangement of freestanding piles or other restraining devices within which a vessel is permanently berthed.

**native plant** means any plant (including any tree, shrub, fern, vine, herb or grass) that is native to the Sydney Harbour Catchment.

**place of Aboriginal heritage significance** means:

- (a) a place that has the physical remains of pre-European occupation by, or is of contemporary significance to, the Aboriginal people, which may (but need

not) include items and remnants of the occupation of the land by Aboriginal people, such as burial places, engraving sites, rock art, midden deposits, scarred and sacred trees and sharpening grooves, or

- (b) a natural Aboriginal sacred site or other sacred feature, which may (but need not) include natural features such as creeks or mountains of long-standing cultural significance, as well as initiation, ceremonial or story places or areas of more contemporary cultural significance.

***potential archaeological site*** means a site:

- (a) that is specified in an inventory of archaeological sites available at the office of the relevant council and described in the inventory as a potential archaeological site, or
- (b) that, in the opinion of the consent authority, has the potential to be an archaeological site, even if it is not so specified.

***potential place of Aboriginal heritage significance*** means a place:

- (a) that is specified in an inventory of heritage items available at the office of the relevant council and described in the inventory as a potential place of Aboriginal heritage significance, or
- (b) that, in the opinion of the consent authority, has the potential to have Aboriginal heritage significance, even if it is not so specified.

***private landing facility*** means a structure (such as a wharf, jetty or pontoon) that is used to enable a vessel to embark or disembark passengers, or to load or unload goods, being a structure that is not generally available for public use, but does not include private landing steps.

***private landing steps*** means steps used for launching and retrieving vessels, being steps that are not generally available for public use.

***private marina*** means an apparatus or structure located on or in the waterway and used for restraining two or more vessels, but does not include a commercial marina or mooring pen.

***public boardwalk*** means a decked structure, supported by piers or piles, providing public pedestrian access extending over or beyond the intertidal zone, but does not include a structure that is intended merely to provide direct access to a vessel.

***public domain*** means land available for public use and includes streets, lanes, squares, playgrounds, parks, open shopping malls, pedestrian walkways, cycleways, pedestrian overpasses and underpasses, colonnades, balconies, terraces and the like.

***public open space*** means:

- (a) any part of the public domain that is set aside for public recreation, or for a temporary use, and to which public access is unrestricted, or
- (b) any part of the public domain that is unfenced and that is set aside for commercial seating associated with restaurants, cafes or the like,

but does not include land on which any building (other than a temporary structure) is situated.

**public water recreational facility** means a pier, wharf, boat shed or other waterfront structure that is primarily used for public recreation.

**public water transport facility** means any structure used primarily in connection with transporting the public by water.

**reclamation work** means any work that involves:

- (a) the filling or draining of submerged land for the purpose of reclaiming the land, or
- (b) the filling of submerged land for the purpose of supporting a building or structure (such as a bridge) being erected over the land.

**recreational or club facility** means a building or place used exclusively for sporting or leisure activities, whether operated for the purpose of gain or not.

**relic** means any deposit, object or material evidence:

- (a) which relates to the settlement of that area that comprises New South Wales, not being Aboriginal habitation, and
- (b) which is 50 or more years old.

**residential development** means development for residential purposes.

**restricted premises** means any building or place at which:

- (a) restricted publications (that is, publications classified as Category 1 restricted, Category 2 restricted or RC under the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth) are shown, exhibited, displayed, sold or otherwise rendered accessible or available to the public, or
- (b) a business to which section 578E of the *Crimes Act 1900* applies is conducted, but does not include a newsagency or pharmacy.

**sea wall** means a structure placed partially or wholly along the land/water interface to protect the land from the sea or to stop accelerated erosion of the shoreline, but does not include a breakwater.

**single mooring** means an apparatus or structure located on or in the waterway and designed, constructed or used for restraining one vessel only, but does not include a mooring pen.

**skid** means an inclined ramp used for the manual launching of small craft, but does not include a slipway.

**slipway** means a structure, usually in the form of two supported parallel rails on which a wheeled cradle is run, to draw a vessel out of the water for maintenance and repair, other than a structure that forms part of a boat repair facility or commercial marina.

**strategic foreshore site** means a site shown edged heavy black on the Strategic Foreshore Sites Map.

**street** means any street, road, lane, footpath or other thoroughfare open to or used by the public, whether or not in public ownership.

**swimming enclosure** means a net or other structure placed in the waterway for the purpose of providing a protected swimming area, but does not include a public water recreational facility.

**swimming pool** has the same meaning as it has in the *Swimming Pools Act 1992*.

**Sydney Harbour** includes all tidal bays, rivers and their tributaries connected with or leading to Sydney Harbour, and all waters bounded by mean high water mark and lying to the west of a line running between the southernmost point of North Head and the northernmost point of South Head.

**Sydney Harbour Catchment** means the land shown edged heavy black on the Sydney Harbour Catchment Map.

**telecommunications facility** means a building, structure, work or place (such as a radio mast, tower, earth station, cable, satellite dish or the like) used specifically for transmitting, receiving or passing on signals, but does not include any such facility used for domestic purposes only.

**temporary structure** includes:

- (a) a booth, tent or other temporary enclosure, whether or not a part of the booth, tent or enclosure is permanent, and
- (b) a mobile structure.

**the Act** means the *Environmental Planning and Assessment Act 1979*.

**tourist facility** means a building or place, such as a hotel or motel, used by tourists or holiday-makers for the purposes of holiday accommodation, sport or recreation, and includes:

- (a) shops attached to or incorporated within the building or located at the place, and
- (b) other facilities serving the needs of tourists and holiday-makers using the building or place,

but does not include a caravan park.

**water-based development** means any development carried out wholly below the mean high water mark, and development for any of the following purposes:

- (a) advertisements,
- (b) advertising structures,
- (c) aids to navigation,
- (d) aviation facilities,
- (e) boat lifts,
- (f) charter and tourism boating facilities,
- (g) commercial port facilities,
- (h) dredging,
- (i) flora and fauna enclosures,

Dictionary

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- (j) houseboats,
- (k) mooring pens,
- (l) private landing facilities,
- (m) private landing steps,
- (n) private marinas,
- (o) public boardwalks,
- (p) public water transport facilities,
- (q) single moorings,
- (r) skids,
- (s) slipways,
- (t) swimming enclosures,

but does not include land/water interface development.

***water-based restaurant and entertainment facility*** means a vessel or structure that floats on, or is fixed in, the waterway, that is used as a club or restaurant or for entertainment (on a commercial basis) and that has a direct structural connection between the foreshore and the waterway.

***waterfront access stairs*** means stairs or a ramp used for pedestrian access to the foreshore, but does not include stairs or a ramp used merely for launching vessels or for providing direct access to a vessel on the waterway.

***waterway*** means such part of the Foreshores and Waterways Area as is within Zone No W1, W2, W3, W4, W5, W6, W7, W8 or 8 (a).

***wetlands*** means natural or non-natural wetlands (including marshes, sedgelands, wet meadows, salt marshes, mudflats, mangroves and seagrasses) that form a shallow water body when inundated (cyclically, intermittently or permanently) with fresh, brackish or salt water.

***wetlands protection area*** means land shown coloured green on the Wetlands Protection Area Map.

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## Public exhibition draft

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New South Wales

# **Sydney Regional Environmental Plan (Sydney Harbour Catchment) (Amendment No 1) 2005**

under the

**Environmental Planning and Assessment Act 1979**

I, the Minister for Planning, make the following regional environmental plan under the *Environmental Planning and Assessment Act 1979*. (9038532-2)

Minister for Planning

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## Public exhibition draft

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Clause 1 Sydney Regional Environmental Plan (Sydney Harbour Catchment)  
(Amendment No 1) 2005

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### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) (Amendment No 1) 2005**

under the

Environmental Planning and Assessment Act 1979

#### **1 Name of plan**

*This plan is Sydney Regional Environmental Plan (Sydney Harbour Catchment) (Amendment No 1) 2005.*

#### **2 Aims of plan**

The aims of this plan are:

- (a) to establish a buffer zone around the Sydney Opera House so as to give added protection to its world heritage value, and
- (b) to recognise that views and vistas between the Sydney Opera House and other public places within that zone contribute to its world heritage value.

#### **3 Land to which plan applies**

This plan applies to land in the general vicinity of the Sydney Opera House, as shown edged heavy black on the map entitled "Sydney Regional Environmental Plan (Sydney Harbour Catchment)—Sydney Opera House Buffer Zone Map", a copy of which is deposited in the head office of the Department of Planning.

#### **4 Amendment of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

*Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 is amended as set out in Schedule 1.*

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# Public exhibition draft

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Sydney Regional Environmental Plan (Sydney Harbour Catchment)  
(Amendment No 1) 2005

Amendments

Schedule 1

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## Schedule 1 Amendments

(Clause 4)

**[1] Clause 3 Land to which plan applies**

Insert after clause 3 (2) (c):

- (c1) the Sydney Opera House buffer zone, as shown on the Sydney Opera House Buffer Zone Map, and

**[2] Clause 53 Objectives**

Insert at the end of the clause (before the note):

- (2) The objectives of this plan in relation to the Sydney Opera House are:
  - (a) to establish a buffer zone around the Sydney Opera House so as to give added protection to its world heritage value, and
  - (b) to recognise that views and vistas between the Sydney Opera House and other public places within that zone contribute to its world heritage value.

**[3] Part 5, Division 3A**

Insert after Division 3 of Part 5:

### **Division 3A Sydney Opera House**

**58A Land to which Division applies**

This Division applies to the Sydney Opera House buffer zone, as shown edged heavy black on the Sydney Opera House Buffer Zone Map.

**58B Protection of world heritage value of Sydney Opera House**

The matters to be taken into consideration in relation to development within the Sydney Opera House buffer zone are as follows:

- (a) the objectives set out in clause 53 (2),
- (b) the need for development to preserve views and vistas between the Sydney Opera House and other public places within that zone,
- (c) the need for development to preserve the world heritage value of the Sydney Opera House,



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# Public exhibition draft

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Sydney Regional Environmental Plan (Sydney Harbour Catchment)  
(Amendment No 1) 2005

Schedule 1 Amendments

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- (d) the need for development to avoid any diminution of the visual prominence of the Sydney Opera House when viewed from other public places within that zone.

## **58C Minor development**

- (1) This Division does not apply to or in respect of building work that merely involves:
  - (a) the renovation, repair, rebuilding or demolition of a building, or
  - (b) internal alterations to a building, or
  - (c) external alterations to a building that are carried out below ground level.
- (2) This Division does not apply to or in respect of the subdivision of land.
- (3) This Division does not apply to or in respect of any use of a building or place, other than:
  - (a) the temporary use of a public open space for more than 30 days in any single period of 12 months, or
  - (b) the temporary use of a private open space for more than 2 years.
- (4) This Division does not apply to or in respect of the installation or erection in any open space of any artwork, time capsule, bollard, tree surround, street furniture, pathway, driveway steps or flagpole.

## **[4] Schedule 1 Maps incorporated in plan**

Insert in alphabetical order:

*Sydney Opera House Buffer Zone Map*, being the map entitled "Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005—Sydney Opera House Buffer Zone Map".

## **[5] Dictionary**

Insert in alphabetical order:

*Sydney Opera House buffer zone* means the land shown edged heavy black on the Sydney Opera House Buffer Zone Map.



**Sydney Opera House  
World Heritage nomination 2006**

**Supporting information and essays  
(presented in chronological order)**

Giedion, S 1967, 'Jørn Utzon and the Third Generation', *Space, Time and Architecture*, 5th Edition, Cambridge Massachusetts, pp. 668-95.

Arup, O and Zunz, J 1969, 'Sydney Opera House', *Structural Engineer*, March 1969. Reprinted in *The Arup Journal*, October 1973 and in Sydney Opera House *Reprint Series* No. 1, 1988.

Baulderstone Hornibrook Group 1993, *Sydney Opera House 20<sup>th</sup> anniversary*, Sydney.

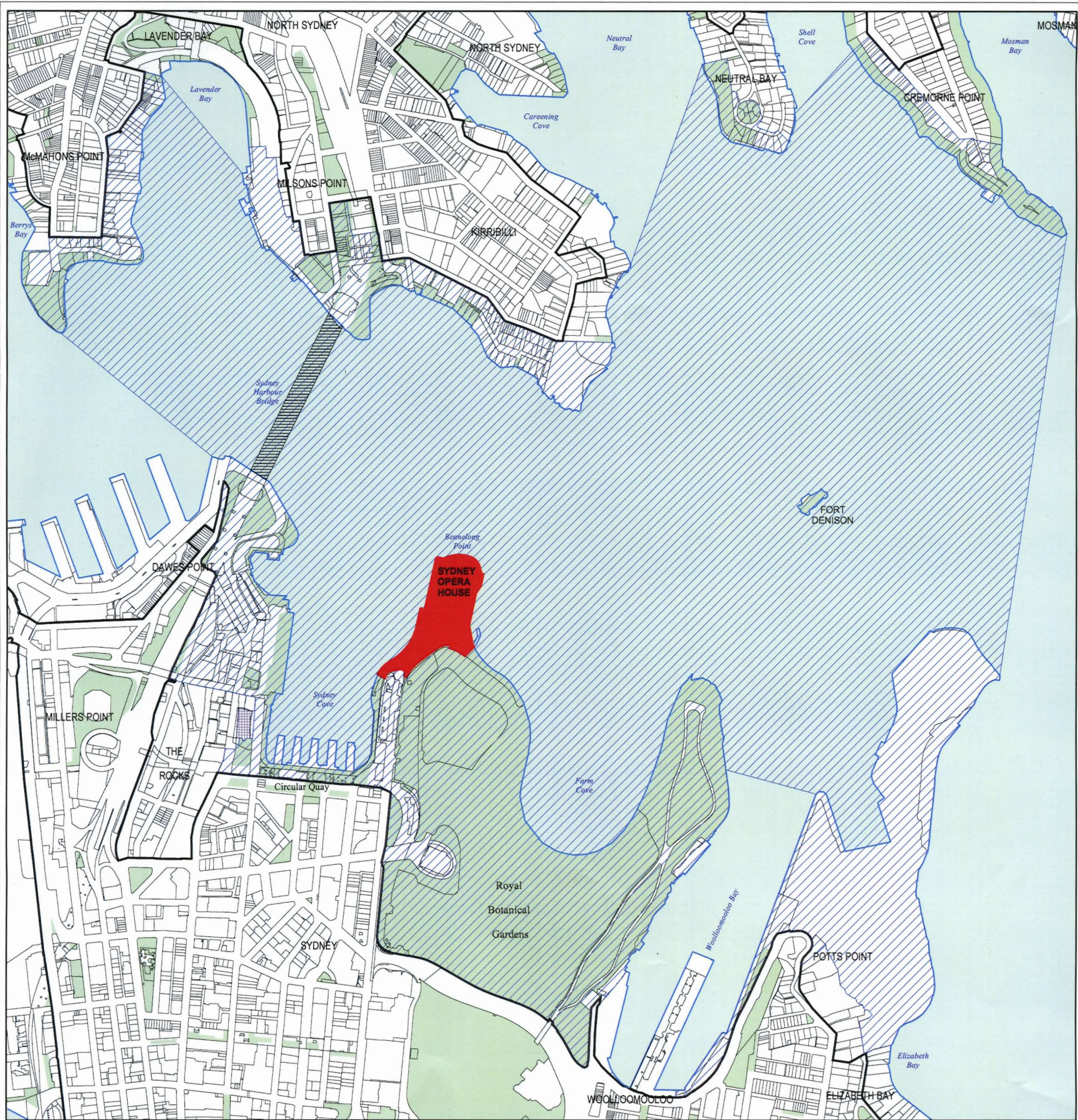
Norberg-Schulz, C 1996, 'The Sydney Opera House: international comparison, an evaluation of its position in the history of modern architecture', Department of the Environment, Sports and Territories and New South Wales Department of Urban Affairs and Planning *Sydney Opera House in its harbour setting*, unpublished World Heritage nomination by the Government of Australia, DEST & DUA P, Sydney, 161-173.

'Pritzker Architecture Prize, Laureate 2003, Jørn Utzon' Award announcement and citation extracts from the Pritzker Prize Jury, online at [www.pritzkerprize.com/2003annc.htm](http://www.pritzkerprize.com/2003annc.htm)

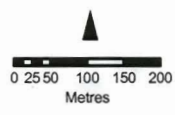
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- Legend**
- Sydney Opera House Site
  - Sydney Opera House Buffer Zone
  - Foreshores and Waterways Area Boundary



NSW GOVERNMENT  
**Department of Planning**  
 Amendment No. 1

Drawn by :  
 G.I.S. Dwg. No.  
 Department file No.  
 Planning Officer:  
 Manager G.I.S.  
 County:  
 Parish:  
 L.G.A.  
 Date:  
 Locality:

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 0401  
 U. Williamson  
 Cumberland  
 Various  
 Various  
 10.11.2005  
 Various

**SYDNEY REGIONAL ENVIRONMENTAL PLAN  
 (SYDNEY HARBOUR CATCHMENT) 2005  
 SYDNEY OPERA HOUSE  
 BUFFER ZONE**

**DRAFT**



## Sydney Opera House (Australia)

No 166 rev

*Official name as proposed by the State Party:* Sydney Opera House

*Location:* Sydney, Australia

### *Brief description:*

The Sydney Opera House is situated at the tip of a prominent peninsula projecting into Sydney Harbour and within close proximity to the Royal Botanic Gardens and the Sydney Harbour Bridge. The architectural form comprises three groups of interlocking vaulted ‘shells’ (roofing respectively the two main performances halls and a restaurant), set upon a vast terraced platform, ‘the podium’, and surrounded by terrace areas that function as pedestrian concourses. The complex includes more than 1,000 rooms, most of which are located within the podium, as are virtually all the technical functions of the performing arts centre.

### *Category of property:*

In terms of the categories of cultural properties set out in Article 1 of the 1972 World Heritage Convention, this is a *monument*.

## 1. BASIC DATA

*Included in the Tentative List:* 27 June 2006

*International Assistance from the World Heritage Fund for preparing the Nomination:* No

*Date received by the World Heritage Centre:* 26 January 2006

### *Background:*

In 1980 Australia submitted a nomination dossier referred to as *The Sydney Opera House in its Setting*, including the Sydney Harbour Bridge and the surrounding waterways of Sydney Harbour from Bradley’s Head to McMahon’s Point.

In April 1981 ICOMOS recommended that the inclusion of the proposed cultural property be deferred. ICOMOS considered that the inscription on the World Heritage List on the basis of criterion i, as proposed by the State Party, did not appear to assert itself, to the extent that the Opera House is part of a series of experiments in “sculptural architecture”.

ICOMOS also considered that as a question of the work of a living architect, inaugurated less than ten years ago at that time, ICOMOS did not feel itself competent to express an opinion on the eventual admissibility based on criterion ii.

The inscription was recommended to be deferred until its exemplary character or its role as model appears more clearly attributable to the creation of Jørn Utzon.

At the 5<sup>th</sup> session of the Bureau of the World Heritage Committee (Paris, May 1981), the Bureau “considered that modern structures should only be accepted when there was clear evidence that they had established, or were outstanding examples of, a distinctive architectural style. However, the Bureau expressed interest in receiving a revised nomination based on the outstanding features of Sydney Harbour, both as a bay and as the site of the first permanent European settlement in Australia. Such a nomination could include structures such as the Opera House and the Sydney Harbour Bridge, but they would not constitute the primary elements.”

*Consultations:* ICOMOS has consulted its International Scientific Committee on 20<sup>th</sup> Century Heritage.

### *Literature consulted (selection):*

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*Technical Evaluation Mission:* 20-22 September 2006

*Additional information requested and received from the State Party:* None

*Date of ICOMOS approval of this report:* 21 January 2007

## 2. THE PROPERTY

### *Description*

The Sydney Opera House is situated at the tip of a prominent peninsula projecting into Sydney Harbour (known as Bennelong Point) and within close proximity to the Royal Botanic Gardens and the Sydney Harbour Bridge.

The architectural form comprises three groups of interlocking vaulted 'shells', set upon a vast terraced platform ('the podium') and surrounded by terrace areas that function as pedestrian concourses. The two main shell structures cover the two main performance venues, known as the Concert Hall and Opera Theatre. The third set of shells that overlooks Sydney Cove was designed specially to house a restaurant. The two main halls are arranged side by side, oriented north-south with their axes slightly inclined. The auditoria are carved out of the high north end of the podium so that they face south, towards the city, with the stage areas positioned between them and the entrance foyers. The tallest shell reaches the height of a 20-storey building above the water. The shell structures cover nearly two hectares and the whole property is nearly six hectares. The complex includes more than 1000 rooms, most of which are located within the podium, as are virtually all the technical functions of the performing arts centre.

The base of the Sydney Opera House rises up as a massive monolith of reinforced concrete, a grand granite-clad podium. Its monumental scale forms an artificial promontory that offers continuity with the harbour-side landscape. The forecourt is a vast open space from which people ascend the stairs to the podium. The podium steps, which lead up from the forecourt to the two main performance venues, are a great ceremonial stairway nearly 100 metres wide and two storeys high.

Jørn Utzon's design created an unconventional performing arts building in the way that it separated the performance and technical functions. The two main performance venues were placed beneath the vaulted roof shells, side by side upon the podium, while all the back-stage facilities and technical equipment were hidden within the podium. The vaulted roof shells were designed by Utzon in collaboration with Ove Arup & Partners; the final shape of the shells was derived from the surface of a single imagined sphere, some 75 metres in diameter. This geometry gives the building great coherence as well as allowing its construction to benefit from the economies of prefabrication.

Each shell is composed of pre-cast rib segments radiating from a concrete pedestal and rising to a ridge beam. The ribs of the shells are covered with chevron-shaped, pre-cast concrete tile lids. The shells are faced in glazed off-white tiles while the podium is clad in earth-toned, reconstituted

granite panels. The north and south ends of the shells are hung with topaz glass walls that project diagonally outwards to form foyers, offering views from inside and outside. The glass walls are a special feature of the building, constructed according to architect Peter Hall's modified design. The topaz glazed in-fill between the shells and the podium was built as a continuous laminated glass surface with faceted folds tied to a structure of steel mullions.

The Concert Hall is the largest performance space of the Sydney Opera House and accommodates up to 2700 people. Birch plywood, formed into radiating ribs on the suspended hollow raft ceiling, extends down the walls to meet laminated brush-box linings that match the floor. The Opera Theatre is the Sydney base for Opera Australia and the Australian Ballet, and a regular venue for the Sydney Dance Company. Its walls and ceiling are painted black and the floor is brush-box timber.

Peter Hall's design for the interiors used different finishes to distinguish the various spaces in the building. The Utzon Room is a multi-purpose venue overlooking Farm Cove that is used for music recitals, productions for children, lecture programs and functions. Formerly the Reception Hall, the room was transformed in 2004 under Utzon's design guidance. The western loggia is the first major structural work to the exterior of the building since the opening of the Sydney Opera House. It was designed by Utzon following his re-engagement with the Sydney Opera House in 1999. The western loggia comprises a colonnade opening into the western side of the podium facing towards the Sydney Harbour Bridge. Nine openings have been created to open up the foyers of the Drama Theatre, the Studio and the Playhouse to natural light and to allow access to harbour and city views. Utzon's design for the western loggia was inspired by the colonnades found in Mayan temples, which were one of the original design sources for the Sydney Opera House.

### *History and development*

A major cultural centre for Sydney and its siting at Bennelong Point had been discussed since the 1940s. In 1956 the New South Wales Government called an open-ended international design competition and appointed an independent jury, rather than commissioning a local firm. The competition brief provided broad specifications to attract the best design talent in the world; it did not specify design parameters or set a cost limit. The main requirement of the competition brief was a design for a dual function building with two performance halls.

The competition generated enormous interest in Australia and overseas. The New South Wales Government's decision to commission Jørn Utzon as the sole architect was unexpected, bold and visionary. There was scepticism as to whether the structure could be built given Utzon's limited experience, the rudimentary and unique design concept and the absence of any engineering advice. The competition drawings were largely diagrammatic, the design had not been fully costed and neither Utzon nor the jury had consulted a structural engineer. Utzon's design concept included unprecedented architectural forms and demanded solutions that required new technologies and materials. The New South Wales Government also faced public pressure to select an Australian architect.

The Sydney Opera House is often thought of as being constructed in three stages and this is useful in understanding the history of the three key elements of its architectural composition: the podium (stage 1: 1958–1961), the vaulted shells (stage 2: 1962–1967) and the glass walls and interiors (stage 3: 1967–1973). Architect Jørn Utzon conceived the overall design and supervised the construction of the podium and the vaulted shells. The glass walls and interiors were designed and their construction supervised by architect Peter Hall supported by Lionel Todd and David Littlemore in conjunction with the then New South Wales Government Architect, Ted Farmer. Peter Hall was in conversation with Utzon on various aspects of the design for at least eighteen months following his departure. Ove Arup & Partners provided the engineering expertise for all three stages of construction.

Design and construction were closely intertwined. Utzon's unique design together with his radical approach to the construction of the building fostered an exceptional collaborative and innovative environment. His collaborative model marked a break from conventional architectural practice at the time. The design solution and construction of the shell structure took eight years to complete and the development of the special ceramic tiles for the shells took over three years. The Sydney Opera House became a testing laboratory and a vast, open-air pre-casting factory.

The Sydney Opera House took sixteen years to build; this was six years longer than scheduled and ten times more than its original estimated cost. On 20 October 1973 the Sydney Opera House was officially opened by Queen Elizabeth II. After inauguration, new works were undertaken over time. Between 1986 and 1988 the land approach and forecourt were reconstructed and the lower concourse developed under the supervision of the then New South Wales Government Architect, Andrew Andersons, with contributions by Peter Hall.

Between 1998 and 1999 the recording and rehearsal room was converted into two areas: an assembly area for the orchestra and the Studio, a revitalised performance space for the presentation of innovative music and performing arts. In 1998, in accordance with the celebration of the 25th anniversary of inauguration, the Sydney Opera House Trust appointed Sydney architect Richard Johnson to advise on future development of the site and to establish planning principles. Through Johnson, the Sydney Opera House Trust began negotiations to reconcile with Utzon and to re-engage him with the building in an advisory capacity. In 1999 Utzon formally accepted Premier Carr's invitation to re-engage with the project by setting down design principles that outline his vision for the building and explain the principles behind his design. Over three years he worked with his architect son and business partner, Jan Utzon, and Richard Johnson to draw up his design principles for the Sydney Opera House, including the refurbishment of the reception hall, construction of the western loggia, exploration of options for improving the Concert Hall acoustics, improving services to the forecourt to support performances, modification of the orchestra pit and interior of the Opera Theatre. In 2002 The Sydney Opera House Trust released the Utzon Design Principles. In 2004 refurbishment of the Utzon Room (formerly known as the reception hall) was completed.

### 3. OUTSTANDING UNIVERSAL VALUE, INTEGRITY AND AUTHENTICITY

#### *Integrity and Authenticity*

##### *Integrity*

All elements necessary to express the values of the Sydney Opera House are included within the boundaries of the nominated area and buffer zone. This ensures the complete representation of its significance as an architectural object of great beauty in its waterscape setting. The proposed buffer zone retains the relationship between the monument and its setting that has been identified as contributing to its value. All elements of the property that contribute to its heritage significance have been identified and policies developed to sustain their significance into the future.

##### *Authenticity*

Extensive documentation is available on the construction of the building to the present day and the people who were directly involved in its creation are accessible today.

With regards to form and design, it is worthy to remember that Jørn Utzon designed and supervised the construction of the podium, stairs and the shells, which together provide the exterior and interior form and structure of the building. The major and minor halls and the glass walls were designed and built by Hall, Todd and Littlemore.

As mentioned before, design and construction were intertwined and are key to a good understanding of the property. Conservation issues have arisen from this multiple authorship. Attention given to retain the building's authenticity culminated with the Conservation Plan and the Utzon Design Principles. The rigorous management and conservation of the building assist in retaining its material integrity and authenticity.

The Sydney Opera House continues to perform its function as a world-class performing arts centre. The Conservation Plan specifies the need to balance the roles of the building as an architectural monument and as a state of the art performing centre, thus retaining its authenticity of use and function.

Concerning authenticity of the setting, the Sydney Opera House is surrounded on three sides by the harbour, which provides a natural safeguard from development of the waterscape setting. Immediately behind the property, are the Royal Botanic Gardens, an important backdrop to the property when viewed from the water.

Extensive information sources are available on the construction and changes to the property. International and local expertise on the history and significance of the building is referenced throughout the nomination dossier. The ability to engage the building's creator has provided unique opportunities to authenticate its values.

ICOMOS agrees with the views expressed in the nomination dossier in relation to the authenticity of the property. The consideration of authenticity in such a "young" building obliges to take into account the specific

circumstances of its short history. The building is the result of different stages of design and construction, developed by a group of architects, engineers and constructors in the framework of the Utzon's original project. Changes introduced over the construction process and after inauguration must be considered as the natural result of the development of a living monument; they do not jeopardise the intrinsic values of the original architectural ideas and design but illustrate on the process of constructing and managing one of the landmarks of 20<sup>th</sup> century architecture.

In conclusion, ICOMOS is satisfied with the integrity and authenticity of the nominated property.

### **Comparative analysis**

The nomination dossier includes a comprehensive comparative analysis of the Sydney Opera House with other prominent buildings of the 20<sup>th</sup> century, based on four thematic lines: the building as an outstanding example of late modern architecture; masterpieces that challenged accepted norms of buildings expression, siting or planning; masterpieces of structural engineering and technology that stretched the boundaries of the possible and iconic masterpieces. The comparative analysis is supported by quotes from some of the most important historians and critics of modern architecture.

As a masterpiece of late modern architecture, the role of Jørn Utzon as a leading architect of the so-called "third generation" is stressed. In this sense, the Sydney Opera House is compared with two masterpieces that express the poetic and environmental expressions of the third generation: the Notre Dame du Haut Chapel in Ronchamp (Le Corbusier, 1950-1955) and the Guggenheim Museum in New York (Frank Lloyd Wright, 1956-1959). This line of comparison also points out the relationship of the building with the post war search of a new monumentality, represented mainly by Le Corbusier's works in Chandigarh and Alvar Aalto's Town Hall of Säinäsalo.

With regard to masterpieces that challenged conventional norms of building expression, siting and planning, the building is compared with the City of Brasilia, the Guggenheim Museum in Bilbao, the Getty Centre in Los Angeles and the Pompidou Centre in Paris. The comparison with other opera houses or cultural centres includes the Royal Festival Hall in London, the Berlin Philharmonie and Finlandia's Hall in Helsinki. As general statement on this point, the nomination dossier concludes that the Sydney Opera House breaks new ground in terms of complex sources of architectural representation, innovation in structure and technology and an empathetic relationship between a large public building and its dramatic natural setting.

In relation with engineering and technical achievements, the building is compared with Exhibitions Buildings in Turin by Pier Luigi Nervi, and Eero Saarinen's TWA Terminal in J. F. Kennedy Airport in New York. The Sydney Opera House bears important similarities to the buildings of Nervi and Saarinen, but the functional simplicity of Nervi and Saarinen roofs serves to highlight the complex structural and architectural expression of the roofs of the Sydney Opera House.

In terms of iconic masterpieces, the building is one of the most enduring images of 20<sup>th</sup> century and world renowned monuments that traverse time and place. In this sense, it is compared to some masterpieces of architectural modernity, such as Gaudi's Sagrada Familia, Le Corbusier's Villa Savoye, Wright's Fallingwater, etc. The Sydney Opera House enjoys the same global reputation and success as these buildings for its unique architectural character and for being revered by people the world over.

The significance of the Sydney Opera House as a masterpiece of 20<sup>th</sup> century architecture has been stated by the most important historians and critics of modern architecture (see *Literature consulted* above). If compared with all the cases mentioned in this chapter, it shares some features but, at the same time, ICOMOS considers that it stands by itself as one of the indisputable masterpieces of human creativity, not only in the 20<sup>th</sup> century but of history of humankind.

ICOMOS considers that the comparative analysis justifies consideration of this property for the World Heritage List.

### **Justification of the Outstanding Universal Value**

#### *Statement of Outstanding Universal Value*

According to the State Party, the Sydney Opera House is of outstanding universal value as a masterpiece of the 20<sup>th</sup> century architecture. Its significance is demonstrated by its unparalleled and seminal design and construction; its exceptional engineering achievements and technological innovation and its position as a world-famous icon of architecture. The Sydney Opera House broke with the formal traditions of Modernism defining a new expressive form for civic monuments. It is a daring and visionary experiment that has had an enduring influence on the emergent architecture of the late 20<sup>th</sup> century and beyond.

Utzon's original design concept and his unique approach to building gave impetus to a collective creativity including architects, engineers and builders. The design represents an extraordinary interpretation and response to the setting in Sydney Harbour.

#### *Criteria under which inscription is proposed:*

The property is nominated on the basis of *criterion i*:

*Criterion i*: The argument for the application of criterion (i) is developed in the nomination dossier along three lines: as a masterpiece of late modern architecture (multiple strands of creativity, a great urban sculpture, a masterful synthesis of architectural ideas); as an outstanding achievement in structural engineering and technological innovation; and as a world-famous iconic building of the 20<sup>th</sup> century.

In coincidence with the State party's view, ICOMOS considers that the Sydney Opera House is a work of human creative genius, and a masterful architectural and engineering achievement. It represents an outstanding conjunction not only of architecture and engineering but also of sculpture, landscape design and urban design. It is an ensemble that has reconfigured the way public architecture can define the city's identity in the form of an iconic signature building.

ICOMOS furthermore considers that criterion i is justified on the merit of the Sydney Opera House as a work of architecture imagined and carefully developed on the basis of programme and site in order to create a marking icon, and on the merit of the engineering achievements its construction represents. Utzon's original design concept and his unique approach to building gave impetus to a collective creativity including architects, engineers and builders.

Therefore, more than 25 years after the first nomination of this property by the State Party, ICOMOS considers that the role of Utzon (and others) has been clarified and that criterion i has been demonstrated.

ICOMOS considers that this criterion is justified.

#### 4. FACTORS AFFECTING THE PROPERTY

The nomination dossier includes an identification of the following factors:

##### *Development pressures*

According to the State Party, these will not constitute a factor of risk since the property has substantial natural protection from development: it is surrounded on three sides by the Sydney Harbour, while the fourth side corresponds to the Royal Botanic Gardens. The definition and treatment of the buffer zone will assure the proper protection of the neighbouring areas.

##### *Environmental pressures*

The property is exposed to several environmental pressures but the means for managing their effects are in place. The exposed harbour-side location includes salt water, wave action, high winds, atmospheric pollution and solar radiation, particularly in relation to the large roof and glass wall areas. The concrete structure is vulnerable to the problems of concrete decay typical for a building in a maritime environment. Conservation challenges arising from environmental pressures have been comprehensively identified and managed. It can experience strong winds but the building was designed to withstand wind loads higher than 180 kilometres per hour. A proactive and rigorous building maintenance programme is in place to deal with the critical areas of material risk.

##### *Natural disasters and Risk preparedness*

The property is located in an area not generally prone to natural disasters. Nevertheless, as a consequence of heightened awareness of earthquake risk, new Australian standards for buildings construction have been introduced. Risk management is comprehensively embedded in the administration and management of the property.

##### *Tourism*

Since the Sydney Opera House is one of the most popular visitor attractions in Australia, more than four million people visit the property each year. Strategic planning is foreseen to address the estimated increase in visitors; which is not expected to have any negative impact on the heritage values, given the size of the Opera House precinct and the management strategies being implemented.

Initiatives under consideration include the provision of a visitor's centre and an information booth.

In conclusion, ICOMOS considers that the main risks to the property are related to the impact of its maritime location on construction materials and to the increasing number of visitors. Both aspects are considered in the conservation, management and monitoring plans.

#### 5. PROTECTION, CONSERVATION AND MANAGEMENT

##### *Boundaries of the nominated property and buffer zone*

The nominated property includes 5.8 hectares. It corresponds to the site known as Bennelong Point, where the Sydney Opera House stands. The nominated area encompasses land owned by Government of New South Wales and managed by the Sydney Opera House Trust. It is surrounded by Sydney Harbour and the Royal Botanic Gardens.

The proposed buffer zone (438.1 hectares) has been designed to protect the property's universal values in relation to its setting on Sydney Harbour. The buffer zone centres on the inner waters of the harbour and includes places around the harbour within a radius of 2.5 kilometres that have been identified as offering critical views to and from the Sydney Opera House.

ICOMOS considers that the proposed core zone includes all the physical components that express the property's outstanding universal values. The proposed buffer zone assures the proper management of the views from and to the Sydney Opera House. Construction regulations should be implemented in order to assure the conservation of the present features of shore landscape included in the buffer zone.

##### *Ownership*

The Sydney Opera House is publicly owned by the State Government of New South Wales (Ministry for the Arts). The administration and management of the property are the responsibility of the Sydney Opera House Trust under the *Sydney Opera House Trust Act 1961*.

##### *Protection*

###### *Legal protection*

Legislation and associated instruments have been established across national and state levels to ensure the comprehensive conservation and management of the heritage values of the Sydney Opera House. The property and its site are protected by being listed on statutory heritage registers at all levels of government, including specific provisions for managing their heritage values. The Sydney Opera House was included in the National Heritage List on 12 July 2005 under the *Environment Protection and Biodiversity Conservation Act 1999* and on the State Heritage Register of New South Wales on 3 December 2003 under the *Heritage Act 1977*. In 1980 the property was included in the Register of the National Estate which was established under the *Australian*



*Heritage Commission Act 1975* and now maintained under the *Australian Heritage Council Act 2003*.

Listing in the National Heritage List implies that any proposed action to be taken inside or outside the boundaries of a National Heritage place or a World Heritage property that may have a significant impact on the heritage values is prohibited without the approval of the Minister for the Environment and Heritage. Actions must be subjected to a rigorous assessment and approval process. In 2005 the Australian Government and the New South Wales Government entered into a bilateral agreement for the Sydney Opera House. The agreement declares that actions approved by the New South Wales Government, in accordance with a bilateral accredited management plan, do not require approval by the Australian Government.

Australian Government and New South Wales Government legislation have provisions to impose financial penalties or imprisonment for actions that may have an adverse impact on the heritage values of the Sydney Opera House.

ICOMOS considers that the protective measures for the property are adequate to protect its outstanding universal values.

### **Conservation**

#### *Conservation history*

Since the construction of the Sydney Opera House implied a long process that has not finished with its inauguration in 1973, conservation history is partly linked with the construction and development process, explained in the *History and development* section.

In 1993 James Semple Kerr was commissioned to write a conservation plan for the Sydney Opera House. In 1998 the Sydney Opera House Trust appointed Sydney architect Richard Johnson to advise on future development of the property and to establish planning principles. Through Johnson, the Trust began negotiations to reconcile with Utzon and to re-engage him with the building in an advisory capacity. In 2002 the Sydney Opera House Trust released the Utzon Design Principles, intended for future development in the framework of the conservation of the original design ideas. The adoption of the Sydney Opera House Conservation Plan (2003) assures the proper conservation and management of the property.

#### *Present state of conservation*

The present state of conservation is very good. The property is maintained and preserved through regular and rigorous repair and conservation programmes, as well as by scrutiny at the highest levels including the executive of the Sydney Opera House Trust and the New South Wales Government. All elements of the building and the site are currently in good physical condition.

Alternative sources have been located to replace original materials that are no longer available. The replacement of original material components is considered justified taking into account fragility of some modern materials in relation with aging and with the maritime building's setting.

ICOMOS considers that conservation measures and actions are adequate to preserve the property's values.

### **Management**

#### *Management structures and processes, including traditional management processes*

The management structure of the Sydney Opera House takes into account a wide range of measures provided under planning and heritage legislation and policies of both the Australian Government and the New South Wales Government. As the property is registered at national and state levels, both governments share responsibility regarding protection and conservation, in the framework of the existing bilateral agreement.

At the national level, the Australian Council was established under the *Australian Heritage Council Act 2003*. The Council is an independent body of heritage experts that provides advice to the Minister for the Environment and Heritage on a range of heritage matters, including issues related to policies, protection, conservation and monitoring of places of the National Heritage List.

At the State level, the *Environmental Planning and Assessment Act 1979* provides for the proper management, development and conservation of the natural and built environment in New South Wales. The legislation requires that proposals comply with relevant planning controls and are environmentally and socially sustainable according to their nature and scale. Before a proposal can be undertaken on the Sydney Opera House site, it is subject to rigorous assessment by qualified planners, urban designers and heritage experts. This process involves consultation with the public and interested parties and identifies all likely impacts. Approval cannot be granted unless there has been an assessment and consideration of the impacts of the proposed action or proposal on the heritage values of the property. If approved, the proposal may be subject to conditions of approval to ensure that the heritage values are conserved and protected.

The *Heritage Act 1977* provides protection for places of natural and cultural heritage significance. It provides for the listing of heritage items or places on the State Heritage Register and the making of orders for their protection. Any development application for the property must be considered for approval by the New South Wales Heritage Council. In addition, the *Minimum standards of maintenance and repair*, created under the legislation, require that the Sydney Opera House is kept to a mandatory standard of care and maintenance. The property is also subject to guidelines that regulate heritage items owned by New South Wales Government agencies under the legislation. The *State agency heritage guide* sets standards for the day-to-day care of places owned by New South Wales Government agencies and establishes the integration of heritage matters into overall asset management.

The Sydney Opera House Trust was created in 1961 and is administered by the New South Wales Minister for the Arts. Functions of the Trust include the administration, care, control, management and maintenance of the property and the administration of the Sydney Opera House as a

performing arts centre. The Trust is advised by the Sydney Opera House Conservation Council on conservation issues. The Council is composed by representatives of the Trust, the Sydney Opera House Executive Committee, the Government Architect and government and private specialists with recognised experience in architecture, heritage and conservation matters, design, engineering and related disciplines and performing arts. Membership of the Council is foreseen to be enlarged with the inclusion of representatives of the New South Wales Heritage Office, the Department of Infrastructure, Planning and Natural Resources and the NSW Minister for the Arts.

ICOMOS considers that management structures and processes are adequate to assure the proper conservation and management of the property's values, integrity and authenticity.

#### *Management plans, including visitor management and presentation*

The *Management Plan for the Sydney Opera House 2005* was prepared by the New South Wales Government in consultation with the Australian Government in the framework of the existing bilateral agreement. The plan sets out the environmental assessment and approval requirements and the management arrangements that operate to protect the values of the property. The plan includes the Conservation Plan and the Utzon Design Principles. Together these three documents provide the policy framework for the conservation and management of the Sydney Opera House.

The plan provides a link between these practical documents and the legislation. It provides a sound basis for decision-making in relation to any future development and evolution, modification and change, as well as for the day-to-day management of the property including minor management proposals. All management decisions must be carried out in accordance with the plan.

*Sydney Opera House: a plan for the conservation of the Sydney Opera House and its site 2003*. The Conservation Plan is a highly effective management tool for the property. The plan identifies the heritage significance of the property, assesses the levels of heritage significance to be assigned to the various elements of the property and its fabric, contains detailed policies to manage the heritage values, and gives guidance on managing any necessary change or upgrade in vision for the building and its setting.

The *Utzon Design Principles* (2002) are a record of Utzon's vision for the building and its setting and his views about its future. As a reference document that explains the design principles of the building it provides a framework within which the building and site may evolve and develop to meet the changing demands of this major performing arts centre, while conserving the heritage values of the site and retaining its authenticity.

#### *Involvement of local communities*

Since the Sydney Opera House became a symbol not only of Sydney but of Australia, there is a high degree of public awareness on its values and significance.

#### *Resources, including staffing levels, expertise and training*

The Sydney Opera House is financed from a number of different sources. The administration and maintenance of the property and its operations are funded by New South Wales Government grants, earned income from the provision of facilities and services by the Sydney Opera House, corporate sponsorship and philanthropy. An annual endowment for the operations of the Sydney Opera House Trust is provided by the New South Wales Ministry for the Arts. The Ministry also funds ongoing building and maintenance requirements. In addition, the Australian Government may provide financial assistance for the identification, promotion, protection or conservation of a National Heritage place through initiative or incentive programs.

The Sydney Opera House Trust is in the position of managing the property with policies developed by one of Australia's most respected conservation consultants, James Semple Kerr (the Conservation Plan), and with the benefit of the principles set down by the building's creator, Jørn Utzon (the Utzon Design Principles). The Sydney Opera House Trust established a Conservation Council in 1996 to provide specialist advice about issues of heritage significance (see *Management structures* above). Its key responsibilities are to conduct annual inspections and review significant works, the Conservation Plan and expenditures. A range of professional, technical and maintenance staff are employed at Sydney Opera House on permanent, temporary and casual contracts.

In conclusion, ICOMOS considers that the management system for the property is adequate to assure the proper conservation and enhancement of its outstanding universal values, integrity and authenticity.

## **6. MONITORING**

Formal monitoring systems with wide ranging indicators that measure the state of conservation are in place. The *Management plan for the Sydney Opera House 2005* establishes formal monitoring mechanisms and obligations for various parties regarding the management of the heritage values of the property.

A range of documents have been developed by the Sydney Opera House Trust to monitor the Sydney Opera House's state of conservation, protect its heritage values and manage its assets. These include a building standards manual; strategic building plans; strategic asset maintenance plans; emergency plans; security plans and policies; and a crisis management plan. These management tools are reviewed and updated regularly. They ensure that maintenance requirements and projected capital improvements are identified over a 25-year cycle.

The method of monitoring and assessing the conservation and condition of the property is encapsulated in Building Condition Indices that have evolved from quarterly condition monitoring reports. The Building Condition Indices database details thousands of individual building fabric inspections that are used to determine trends in the building's condition and to plan future preventative conservation works. It is also used by the Sydney Opera House staff responsible for the care of the building and by maintenance and cleaning contractors to assess the

condition of the property. The Building Condition Indices database has over 490 000 entries that detail the condition of every place, room, functional space, location zone and level of the building.

The internal administrative arrangements for monitoring the property's state of conservation are undertaken by the Trust's Facilities Portfolio, its staff and contractors. The Facilities Portfolio has responsibility for developing strategies and maintenance plans. A specialist technical department within the Facilities Portfolio is responsible for the ongoing care of the property. The Sydney Opera House's asset maintenance and planning framework requires the Building Conservation Contractor to conduct monthly or quarterly inspections. This periodic monitoring ensures quick identification and rectification of maintenance and conservation matters. The Sydney Opera House Conservation Council provides advice on the care, control and maintenance of the building.

In conclusion, ICOMOS considers that the monitoring measures for the property are adequate. Nevertheless, ICOMOS recommends identifying key indicators, related not only to physical components but also to uses and public use of the property (visitors).

## 7. CONCLUSIONS

ICOMOS recommends that the Sydney Opera House be considered bearing outstanding universal value based on its significance as one of the most prominent architectural works of the 20<sup>th</sup> century, encompassing remarkable achievements in buildings form and expression and structural and technical issues. The proposed core zone includes all the physical components necessary to express the property's values. The proposed buffer zone assures the preservation of the property's dramatic setting in Sydney Harbour.

The property meets successfully the conditions of integrity and authenticity. The protection, conservation, management and monitoring structures and processes demonstrate to be adequate to ensure the proper conservation and enhancement of the Sydney Opera House values, integrity and authenticity.

### *Recommendations with respect to inscription*

ICOMOS recommends to the World Heritage Committee that the Sydney Opera House, Australia, be inscribed on the World Heritage List on the basis of *critterion i*:

### *Recommended Statement of Outstanding Universal Value*

The Sydney Opera House constitutes a masterpiece of the 20<sup>th</sup> century architecture. Its significance is based on its unparalleled design and construction; its exceptional engineering achievements and technological innovation and its position as a world-famous icon of architecture. It is a daring and visionary experiment that has had an enduring influence on the emergent architecture of the late 20<sup>th</sup> century. Utzon's original design concept and his unique approach to building gave impetus to a collective creativity including architects, engineers and builders. The design represents an extraordinary interpretation and response to the setting in Sydney Harbour. The Sydney Opera House is

of outstanding universal value for its achievements in structural engineering and building technology. The building is a great artistic monument and an icon, accessible at society as large.

**Criterion i:** The Sydney Opera House is a great architectural work of the 20<sup>th</sup> century. It represents multiple strands of creativity, both in architectural form and structural design, a great urban sculpture carefully set in a remarkable waterscape and a world famous iconic building.

ICOMOS recommends that the State Party give consideration to the following in order to ensure the optimisation of the management system for the property and its buffer zone:

- Define and implement construction regulations for the buffer zone, especially in relation to the conservation of the current skyline of the shore landscape of Sydney Harbour.
- Consider how to reconcile the increase of visitor numbers with the proper functioning of the performing arts centre and with the preservation of the property's outstanding universal values, integrity and authenticity. Management of the property could be further enhanced by increased interpretation of its values to visitors.
- The interior spaces and material components should be considered as important as the exterior form and materials. They bear testimony of the specific history and process of design and construction of the building. It is thus recommended that conservation measures include original interior components as well as the consideration of different stages of construction and interior design as a part of the history of the property.



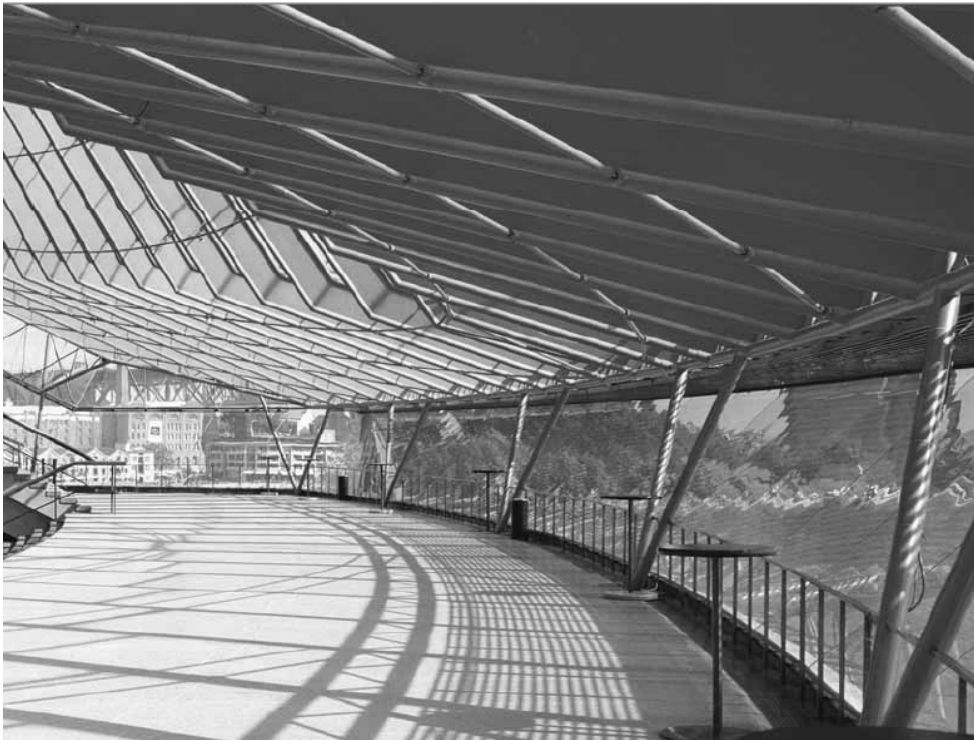
Map showing the boundaries of the nominated property



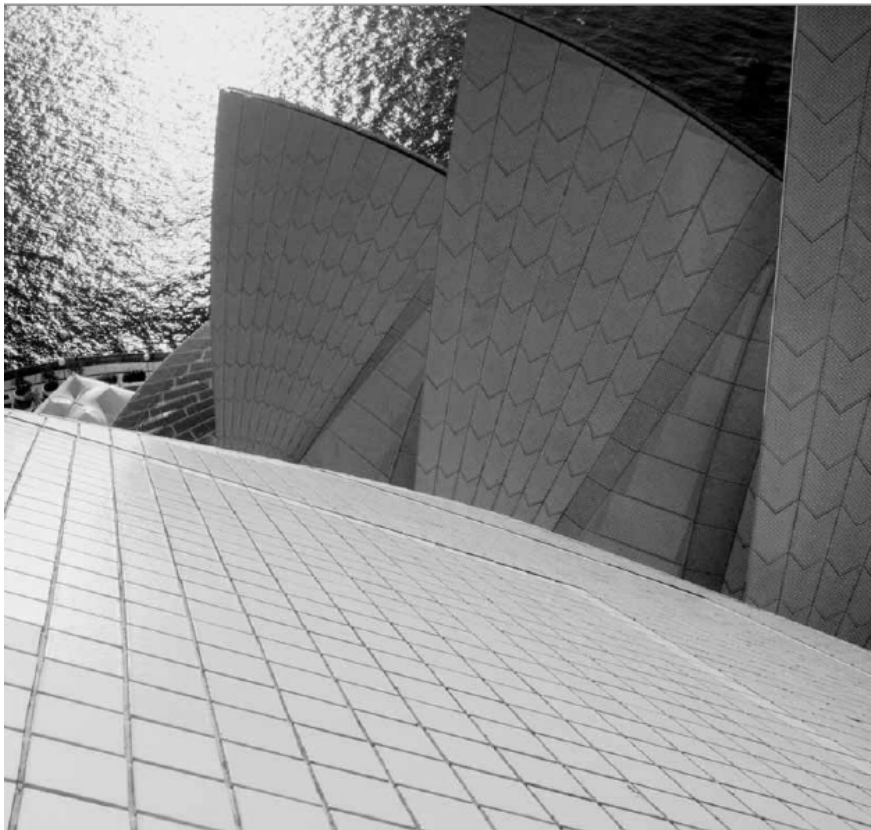
**Aerial view of the site**



**Podium**



**Glass walls**



**Vaulted roof shells**

## Opéra de Sydney (Australie)

No 166 rev

Nom officiel du bien tel que  
proposé par l'État partie : Opéra de Sydney

Lieu : Sydney, Australie

### Brève description :

L'Opéra de Sydney est situé à la pointe d'une péninsule proéminente s'avancant dans le port de Sydney, tout près des Jardins botaniques royaux et du pont du port de Sydney. Du point de vue architectural, il se compose de trois groupes de « coquilles » voûtées et entrelacées (abritant respectivement les deux auditoriums principaux et un restaurant), disposés sur vaste plate-forme en terrasse, le « podium », et entourés de terrasses qui font office de promenades piétonnes. L'ensemble comporte plus de 1 000 salles, dont la plupart sont situées dans le podium, qui abrite la quasi-totalité des fonctions techniques du centre des arts de la scène.

### Catégorie de bien :

Aux termes des catégories de biens culturels, telles qu'elles sont définies à l'article premier de la Convention du patrimoine mondial, il s'agit d'un monument.

## 1. IDENTIFICATION

Inclus dans la liste indicative : 27 juin 2006

Assistance internationale au titre du Fonds du patrimoine mondial pour la préparation de la proposition d'inscription : Non

Date de réception par  
le Centre du patrimoine mondial : 26 janvier 2006

### Antécédents :

En 1980, l'Australie a soumis un dossier de proposition d'inscription dénommé l'*Opéra de Sydney dans son cadre*, comprenant le pont du port de Sydney et les voies navigables environnantes du port de Sydney, de Bradley's Head à McMahon's Point.

En avril 1981, l'ICOMOS a recommandé que l'inclusion du bien culturel proposé soit différée. L'ICOMOS considérait en effet que l'inscription sur la Liste du patrimoine mondial sur la base du critère i, telle que le proposait l'État partie, ne s'imposait pas de manière évidente, dans la mesure où l'Opéra s'inscrit dans une série d'expériences autour de l'architecture sculpturale.

L'ICOMOS a également estimé ne pas être compétent pour exprimer une opinion sur l'éventuelle admissibilité sur la base du critère ii d'une œuvre d'un architecte vivant, inaugurée depuis moins de dix ans à l'époque.

Il fut recommandé de différer l'inscription jusqu'à ce que son caractère exemplaire ou son rôle de modèle devienne plus clairement attribuable à la création de Jørn Utzon.

Lors de la 5<sup>e</sup> session du Bureau du Comité du patrimoine mondial (Paris, mai 1981), le Bureau avait considéré que « les structures modernes ne devaient être acceptées que lorsqu'il était manifeste qu'elles avaient établi ou constituaient un exemple exceptionnel d'un système architectural distinctif. Cependant, le Bureau a exprimé son intérêt de recevoir une proposition d'inscription révisée portant sur les caractéristiques exceptionnelles du port de Sydney, à la fois en tant que baie et en tant que site du premier peuplement européen permanent en Australie. Une telle proposition d'inscription pourrait inclure des structures comme l'Opéra et le pont du port de Sydney, mais elles n'en constitueraient pas les éléments principaux. »

Consultations : L'ICOMOS a consulté son Comité scientifique international sur le patrimoine du XXe siècle.

### Littérature consultée (sélection):

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*Mission d'évaluation technique* : 20-22 septembre 2006

*Information complémentaire demandée et reçue de l'État partie* : Aucune

*Date d'approbation de l'évaluation par l'ICOMOS* : 21 janvier 2007

## 2. LE BIEN

### *Description*

L'Opéra de Sydney est situé à la pointe d'une péninsule proéminente s'avancant dans le port de Sydney (connue sous le nom de Bennelong Point), tout près des Jardins botaniques royaux et du pont du port de Sydney.

Du point de vue architectural, il se compose de trois groupes de « coquilles » voûtées et entrelacées, disposés sur une vaste plate-forme en terrasse (le « podium »), et entourés de terrasses qui font office de promenades piétonnes. Les deux principales structures de « coquille » couvrent les deux principales salles de concert, le *Concert Hall* et l'*Opera Theatre*. Le troisième ensemble de coquilles, qui surplombe la baie de Sydney, a été spécialement conçu pour abriter un restaurant. Les deux salles principales sont disposées côte à côte, orientées selon deux axes qui divergent légèrement mais qui marquent globalement l'axe nord-sud. Les auditoriums sont creusés dans l'extrémité haute du podium, au nord, de sorte qu'ils font face au sud en direction de la ville, avec leur scène positionnée entre eux et les foyers d'entrée en scène. La coquille la plus grande se dresse au-dessus de l'eau à une hauteur comparable à celle d'un immeuble de vingt étages. Les structures de coquille couvrent environ deux hectares et le bien en entier en représente presque six. Le complexe comprend plus de 1 000 salles, situées pour la plupart à l'intérieur du podium, qui abrite la quasi-totalité des fonctions techniques du centre des arts de la scène.

La base de l'Opéra de Sydney se dresse comme un imposant monolithe en béton armé, un grand podium revêtu de granit. Son échelle monumentale forme un promontoire artificiel, présentant une continuité avec le paysage portuaire. L'avant-cour est un vaste espace ouvert à partir duquel les gens montent les escaliers menant au podium. Les marches du podium, qui mènent de l'avant-cour aux deux principaux lieux de représentation, dessinent un grand escalier d'honneur de presque 100 mètres de large et de deux étages de haut.

Le design de Jørn Utzon a donné naissance à un centre des arts de la scène peu conventionnel en ce qu'il sépare les fonctions de représentation et les fonctions techniques. Les deux principaux lieux de représentation ont été placés sous les toits voûtés en forme de coquilles, côte à côte sur le podium, tandis que toutes les installations de coulisses et l'équipement technique étaient cachés au cœur du podium. Les toits voûtés en forme de coquille ont été dessinés par Utzon en collaboration avec Ove Arup & Partners ; la forme finale des coquilles dérive de la surface d'une seule sphère imaginaire de 75 mètres de diamètre. Cette géométrie donne au bâtiment une grande cohérence, tout en

permettant à sa construction de bénéficier des économies de la préfabrication.

Chaque coquille est composée de côtes radiales préfabriquées rayonnant depuis un piédestal en béton et s'élevant jusqu'à une poutre faitière. Les côtes des coquilles sont couvertes de tuiles en béton précontraint, en forme de chevron. Les coquilles sont revêtues de tuiles blanches vernies tandis que le podium est recouvert de panneaux de granit reconstitué aux tons terreux. Les extrémités nord et sud des coquilles sont dotées de murs en verre couleur topaze qui se projettent en diagonale vers l'extérieur pour former des foyers et qui offrent des vues depuis l'intérieur et l'extérieur. Construits selon le dessin modifié de l'architecte Peter Hall, les murs en verre sont une caractéristique particulière du bâtiment. Le remplissage verni et couleur topaze qui associe les coquilles et le podium a été construit comme une surface ininterrompue de verre laminé, avec des enveloppes à facettes rattachées à une structure de meneaux en acier.

Le *Concert Hall*, le plus grand espace de représentation de l'Opéra de Sydney, peut accueillir jusqu'à 2 700 personnes. Les côtes du plafond suspendu et creux sont couvertes d'un placage de bouleau qui couvre également les murs et qui rejoint le revêtement de lames de buis qui est assorti au sol. L'*Opera Theatre* est le siège à Sydney de la compagnie *Opera Australia* et de l'*Australian Ballet*, et il accueille régulièrement la *Sydney Dance Company*. Ses murs et son plafond sont peints en noir et son sol est en buis massif.

Pour le design intérieur, Peter Hall a fait appel à des finitions différentes afin de démarquer les divers espaces de l'édifice. *Utzon Room* est une salle polyvalente en surplomb de *Farm Cove*, qui accueille des récitals de musique, des productions pour enfants, des conférences et des cérémonies officielles. Anciennement appelée *Reception Hall*, la salle a été transformée en 2004 sous la direction de Utzon. Les premiers travaux structurels majeurs menés à l'extérieur du bâtiment depuis l'ouverture de l'Opéra de Sydney furent ceux de la loggia occidentale, conçue par Utzon après qu'il eut été à nouveau engagé par l'Opéra de Sydney en 1999. La loggia occidentale comprend une colonnade ouvrant sur le côté ouest du podium et faisant face au pont du port de Sydney. Neuf ouvertures ont été aménagées pour laisser entrer la lumière du jour dans les foyers du *Drama Theatre*, du *Studio* et du *Playhouse* et pour offrir une vue panoramique sur le port et la ville. Pour la conception de la loggia occidentale, Utzon s'est inspiré de colonnades qu'on trouve dans les temples mayas, une de ses influences pour la conception originelle de l'Opéra de Sydney.

### *Histoire et développement*

La création d'un grand centre culturel pour Sydney implanté à Bennelong Point était un projet discuté depuis les années 1940. En 1956, le gouvernement de la Nouvelle-Galles du Sud préféra lancer un concours international d'architecture et nommer un jury indépendant, plutôt que de passer commande auprès d'une société locale. Les spécifications du concours étaient vastes, afin d'attirer les meilleurs architectes du monde ; elles ne précisaient pas de paramètre de conception, ni de plafond des coûts. L'exigence principale du dossier de concours était la



création d'un édifice à double fonction, avec deux salles de représentation.

Le concours suscita un intérêt énorme en Australie et à l'étranger. La décision du gouvernement de Nouvelle-Galles du Sud de désigner Jørn Utzon comme unique architecte était inattendue, audacieuse et visionnaire. Un certain scepticisme prévalait quant à la faisabilité de la construction de la structure, étant donné l'expérience limitée d'Utzon, le concept architectural rudimentaire et unique et l'absence de tout conseil en ingénierie. Les plans réalisés pour le concours étaient largement schématiques, les coûts de la conception n'avaient pas été pleinement estimés et ni Utzon ni le jury n'avaient consulté d'ingénieur en construction. Le concept architectural d'Utzon comportait des formes architecturales inédites et exigeait des solutions faisant appel à de nouvelles technologies et à de nouveaux matériaux. De surcroît, le gouvernement de Nouvelle-Galles du Sud devait aussi faire face à la pression du public, appelant au choix d'un architecte australien.

On considère souvent que l'Opéra de Sydney a été construit en trois étapes, un angle d'approche utile pour comprendre l'histoire des trois principaux éléments de sa composition architecturale : le podium (phase 1 : 1958-1961), les coquilles voûtées (phase 2 : 1962-1967) puis les murs de verre et l'aménagement intérieur (phase 3 : 1967-1973). L'architecte Jørn Utzon a conçu le plan général et a supervisé la construction du podium et des coquilles voûtées. La conception des murs de verre et de l'aménagement intérieur, de même que la supervision de leur construction, ont été réalisés par l'architecte Peter Hall, avec l'aide de Lionel Todd et de David Littlemore, en collaboration avec l'architecte en chef du gouvernement de Nouvelle-Galles du Sud de l'époque, Ted Farmer. Après le départ d'Utzon, Peter Hall est resté en contact avec lui à propos de divers aspects de la conception pendant au moins dix-huit mois. L'expertise en ingénierie a été fournie par Ove Arup & Partner pour chacune des trois étapes de construction.

La conception et la construction étaient étroitement associées. Le projet unique d'Utzon et son approche radicale de la construction du bâtiment donnèrent naissance à un environnement exceptionnel de collaboration et d'innovation. Son modèle collaboratif était en rupture totale avec la pratique architecturale conventionnelle de l'époque. La solution conceptuelle et la construction de la structure des coquilles prirent huit ans, et le développement des tuiles en céramique destinées spécialement aux coquilles prit plus de trois ans. L'Opéra de Sydney devint un laboratoire d'essais et une fabrique à matériaux préfabriqués, vaste et à ciel ouvert.

Il fallut seize ans pour construire l'Opéra de Sydney, soit six de plus que prévu, et dix fois le coût estimatif de départ. Le 20 octobre 1973, l'Opéra de Sydney fut officiellement inauguré par la reine Elisabeth II. Après l'inauguration, on entreprit au fil du temps de nouveaux travaux. Entre 1986 et 1988, la voie d'accès terrestre et l'avant-cour furent reconstruits, et la promenade inférieure développée sous la supervision de l'architecte en chef du gouvernement de Nouvelle-Galles du Sud de l'époque, Andrew Andersons, avec des contributions de Peter Hall.

Entre 1998 et 1999, la salle d'enregistrement et de répétition fut divisée en deux : un espace de réunion pour l'orchestre et le *Studio*, un espace revivifié de représentation dédié aux musiques et aux arts de la scène innovants. En 1998, à l'occasion de la célébration du 25e anniversaire de l'inauguration, l'Opéra de Sydney nomma l'architecte de Sydney Richard Johnson conseiller pour le développement futur du site et l'établissement de principes d'urbanisme. Par l'entremise de Johnson, le *Sydney Opera Trust* commença des négociations pour se réconcilier avec Utzon et le réengager comme consultant pour l'édifice. En 1999, Utzon accepta officiellement l'invitation de Bob Carr, Premier ministre de Nouvelle-Galles du sud, à se réinvestir dans le projet, en énonçant les principes définissant sa vision pour l'édifice et en expliquant les principes sous-tendant sa conception. Pendant trois ans, il travailla avec son fils Jan Utzon, architecte et associé, et avec Richard Johnson pour rédiger ses principes de conception pour l'Opéra de Sydney, notamment concernant la rénovation de la salle de réception, la construction de la loggia occidentale, l'exploration des options d'amélioration de l'acoustique du *Concert Hall*, l'amélioration des services de l'avant-cour pour les représentations, la modification de la fosse d'orchestre et de l'intérieur du *Opera Theatre*. En 2002, le *Sydney Opera House Trust* publia les principes de conception d'Utzon. En 2004, la rénovation de la *Utzon Room* (anciennement connue sous le nom de *Reception Hall*) fut achevée.

### 3. VALEUR UNIVERSELLE EXCEPTIONNELLE, INTÉGRITÉ ET AUTHENTICITÉ

#### *Intégrité et authenticité*

##### *Intégrité*

Tous les éléments nécessaires à l'expression des valeurs de l'Opéra de Sydney sont inclus dans les délimitations de la zone proposée pour inscription et celles de la zone tampon. Ceci assure la totale expression de son importance en tant qu'objet architectural d'une grande beauté dans un panorama côtier. La zone tampon envisagée préserve la relation entre le monument et son environnement, qui a été identifiée comme un facteur contribuant à sa valeur. Tous les éléments du bien contribuant à son importance en tant que patrimoine ont été identifiés et des politiques ont été élaborées pour garantir la pérennité de leur valeur.

##### *Authenticité :*

Une vaste documentation est aujourd'hui disponible sur la construction du bâtiment et sur les personnes qui ont directement pris part à sa création.

Sur le plan de la forme et de la conception, il est important de souligner que Jørn Utzon a conçu et supervisé la construction du podium, des escaliers et des coquilles, qui composent, par leur ensemble, la forme et la structure extérieure et intérieure de l'édifice. Les salles, majeures et mineures, et les murs de verre ont été conçus et construits par Hall, Todd et Littlemore.

Comme cela a déjà été mentionné, la conception et la construction étaient étroitement liées, et elles sont la clé d'une bonne compréhension du bien. Des questions de

conservation se sont posées du fait de cette paternité multiple. L'attention portée au maintien de l'authenticité de l'édifice a culminé avec le plan de conservation et les principes de conception d'Utzon. La gestion et la conservation rigoureuses du bâtiment participent du maintien de son intégrité matérielle et de son authenticité.

L'Opéra de Sydney continue de remplir ses fonctions de centre des arts de la scène de renommée mondiale. Le plan de conservation stipule la nécessité d'équilibrer les rôles du bâtiment en tant que monument architectural et en tant que centre des arts de la scène, afin de conserver son authenticité d'utilisation et de fonction.

En ce qui concerne l'authenticité du cadre, l'Opéra de Sydney est entouré sur trois côtés par le port, garantie naturelle contre le développement du paysage côtier. Immédiatement derrière le bien se trouvent les Jardins botaniques royaux, toile de fond du bien quand on le contemple depuis la mer.

De nombreuses sources d'information sur la construction et les modifications du bien sont disponibles. L'expertise internationale et locale sur l'historique et l'importance du bien est soulignée tout au long de la proposition d'inscription. Le fait d'avoir pu engager le créateur de l'édifice a donné l'occasion unique d'en authentifier les valeurs.

L'ICOMOS est d'accord avec les avis exprimés dans la proposition d'inscription concernant l'authenticité du bien. La considération de l'authenticité dans un édifice aussi « jeune » oblige à prendre en compte les circonstances propres à sa courte histoire. Le bâtiment est le résultat de différentes phases de conception et de construction, développées par un groupe d'architectes, d'ingénieurs et de constructeurs dans le cadre du projet originel d'Utzon. Les changements apportés tout au long de la construction et après l'inauguration doivent être considérés comme le résultat naturel du développement d'un monument vivant ; ils ne mettent pas en péril les valeurs intrinsèques des idées et de la conception architecturale originales, mais illustrent le processus de construction et de gestion d'un des fleurons de l'architecture du XXe siècle.

En conclusion, l'ICOMOS est satisfait de l'intégrité et de l'authenticité du bien proposé pour inscription.
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### **Analyse comparative**

Le dossier de proposition d'inscription comporte une analyse comparative complète de l'Opéra de Sydney par rapport à d'autres édifices célèbres du XXe siècle, qui développe quatre lignes thématiques : l'édifice comme exemple exceptionnel d'architecture moderne tardive ; les chefs-d'œuvre qui ont remis en question les normes acceptées de l'expression architecturale, de la localisation ou de l'urbanisme ; les chefs-d'œuvre d'ingénierie structurelle et de technologie qui ont repoussé les limites du possible ; et les chefs-d'œuvre iconiques. L'analyse comparative est appuyée par des citations de certains des plus éminents historiens et critiques de l'architecture moderne.

L'accent est mis sur le fait que ce chef-d'œuvre de l'architecture moderne tardive témoigne du rôle prééminent de Jørn Utzon comme architecte majeur de la

« troisième génération ». En ce sens, l'Opéra de Sydney est comparé à deux chefs-d'œuvre exprimant les conceptions poétiques et environnementales de la troisième génération : la chapelle Notre-Dame-du-Haut à Ronchamp (Le Corbusier, 1950-1955) et le musée Guggenheim à New York (Frank Lloyd Wright, 1956-1959). Cette ligne de comparaison met aussi en lumière la relation du bâtiment avec la recherche d'une nouvelle monumentalité après guerre, essentiellement représentée par l'œuvre de Le Corbusier à Chandigarh et par l'hôtel de ville d'Alvar Aalto à Säinäsalo.

En ce qui concerne les chefs-d'œuvre qui ont remis en question les normes conventionnelles de l'expression architecturale, de la localisation et de l'urbanisme, le bâtiment est comparé à la ville de Brasilia, au musée Guggenheim à Bilbao, au centre Getty à Los Angeles et au centre Pompidou à Paris. La comparaison avec d'autres Opéras ou centres culturels comprend le *Royal Festival Hall* de Londres, la *Philharmonie* de Berlin et le *Finlandia's Hall* à Helsinki. Sur ce point, la proposition d'inscription conclut par une déclaration générale expliquant que l'Opéra de Sydney innove en termes de sources complexes de représentation architecturale, d'innovation structurelle et technologique, et en termes de relation empathique entre un grand édifice public et son cadre naturel spectaculaire.

Sur le plan de l'ingénierie et des réussites techniques, l'édifice est comparé au Palais des expositions de Turin réalisé par Pier Luigi Nervi, et au terminal TWA à l'aéroport J. F. Kennedy de New York conçu par Eero Saarinen. L'Opéra de Sydney présente d'importantes similitudes avec les bâtiments de Nervi et de Saarinen, mais la simplicité fonctionnelle des toitures de Nervi et de Saarinen ne fait que rehausser l'expression structurelle et architecturale complexe de ceux de l'Opéra de Sydney.

Pour ce qui est des chefs-d'œuvre iconiques, l'édifice est l'une des images les plus symboliques du XXe siècle et fait partie des monuments de renommée mondiale, toutes époques et tous lieux confondus. En ce sens, il est comparables à certains chefs d'œuvre de l'architecture moderne, comme la *Sagrada Família* de Gaudi, la *Villa Savoye* de Le Corbusier, le *Fallingwater* de Wright, etc. L'Opéra de Sydney jouit de la même réputation planétaire et du même succès que ces édifices pour son caractère architectural unique et pour l'admiration qui lui est portée dans le monde entier.

L'importance de l'Opéra de Sydney en tant que chef-d'œuvre de l'architecture du XXe siècle est un fait reconnu par les plus éminents historiens et critiques de l'architecture moderne (voir *Littérature consultée* ci-avant). Si on le compare à tous les cas mentionnés dans ce chapitre, il partage avec eux quelques caractéristiques, mais l'ICOMOS considère cependant qu'il constitue à lui seul un chef-d'œuvre incontestable du génie créateur de l'humanité, non seulement au XXe siècle mais aussi dans toute l'histoire de l'humanité.

L'ICOMOS considère que l'analyse comparative justifie que l'inscription de ce bien sur la Liste du patrimoine mondial soit envisagée.
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### **Justification de la valeur universelle exceptionnelle**

*Déclaration de valeur universelle exceptionnelle*

Selon l'État partie, l'Opéra de Sydney est d'une valeur universelle exceptionnelle en tant que chef-d'œuvre de l'architecture du XXe siècle. Son importance est évidente dans sa conception et sa construction qui sont sans précédent et qui font école, ses réussites exceptionnelles en termes d'ingénierie et d'innovation technologique, et son statut d'icône mondiale de l'architecture. L'Opéra de Sydney a rompu avec les traditions formelles du modernisme, en définissant une nouvelle forme d'expression pour les monuments publics. C'est une expérience audacieuse et visionnaire qui a eu une influence durable sur l'architecture émergente de la fin du XXe siècle et au-delà.

Le concept architectural original d'Utzon et son approche unique de l'édifice ont donné l'impulsion à un collectif créateur composé d'architectes, d'ingénieurs et de constructeurs. La conception représente une interprétation et une réponse extraordinaire au décor du port de Sydney.

#### *Critères selon lesquels l'inscription est proposée*

Le bien est proposé pour inscription sur la base du critère i :

*Critère i* : L'argument en faveur de l'application du critère i est développé dans la proposition d'inscription d'après trois axes : en tant que chef-d'œuvre de l'architecture moderne tardive (des souches de créativité multiples, une grande sculpture urbaine, une synthèse maîtrisée d'idées architecturales) ; en tant que réussite exceptionnelle de l'ingénierie structurelle et de l'innovation technologique, et en tant que bâtiment de renommée mondiale, icône du XXe siècle.

En accord avec l'avis de l'État partie, l'ICOMOS considère que l'Opéra de Sydney est l'œuvre du génie créateur de l'humanité, une réussite magistrale en termes d'architecture et d'ingénierie. Il représente une synthèse exceptionnelle non seulement entre l'architecture et l'ingénierie, mais aussi entre la sculpture, la conception paysagère et l'urbanisme ; c'est un ensemble qui a remodelé la façon dont l'architecture publique peut définir l'identité d'une ville sous la forme d'un édifice iconique, véritable signature.

L'ICOMOS considère en outre que le critère i est justifié pour l'Opéra de Sydney en tant qu'œuvre architecturale imaginée et développée avec soin sur la base du programme et du site pour créer une icône marquante, mais aussi en tant que réussite d'ingénierie incarnée par sa construction. Le concept architectural original d'Utzon et son approche unique de l'édifice ont donné de l'élan à un collectif créateur composé d'architectes, d'ingénieurs et de constructeurs.

C'est pourquoi, plus de 25 ans après la première proposition d'inscription de ce bien par l'État partie, l'ICOMOS considère que le rôle d'Utzon (et des autres) a été clarifié et que le critère i a été démontré.

L'ICOMOS considère que ce critère est justifié.

#### **4. FACTEURS AFFECTANT LE BIEN**

La proposition d'inscription inclut une identification des facteurs suivants :

#### *Pressions liées au développement*

Selon l'État partie, celles-ci ne constitueront pas un facteur de risque, le bien bénéficiant d'une substantielle protection naturelle contre le développement : il est en effet entouré sur trois côtés par le port de Sydney, le quatrième correspondant aux Jardins botaniques royaux. La définition et le traitement de la zone tampon assureront une protection adaptée aux zones voisines.

#### *Pressions environnementales*

Le bien est exposé à plusieurs pressions environnementales, mais les moyens de gestion de leurs effets sont en place. Il s'agit, pour le côté exposé au port, de l'eau salée, des vagues, des vents violents, de la pollution atmosphérique et des radiations solaires, particulièrement par rapport aux grandes surfaces des toits et des murs de verre. La structure en béton est vulnérable aux problèmes de dégradation du béton typiques d'un édifice inscrit dans un environnement maritime. Les enjeux de la conservation découlant des pressions environnementales ont été identifiés de façon exhaustive et gérés. Il peut y avoir des vents forts mais le bâtiment a été conçu pour résister à des vents soufflant à plus de 180 km/heure. Un programme de maintenance, préventif et rigoureux, est en place pour traiter les secteurs critiques des risques matériels.

#### *Catastrophes naturelles et préparation aux risques*

Le bien est situé dans une région généralement peu sujette aux catastrophes naturelles. Néanmoins, du fait de la sensibilisation accrue aux risques de tremblement de terre, de nouvelles normes australiennes pour la construction des bâtiments ont été mises en place. La gestion des risques est intégrée de façon très complète à l'administration et à la gestion du bien.

#### *Tourisme*

L'Opéra de Sydney étant l'une des attractions touristiques les plus populaires d'Australie, plus de quatre millions de personnes le visitent chaque année. On prévoit une planification stratégique pour traiter la hausse prévue du nombre de visiteurs, qui ne devrait pas avoir d'impact négatif sur les valeurs patrimoniales étant donné la taille de l'enceinte de l'Opéra et les stratégies de gestion appliquées actuellement. Les initiatives envisagées comprennent la mise en place d'un centre pour les visiteurs et d'un guichet d'information.

En conclusion, l'ICOMOS considère que les principaux risques pour le bien sont liés à l'impact de son environnement maritime sur ses matériaux de construction et au nombre croissant de visiteurs. Ces deux aspects sont pris en compte dans les plans de conservation, de gestion et de suivi.

#### **5. PROTECTION, CONSERVATION ET GESTION**

#### *Délimitations du bien proposé pour inscription et de la zone tampon*

Le bien proposé pour inscription couvre 5,8 hectares. Il correspond au site connu sous le nom de Bennelong Point, où se dresse l'Opéra de Sydney. La zone proposée pour inscription comprend des terres appartenant au gouvernement de Nouvelle-Galles du Sud et gérées par le *Sydney Opera House Trust*. Elle est entourée par le port de Sydney et les Jardins botaniques royaux.

La zone tampon proposée pour inscription (438,1 hectares) a été conçue pour protéger les valeurs universelles du bien par rapport à son cadre dans le port de Sydney. La zone tampon est centrée sur les eaux intérieures du port et inclut les zones situées autour du port dans un rayon de 2,5 km qui ont été identifiés comme offrant des points de vue remarquables sur l'Opéra de Sydney ou depuis celui-ci.

L'ICOMOS considère que la zone principale envisagée pour inscription comprend tous les éléments physiques qui expriment les valeurs universelles exceptionnelles du bien. La zone tampon envisagée assure la bonne gestion des vues depuis l'Opéra de Sydney ou sur ce dernier. Les réglementations de construction devraient être mises en œuvre pour assurer la conservation des caractéristiques actuelles du paysage côtier inclus dans la zone tampon.

#### **Droit de propriété**

L'Opéra de Sydney est un bâtiment public, propriété du gouvernement de Nouvelle-Galles du Sud (ministère des Arts). L'administration et la gestion du bien sont sous la responsabilité du *Sydney Opera House Trust*, en vertu du *Sydney Opera House Trust Act 1961*.

#### **Protection**

##### *Protection juridique*

La législation et les instruments associés ont été établis au niveau fédéral et à celui de l'État pour assurer la conservation et la gestion globale des valeurs patrimoniales de l'Opéra de Sydney. Le bien et son site sont protégés par leur classement dans les registres statutaires du patrimoine à tous les niveaux du gouvernement, avec des dispositions portant spécifiquement sur la gestion de leurs valeurs patrimoniales. L'Opéra de Sydney a été inclus dans la Liste du patrimoine national le 12 juillet 2005 en vertu du *Environment Protection and Biodiversity Conservation Act 1999* et au Registre du patrimoine d'État de la Nouvelle-Galles du Sud le 3 décembre 2003 en vertu du *Heritage Act 1977*. En 1980, le bien a été inclus dans le Registre du patrimoine national, établi en vertu du *Australian Heritage Commission Act 1975* et y est aujourd'hui maintenu en vertu du *Australian Heritage Council Act 2003*.

L'inscription sur la Liste du patrimoine national implique que toute action envisagée à l'intérieur ou à l'extérieur d'un site du patrimoine national ou du patrimoine mondial susceptible d'avoir un impact non négligeable sur les valeurs du patrimoine sont interdites sans l'autorisation du ministre de l'Environnement et du Patrimoine. Les actions doivent être soumises à une procédure rigoureuse d'évaluation et d'approbation. En 2005, le gouvernement australien et le gouvernement de Nouvelle-Galles du Sud ont conclu un accord bilatéral relatif à l'Opéra de Sydney. L'accord déclare que les actions approuvées par le gouvernement de Nouvelle-Galles du Sud, conformément à

un plan de gestion bilatéral accrédité, ne nécessitent pas l'agrément par le gouvernement australien.

La législation d'Australie et de Nouvelles-Galles du Sud stipule des sanctions financières ou des peines de prison pour les actions susceptibles de porter préjudice aux valeurs patrimoniales de l'Opéra de Sydney.

L'ICOMOS considère que les mesures de protection pour le bien sont appropriées pour protéger ses valeurs universelles exceptionnelles.

#### **Conservation**

##### *Historique de la conservation*

La construction de l'Opéra de Sydney ayant été un processus long, qui n'a pas même pris fin avec son inauguration en 1973, l'histoire de la conservation est en partie liée au processus de construction et de développement expliqué dans la section *Histoire et développement*.

En 1993, James Semple Kerr a été mandaté pour rédiger un plan de conservation pour l'Opéra de Sydney. En 1998, le *Sydney Opera House Trust* a nommé l'architecte de Sydney Richard Johnson conseiller pour le développement futur du bien et l'a chargé d'en établir les principes d'urbanisme. Par l'entremise de Johnson, le Trust a entamé des négociations pour se réconcilier avec Utzon et pour le réengager pour travailler sur l'édifice à titre consultatif. En 2002, le *Sydney Opera House Trust* a publié les principes de conception d'Utzon, destinés au développement futur dans une optique de conservation des concepts d'origine. L'adoption du plan de conservation de l'Opéra de Sydney (2003) assure la conservation adaptée et la gestion du bien.

##### *État actuel de conservation*

L'état actuel de conservation est très bon. Le bien est entretenu et préservé au moyen de programmes réguliers et rigoureux de réparation et de conservation, ainsi que par une surveillance au plus haut niveau, y compris au niveau de l'exécutif du *Sydney Opera House Trust* et du gouvernement de Nouvelle-Galles du Sud. Tous les éléments du bâtiment et du site sont actuellement en bon état physique.

Des sources d'approvisionnement alternatives ont été identifiées pour remplacer les matériaux d'origine qui ne sont plus disponibles. Le remplacement des matériaux d'origine est justifié, étant donné la fragilité de certains matériaux modernes face au vieillissement et à l'environnement maritime.

L'ICOMOS considère que les mesures et actions de conservation sont adaptées à la préservation des valeurs du bien.

#### **Gestion**

##### *Structures et processus de gestion, y compris les processus traditionnels de gestion*

La structure de gestion de l'Opéra de Sydney tient compte d'un large éventail de mesures fournies par la législation sur le patrimoine et l'urbanisme du gouvernement

australien et du gouvernement de Nouvelle-Galles du Sud. Comme le bien est enregistré au niveau fédéral et au niveau de l'État, les deux gouvernements se partagent la responsabilité en ce qui concerne la protection et la conservation, dans le cadre de l'accord bilatéral en place.

Au niveau fédéral, le Conseil australien a été établi aux termes du *Australian Heritage Council Act 2003*. Il s'agit d'un organe indépendant constitué d'experts du patrimoine qui conseille le ministre de l'Environnement et du Patrimoine sur diverses questions liées au patrimoine, notamment les questions relatives aux politiques, à la protection, à la conservation et au suivi des sites inscrits sur la Liste du patrimoine national.

Au niveau de l'État, le *Environmental Planning and Assessment Act 1979* stipule la gestion, le développement et la conservation appropriés à l'environnement naturel et bâti de Nouvelle-Galles du Sud. La législation impose aux propositions d'être conformes aux contrôles d'urbanisme applicables et d'être durables, tant sur un plan environnemental que social, selon leur nature et leur envergure. Avant qu'une proposition ne puisse être mise en œuvre sur le site de l'Opéra de Sydney, elle est soumise à l'évaluation rigoureuse d'experts en urbanisme, en aménagement et en patrimoine. Cette procédure implique la consultation du public et des parties concernées et une identification de tous les impacts possibles. Le feu vert n'est pas donné sans une évaluation et une prise en compte des impacts qu'aurait l'action envisagée ou la proposition sur les valeurs patrimoniales du bien. En cas d'approbation, la proposition peut être assujettie à certaines conditions, afin de garantir la conservation et la protection des valeurs patrimoniales.

Le *Heritage Act 1977* protège les sites du patrimoine naturel et culturel, par l'inscription des éléments ou des lieux à valeur patrimoniale au Registre du patrimoine de l'état et par des arrêtés les protégeant. Toute demande de développement pour le bien doit être examinée par le Conseil du patrimoine de Nouvelle-Galles du Sud. En outre, les *Normes minimales de maintenance et de réparation* créées dans le cadre de la législation exigent que l'Opéra de Sydney bénéficie d'un standard obligatoire d'entretien et de maintenance. Le bien est aussi soumis à des directives qui réglementent les éléments du patrimoine appartenant aux agences du gouvernement de Nouvelle-Galles du Sud en vertu de la législation. Le *State agency heritage guide* définit les standards de l'entretien journalier des sites appartenant aux agences du gouvernement de Nouvelle-Galles du Sud et établit l'intégration des questions du patrimoine dans la gestion globale des actifs.

Le *Sydney Opera House Trust*, créé en 1961, est administré par le ministre des Arts de Nouvelle-Galles du Sud. Il a parmi ses fonctions l'administration, l'entretien, le contrôle, la gestion et la maintenance du bien et l'administration de l'Opéra de Sydney en tant que centre des arts de la scène. Le Trust est conseillé par le Conseil de la conservation de l'Opéra de Sydney sur les questions de conservation. Le Conseil se compose de représentants du Trust, du comité exécutif de l'Opéra de Sydney, de l'architecte du gouvernement et de spécialistes des secteurs public et privé reconnus pour leur expérience en matière d'architecture, de patrimoine et de conservation, de conception, d'ingénierie et d'autres disciplines associées, ainsi que dans le domaine des arts de la scène. On prévoit un élargissement du

Conseil à des représentants du Bureau du patrimoine de Nouvelle-Galles du Sud, du Département de l'infrastructure, de l'urbanisme et des ressources naturelles, et du ministre des Arts de Nouvelle-Galles du Sud.

L'ICOMOS considère que les structures et les processus de gestion sont appropriés pour assurer la bonne conservation et la gestion des valeurs du bien, de son intégrité et de son authenticité.

*Plans de gestion, y compris la gestion des visiteurs et la présentation*

Le *Plan de gestion pour l'Opéra de Sydney 2005* a été préparé par le gouvernement de Nouvelle-Galles du Sud en consultation avec le gouvernement australien, dans le cadre de l'accord bilatéral existant. Le plan expose les conditions d'évaluation et d'agrément en ce qui concerne l'environnement et définit les dispositions de gestion qui protègent les valeurs du bien. Le plan comprend le plan de conservation et les principes de conception d'Utzon. Ensemble, ces trois documents dessinent le cadre de politique générale en matière de conservation et de gestion de l'Opéra de Sydney.

Le plan établit un lien entre ces documents pratiques et la législation. Il offre une base saine à la prise de décision en ce qui concerne les éventuels futurs développements, l'évolution, la modification et le changement, ainsi que la gestion courante du bien, y compris les propositions de gestion mineures. Toutes les décisions de gestion doivent être appliquées conformément au plan.

*Opéra de Sydney: plan de conservation de l'Opéra de Sydney et de son site 2003*. Le plan de conservation est un outil de gestion d'une grande efficacité pour le bien. Il identifie l'importance du bien en tant que patrimoine ; évalue les degrés d'importance patrimoniale à assigner aux divers éléments du bien et à son tissu ; contient des politiques détaillées de gestion des valeurs du patrimoine ; et donne des conseils sur la gestion des changements nécessaires ou l'actualisation de la vision pour le bâtiment et son décor.

Les *Principes de conception d'Utzon (2002)* consignent la vision d'Utzon pour l'édifice et son environnement, ainsi que ses avis sur son avenir. Comme document de référence expliquant les principes de conception de l'édifice, il fournit un cadre au sein duquel le bâtiment et le site peuvent évoluer et se développer pour répondre à l'évolution des besoins de ce centre majeur des arts de la scène, tout en conservant les valeurs patrimoniales du site et en conservant son authenticité.

*Implication des communautés locales*

L'Opéra de Sydney est devenu un symbole non seulement de Sydney mais aussi de l'Australie ; le public est particulièrement sensibilisé à ses valeurs et à son importance.

*Ressources, y compris nombre de personnel, expertise et formation*

L'Opéra de Sydney est financé par différentes sources. L'administration et la maintenance du bien, y compris ses Opérations, sont financées par les subventions du

gouvernement de Nouvelle-Galles du Sud, les revenus tirés de l'offre et de la prestation de services par l'Opéra de Sydney, le parrainage d'entreprises et la philanthropie. Le ministère des Arts de Nouvelle-Galles du Sud fournit une dotation annuelle pour les opérations menées par le *Sydney Opera House Trust*. Le ministère finance également les besoins en cours en termes de construction et de maintenance. En outre, le gouvernement australien peut fournir une assistance financière pour l'identification, la promotion, la protection ou la conservation d'un site du patrimoine national par des initiatives ou des programmes d'incitation.

Le *Sydney Opera House Trust* est en position de gérer le bien grâce à des politiques élaborées par l'un des consultants australiens les plus respectés en matière de conservation, James Semple Kerr (le plan de conservation), et il bénéficie aussi des principes posés par le créateur de l'édifice, Jørn Utzon (les *Principes de conception d'Utzon*). Le *Sydney Opera House Trust* a établi un Conseil de conservation en 1996 pour fournir un conseil spécialisé sur des enjeux d'importance patrimoniale (voir *Structures de gestion* ci-avant). Ses principales responsabilités sont la conduite d'inspections annuelles et la révision des travaux importants, du plan de conservation et des dépenses. Du personnel professionnel, technique et de maintenance est employé à l'Opéra de Sydney avec des contrats à durée indéterminée, des contrats à durée déterminée et des contrats d'intérim.

En conclusion, l'ICOMOS considère que le système de gestion pour le bien est appropriés pour assurer la bonne conservation et l'amélioration de ses valeurs universelles exceptionnelles, de son intégrité et de son authenticité.

## 6. SUIVI

Des systèmes de suivi formels avec des indicateurs très larges mesurant l'état de conservation sont en place. Le *Plan de gestion pour l'Opéra de Sydney 2005* instaure des mécanismes de suivi formels et des obligations pour diverses parties concernant la gestion des valeurs patrimoniales du bien.

Le *Sydney Opera House Trust* a élaboré plusieurs documents pour surveiller l'état de conservation du de l'Opéra de Sydney, protéger ses valeurs patrimoniales et gérer ses actifs. On compte parmi ceux-ci un manuel de normes de construction, des plans de construction et de maintenance stratégiques, des plans d'urgence, des plans et des politiques de sécurité, et un plan de gestion de crise. Ces outils de gestion sont régulièrement passés en revue et mis à jour. Ils assurent l'identification des besoins de maintenance et des améliorations importantes prévues sur un cycle de 25 ans.

La méthode de suivi et d'évaluation de la conservation et de l'état du bien est intégrée aux indices de l'état du bâtiment dérivant de rapports trimestriels de suivi de l'état. La base de données des indices de l'état du bâtiment reprend des milliers d'inspections individuelles du tissu constructif, qui sont utilisées pour déterminer les tendances de l'évolution de l'état du bâtiment et pour prévoir les futurs travaux de conservation préventive. Elle sert aussi au personnel de l'Opéra de Sydney responsable de l'entretien du bâtiment et aux entreprises de maintenance et de

nettoyage à évaluer l'état du bien. La base de données des indices de l'état du bâtiment compte plus de 490 000 entrées qui détaillent la condition de chaque lieu, de chaque salle, de chaque espace fonctionnel, de chaque zone et de chaque niveau du bâtiment.

Les dispositions administratives internes pour le suivi de l'état de conservation du bien sont prises par le *Trust's Facilities Portfolio*, son personnel et des entreprises. Le *Facilities Portfolio* est responsable de développer des stratégies et des plans de maintenance. Un service technique spécialisé du *Facilities Portfolio* est responsable de l'entretien permanent du bien. La maintenance des actifs de l'Opéra de Sydney et le cadre de planification exigent que la société de conservation du bâtiment mène des inspections mensuelles ou trimestrielles. Le suivi périodique assure une identification et une rectification rapides des problèmes de maintenance et de conservation. Le conseil de conservation de l'Opéra de Sydney fournit un avis sur l'entretien, le contrôle et la maintenance du bâtiment.

En conclusion, l'ICOMOS considère que les mesures de suivi du bien sont appropriées. Néanmoins, l'ICOMOS recommande que l'identification des principaux indicateurs concerne non seulement les éléments physiques mais aussi les utilisations et l'usage public du bien (visiteurs).

## 7. CONCLUSIONS

L'ICOMOS recommande que l'Opéra de Sydney soit considéré comme porteur d'une valeur universelle exceptionnelle sur la base de son importance en tant qu'œuvre architecturale parmi les plus éminentes du XXe siècle, comportant de remarquables réussites en termes de forme, d'expression, de structure et de technique architecturales. La zone principale envisagée comprend tous les éléments physiques nécessaires à l'expression des valeurs du bien. La zone tampon envisagée assure la préservation du cadre spectaculaire du bien dans le port de Sydney.

Le bien répond de manière appropriée aux conditions d'intégrité et d'authenticité. Les structures et les processus de protection, de conservation, de gestion et de suivi s'avèrent appropriées pour assurer la bonne conservation et l'amélioration des valeurs de l'Opéra de Sydney, de son intégrité et de son authenticité.

### *Recommandations concernant l'inscription*

L'ICOMOS recommande que l'Opéra de Sydney, Australie, soit inscrit sur la Liste du patrimoine mondial sur la base du *critère i* :

*Déclaration de valeur universelle exceptionnelle recommandée*

L'Opéra de Sydney constitue un chef-d'œuvre de l'architecture du XXe siècle. Son importance repose sur sa conception et sa construction sans équivalent, ses exceptionnelles réussites sur le plan de l'ingénierie et de l'innovation technologique et son statut d'icône mondiale de l'architecture. C'est une expérience audacieuse et visionnaire qui a eu une influence durable sur l'architecture émergente de la fin du XXe siècle et au-delà. Le concept

architectural original de Jørn Utzon et son approche unique de l'édifice ont donné l'impulsion à un collectif créateur composé d'architectes, d'ingénieurs et de constructeurs. La conception représente une interprétation et une réponse extraordinaires au décor du port de Sydney. L'Opéra de Sydney est d'une valeur universelle exceptionnelle pour ses réussites en matière d'ingénierie structurelle et de technologie de la construction. Le bâtiment est un grand monument artistique et une icône, accessible à la société dans son ensemble.

**Critère i** : L'Opéra de Sydney est une œuvre architecturale majeure du XXe siècle. Il représente plusieurs souches créatrices en termes de forme architecturale et de conception structurelle, une magnifique sculpture urbaine soigneusement intégrée dans un remarquable paysage côtier et un édifice à valeur d'icône et de renommée mondiale.

L'ICOMOS recommande à l'État partie de prendre en compte ce qui suit pour assurer l'optimisation du système de gestion du bien et de sa zone tampon :

- Définir et mettre en œuvre des réglementations de construction pour la zone tampon, particulièrement en ce qui concerne la conservation de la ligne d'horizon et du paysage côtier actuel du port de Sydney.
- Étudier comment réconcilier l'augmentation du nombre de visiteurs, le bon fonctionnement du centre des arts de la scène et la préservation des valeurs universelles exceptionnelles, de l'intégrité et de l'authenticité du bien. La gestion du bien pourrait être améliorée par l'accentuation de l'interprétation de ses valeurs à destination des visiteurs.
- Les espaces intérieurs et les éléments matériels devraient être considérés comme aussi importants que la forme extérieure et les matériaux. Ils témoignent de l'histoire particulière et du processus de conception et de construction du bâtiment. Il est donc recommandé que des mesures de conservation prennent en compte les éléments intérieurs originaux ainsi que la considération des différentes étapes de construction et de conception intérieure en tant que partie intégrante de l'histoire du bien.



**Plan indiquant les délimitations du bien proposé pour inscription**

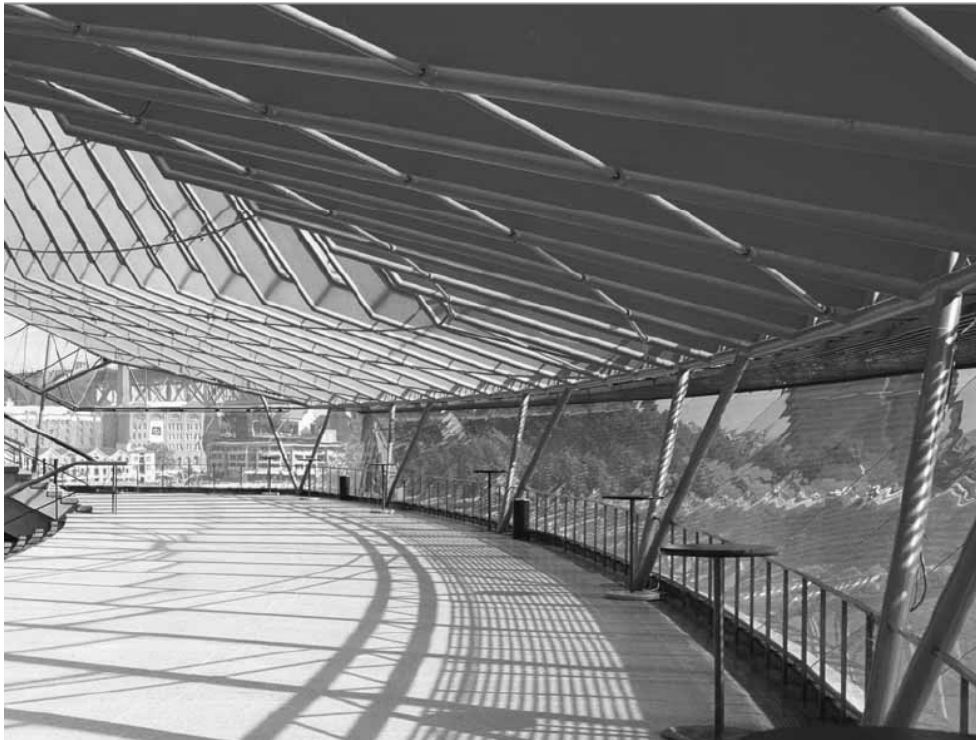




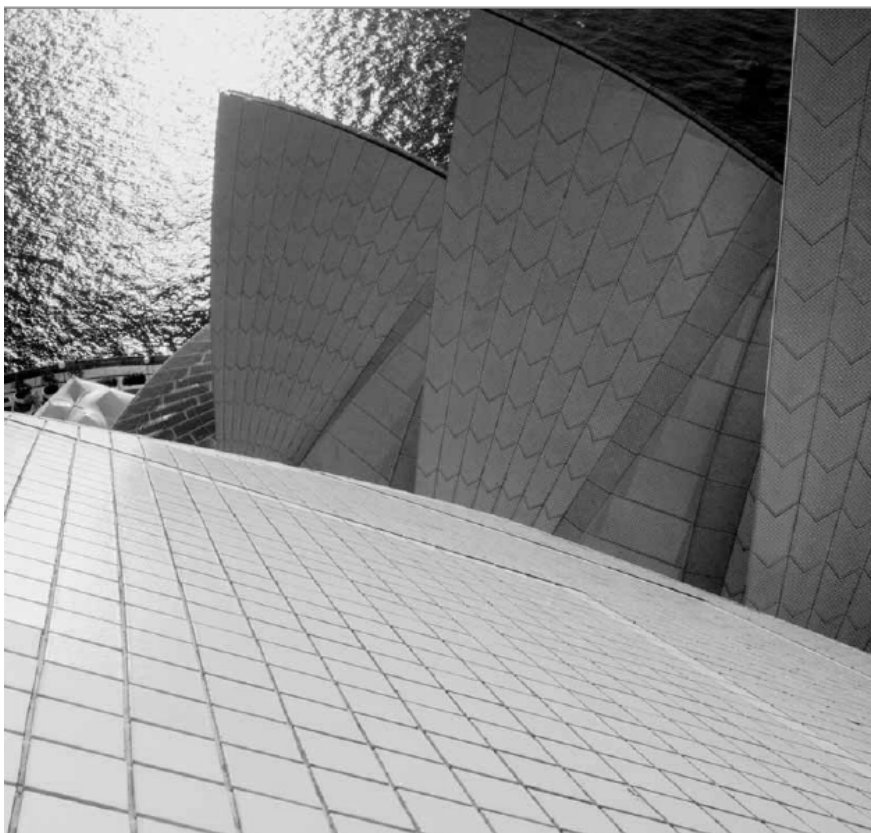
**Vue aérienne du site**



**Podium**



**Verrières**



**Toits voûtés en forme de coquillage**