



Environment Protection and Management Ordinance 1987

Ordinance No. 1, 1987 as amended

made under the

Heard Island and McDonald Islands Act 1953

Compilation start date:	17 October 2014
Includes amendments up to:	Spent and Redundant Instruments Repeal Regulation 2014 (No. 2)

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About this compilation

This compilation

This is a compilation of the *Environment Protection and Management Ordinance 1987* as in force on 17 October 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 17 October 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

Contents

1	Short title	1
2	Repeal	1
3	Purpose of Ordinance	1
4	Interpretation	1
5A	Application of the <i>Criminal Code</i>	2
6	Ordinance to bind the Crown	2
12	Access to the Territory	3
13	Introduction of diseased organism or live poultry	3
14	Activities for which a permit is required	4
15A	Applications for permits	5
15	Granting of permits	5
16A	Authorities under permits	6
16	Restrictions applicable to permits	7
17	Register of permits	8
18	Contravening conditions of permits	9
19	Suspension or revocation of permits	9
19A	Delegation of powers	10
20	Inspectors	10
21	Return of inspectors' identity cards	11
22	Seizure and forfeiture	11
23	Review of decisions	12
24	Liability of Minister	13
25	Prosecution of offences	13
26	Regulations	13
Endnotes		15
Endnote 1—About the endnotes		15
Endnote 2—Abbreviation key		17
Endnote 3—Legislation history		18
Endnote 4—Amendment history		19
Endnote 5—Uncommenced amendments [none]		21
Endnote 6—Modifications [none]		21
Endnote 7—Misdescribed amendments none]		21
Endnote 8—Miscellaneous [none]		21

An Ordinance relating to the protection and management of the environment and wildlife of Heard Island and the McDonald Islands

1 Short title

This Ordinance may be cited as the *Environment Protection and Management Ordinance 1987*.

2 Repeal

The *Nature Conservation Ordinance 1980* is repealed.

3 Purpose of Ordinance

The purpose of this Ordinance is to preserve and manage the Territory so as to protect the environment and the indigenous wildlife of the Territory.

4 Interpretation

In this Ordinance, unless the contrary intention appears:

aircraft means a machine or apparatus that can derive support in the atmosphere from the reaction of the air or from buoyancy, but does not include a hovercraft.

animal means any member, alive or dead, of the animal kingdom (other than man) and includes:

- (a) an embryo, an egg or a sperm of an animal; and
- (b) the skin, feathers, horns, shell or any other part of an animal.

environment includes:

- (a) ecosystems and their constituent parts; and
- (b) natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas; and

- (d) heritage value of places and things; and
- (e) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b), (c) or (d).

inspector means a person appointed under subsection 20(1) or mentioned in subsection 20(5).

organism means:

- (a) any plant or animal; or
- (b) any virus, bacterium or yeast, alive or dead.

permit means a permit granted under section 15.

plant means any member, alive or dead, of the plant kingdom or the fungus kingdom and includes:

- (a) a seed, spore or cutting; and
- (b) any other part of a plant.

take includes:

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

vehicle includes a hovercraft.

vessel means a vessel or boat of any description and includes any floating structure, but does not include a hovercraft.

5A Application of the *Criminal Code*

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

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

6 Ordinance to bind the Crown

- (1) This Ordinance binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

- (2) Nothing in this Ordinance renders the Commonwealth or a State or Territory liable to be prosecuted for an offence.
- (3) Subsection (2) does not affect any liability of any servant or agent of the Commonwealth or of a State or Territory to be prosecuted for an offence.

12 Access to the Territory

- (1) Subject to subsection (2), a person who enters the Territory is guilty of an offence punishable, on conviction, by a fine not exceeding:
 - (a) in the case of a natural person—100 penalty units or imprisonment for 5 years of both; or
 - (b) in the case of a body corporate—500 penalty units.
- (2) A person may enter the Territory:
 - (a) in accordance with a permit; or
 - (b) during the course of an emergency, involving possible loss of human life or injury to persons, or risk to the safety of an aircraft, a vehicle or a vessel; or
 - (c) in the performance of the duties of that person as an inspector.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subsection (2) (see section 13.3 of the *Criminal Code*).

13 Introduction of diseased organism or live poultry

- A person who brings into the Territory:
- (a) any diseased organism; or
 - (b) live poultry;
- is guilty of an offence punishable, on conviction, by a fine not exceeding:
- (c) in the case of a natural person—100 penalty units or imprisonment for 5 years or both; or
 - (d) in the case of a body corporate—500 penalty units.

14 Activities for which a permit is required

- (1) Subject to subsection (2), a person must not:
- (a) bring any organism into the Territory; or
 - (b) bring any dead poultry or poultry products into the Territory;
or
 - (c) take any organism in the Territory; or
 - (d) engage in conduct that results in death or injury to, or interference with, any organism in the Territory; or
 - (e) remove from the Territory any organism indigenous to the Territory; or
 - (f) land an aircraft, drive a vehicle or sail a vessel in the Territory; or
 - (g) leave any equipment, material or refuse in the Territory; or
 - (h) remove any soil or other geological matter from the Territory; or
 - (i) introduce any soil or other geological matter to the Territory;
or
 - (j) engage in conduct that results in interference to any soil or other geological matter in the Territory; or
 - (k) collect any material in the Territory; or
 - (l) engage in conduct that results in a living organism that has been introduced into the Territory escaping in the Territory;
or
 - (m) engage in conduct that results in interference to any buildings, historical relics, equipment, supplies or survey markers in the Territory; or
 - (n) engage in conduct that results in interference to the conduct of a scientific experiment that is the subject of a permit in the Territory.

Penalty:

- (a) in the case of an individual—100 penalty units or imprisonment for 5 years, or both; or
 - (b) in the case of a body corporate—500 penalty units.
- (2) A person does not commit an offence under subsection (1) if the activity in question:

- (a) was done to avoid possible loss of human life or injury to persons, or risk to the safety of an aircraft, a vehicle or a vessel; or
- (b) was done in accordance with a permit granted under this Ordinance, the *Endangered Species Ordinance 1980* or the *Migratory Birds Ordinance 1980*.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subsection (2) (see section 13.3 of the *Criminal Code*).

15A Applications for permits

- (1) A person may apply to the Minister for a permit to:
 - (a) enter a specified part of the Territory; and
 - (b) carry out a specified activity that would otherwise be prohibited by subsection 14(1).
- (2) The application for the permit must be in a form approved by the Minister for the purposes of this subsection.
- (3) An application by a body corporate, or by a person on behalf of an expedition or an association, must specify:
 - (a) in the case of an expedition—the name of every person who is a member of the expedition; and
 - (b) in the case of a body corporate or an association—the name of every person authorised by the body corporate or association to act on its behalf in the Territory.

15 Granting of permits

- (1) Subject to subsection (3) and section 16, the Minister may grant a permit, in writing, to a person to:
 - (a) enter a specified part of the Territory; and
 - (b) carry out a specified activity that would otherwise be prohibited by subsection 14(1).
- (2) Subject to subsection (3) and section 16, the Minister may decide that a permit is subject to conditions, including the condition that the person who is granted the permit may authorise another person to enter the Territory and carry out an activity in accordance with the permit.

Section 16A

- (3) In deciding whether to grant a permit, and in deciding the conditions subject to which a permit is to be granted, the Minister must consider:
 - (a) the need to protect the environment of the Territory; and
 - (b) the safety of persons, aircraft, vehicles and vessels in the Territory.
- (4) If the Minister grants a permit, the permit must include the following information:
 - (a) the activities to be carried out under the permit, including particulars of any specimen to which the permit relates;
 - (b) the part of the Territory to which entry is permitted;
 - (c) the conditions to which the permit is subject;
 - (d) the name of the person to whom the permit is granted;
 - (e) the days on which the permit starts and expires;
 - (f) any other information that the Minister decides should be set out.
- (5) A permit granted to a body corporate, or a person on behalf of an expedition or an association, may be expressed to apply to:
 - (a) all of the persons mentioned in the application under subsection 15A(3); or
 - (b) only those persons specified in the permit.
- (6) The regulations may prescribe fees, not exceeding \$50, payable for the grant of a permit.

16A Authorities under permits

- (1) This section applies to a person named in a permit granted under subsection 15(1).
- (2) The person may authorise, in writing, another person to enter a specified part of the Territory and carry out a specified activity in the Territory in accordance with the permit only if:
 - (a) the permit contains a condition allowing the person to make such an authorisation; and

- (b) the authorisation is given in accordance with any requirements set out in that condition and any other conditions contained in the permit.
- (3) A permit is taken to authorise a person to enter the Territory and carry out an activity if the person is authorised to do so by an authorisation given to that person by a person named in the permit.
- (4) If a person named in the permit gives an authorisation under subsection (2), the person giving the authorisation is not prevented from entering the Territory and carrying out activities under the permit.
- (5) A person who gives an authorisation must give to the Minister written notice of the authorisation within 14 days after giving the authorisation.
- (6) A person who does not comply with subsection (5) commits an offence.

Penalty: 20 penalty units.

16 Restrictions applicable to permits

- (1) Subject to subsection (2), a permit shall not authorise a person to take, injure or otherwise interfere with any organism, or collect any material, unless the Minister is satisfied that:
 - (a) the number of organisms of any species that may be taken or killed in that year by virtue of that permit and all other permits granted under section 15 will be replaced in the immediately succeeding breeding season by natural reproduction; and
 - (b) the activities authorised by the permit will be carried on to the extent only that they are necessary for providing specimens for scientific research, public education (including display in museums, zoological gardens or other educational or cultural institutions) or other educational or cultural purposes as the Minister thinks fit; and
 - (c) the interference with such organisms or the collecting of material does not endanger the continued presence in the Territory of any indigenous species of organism in its natural

state or form and does not detract significantly from the scientific, historic or scenic value of the Territory.

- (2) Nothing in subsection (1) shall prevent the granting of a permit authorising a person to collect or take material for the purpose of ensuring the preservation of that material or to permit its restoration.

17 Register of permits

- (1) As soon as practicable after the commencement of this section, the Minister must establish a register of permits that includes the following for each permit granted under section 15 after the register is established:
- (a) a copy of the permit;
 - (b) the name of any person authorised under section 16A to enter the Territory and carry out activities under the permit;
 - (c) any other information that the Minister decides should be included.
- (2) The Minister may decide that some or all of the information contained in a permit must not be included in the register if the disclosure of the information:
- (a) could adversely affect the commercial interests of a person who has been granted a permit under this Ordinance; or
 - (b) could result in a risk to the environment of the Territory; or
 - (c) would not be in the national interest.
- (3) Without limiting the matters the Minister may consider in deciding what is in the national interest, the Minister may consider the need to keep details about surveillance and enforcement activities in the Southern Ocean confidential.
- (4) The Minister must ensure that the register is:
- (a) updated as soon as practicable after each permit is granted or varied; and
 - (b) accessible to the public through the Internet.

Note: The register may be accessed from the Department's website for the Territory of Heard Island and McDonald Islands at <http://www.heardisland.aq>.

- (5) If a permit expires, the Minister must ensure that:
 - (a) the details of the permit are retained on the register; and
 - (b) the register is updated as soon as practicable after the permit expires to state that the permit is no longer in force.
- (6) The Minister must ensure that the register includes a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for the review of the Minister's decision to grant a permit by or on behalf of a person whose interests are affected by the decision.

18 Contravening conditions of permits

A person who is named in a permit, or who has been authorised under section 16A, commits an offence if the person engages in conduct that contravenes a condition of the permit.

Penalty:

- (a) in the case of an individual—50 penalty units or imprisonment for 2 years, or both; or
- (b) in the case of a body corporate—250 penalty units.

19 Suspension or revocation of permits

The Minister may:

- (a) by notice in writing served personally or by post on the holder; or
- (b) by notice as prescribed; or
- (c) by transmitting a message by radio to the holder of a permit who is travelling on an aircraft or vessel, or is in the Territory;

vary, suspend or revoke a permit, or vary, remove or impose a further condition on a permit where:

- (d) a provision of this Ordinance relating to the permit, or a condition of the permit, has been contravened; or
- (e) it is necessary or expedient to do so in order to protect:
 - (i) the environment of the Territory; or
 - (ii) the safety of any person, aircraft, vehicle or vessel.

19A Delegation of powers

The Minister may, by signed instrument, delegate any or all of his or her powers under this Ordinance, other than the power to make regulations under section 26, to the following:

- (a) the Director of the Australian Antarctic Division of the Department;
- (b) an SES employee, or acting SES employee, in the Australian Antarctic Division of the Department;
- (c) an APS employee who holds, or is acting in, an Executive Level 2 or equivalent position in the Australian Antarctic Division of the Department.

20 Inspectors

Appointment of inspectors and issue of identity cards

- (1) The Minister may, by instrument, appoint persons to be inspectors for the purposes of this Ordinance.
- (2) An inspector shall, subject to this Ordinance, perform such duties for the purposes of this Ordinance as the Minister directs.
- (3) The Minister must issue an identity card to a person appointed under subsection (1).
- (4) The identify card must be in a form approved by the Minister and it must bear a photograph of the holder and a statement to the effect that the person is an inspector for the purposes of this Ordinance.

Inspectors not requiring appointment or identity card

- (5) The following are taken to be inspectors for the purposes of this Ordinance:
 - (a) a member of the Australian Federal Police;
 - (b) a member of the police force of a Territory.
- (6) Subsection (3) does not apply to an inspector mentioned in subsection (5).

21 Return of inspectors' identity cards

- (1) If a person:
 - (a) has been issued with an identity card under subsection 20(3);
and
 - (b) ceases to be an inspector;the person must immediately return the identity card to the Minister.

Penalty: 2 penalty units.

- (2) An offence under subsection (1) is an offence of strict liability.

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

22 Seizure and forfeiture

- (1) Where a court convicts a person of an offence against this Ordinance the court may order the forfeiture to the Commonwealth of any aircraft, vehicle, vessel or article used or otherwise involved in the commission of the offence.
- (2) An inspector may seize any aircraft, vehicle, vessel or article that the inspector believes on reasonable grounds to have been used or otherwise involved in the commission of an offence against this Ordinance and may retain it until the expiration of a period of 60 days after the seizure, or, if proceedings for an offence against this Ordinance in the commission of which it may have been used or otherwise involved are instituted within that period, until the proceedings are terminated.
- (3) The Minister may authorise any aircraft, vehicle, vessel or article seized under subsection (2) or anything in, on or attached to any such aircraft, vehicle or vessel to be released to its owner, or to the person from whose possession it was seized, either unconditionally or on such conditions as are reasonable in the circumstances, including conditions as to the giving of security for payment of its value if it is forfeited.
- (4) Any aircraft, vehicle, vessel or article forfeited under this section may be sold or otherwise disposed of as the Minister thinks fit.

- (5) An inspector may seize any organisms in respect of which the inspector believes on reasonable grounds that an offence against this Ordinance has been committed.
- (6) The Minister may cause any organisms seized under subsection (5) to be retained or disposed of and, if an offence against this Ordinance was not committed in respect of them, any person who has suffered loss or damage by reason of the seizure is entitled to reasonable compensation the amount of which shall be determined by the Minister.

23 Review of decisions

- (1) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Minister made under section 15 or 19 or subsection 22(3) or (6).
- (2) Where the Minister makes a decision that is reviewable under subsection (1), the Minister shall by notice, served in accordance with subsection (2A), notify the applicant or permit holder, as the case may be, of the decision.
- (2A) A notice under subsection (2) shall be served on the applicant or permit holder, as the case may be, within 28 days of the making of the decision to which it relates, and may be served:
 - (a) personally; or
 - (b) by post; or
 - (c) if the person to be served is not present in a State or internal Territory, by radio, telephone or other electronic means.
- (3) A notice referred to in subsection (2) shall set out the decision and the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving reasons for the decision and shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, the person to whom the notice is addressed is entitled to apply to the Administrative Appeals Tribunal for a review of the decision.
- (4) The validity of a decision referred to in section 15 or 19 or subsection 22(3) or (6) shall not be taken to be affected by a failure

to include in a notice for the purpose of subsection (2) a statement in accordance with subsection (3).

24 Liability of Minister

Nothing in paragraph 15(3)(b) or subparagraph 19(e)(ii) shall cause the Minister or the Commonwealth to be held liable at the suit of any person, if the Minister or the Commonwealth would not have been held liable in the absence of that paragraph or subparagraph.

25 Prosecution of offences

- (1) An offence against section 12, 13, 14 or 18 is an indictable offence.
- (2) Notwithstanding that an offence is expressed by subsection (1) to be an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (3) Where, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence, the penalty that the court may impose is:
 - (a) in the case of an offence against section 12, 13 or 14:
 - (i) if the offender is a natural person—a fine not exceeding 20 penalty units or imprisonment for a period not exceeding 12 months, or both; or
 - (ii) if the offender is a body corporate—a fine not exceeding 100 penalty units; or
 - (b) in the case of an offence against section 18:
 - (i) if the offender is a natural person—a fine not exceeding 10 penalty units or imprisonment for a period not exceeding 6 months or both; or
 - (ii) if the offender is a body corporate—a fine not exceeding 50 penalty units.

26 Regulations

- (1) The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters required or permitted by this

Section 26

Ordinance to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

- (2) Without limiting the generality of subsection (1), regulations may be made:
 - (a) providing for functions and powers to be conferred, and duties to be imposed, upon inspectors; and
 - (b) providing, in respect of an offence against a provision of the regulations, for a penalty not exceeding 10 penalty units.

Endnotes

Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history
- Endnote 4—Amendment history
- Endnote 5—Uncommenced amendments
- Endnote 6—Modifications
- Endnote 7—Misdescribed amendments
- Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

Abbreviation key—Endnote 2

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

Endnotes

Endnote 1—About the endnotes

Modifications—Endnote 6

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

Misdescribed amendments—Endnote 7

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

Miscellaneous—Endnote 8

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

Endnote 2—Abbreviation key

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Name	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
Environment Protection and Management Ordinance 1987 No. 1, 1987	11 Jan 1988	11 Jan 1988	
Environment Protection and Management (Amendment) Ordinance 1990 No. 1, 1990	16 Nov 1990	16 Nov 1990	—
Environment Protection and Management (Amendment) Ordinance 1991 No. 1, 1991	6 June 1991	6 June 1991	—
Ordinances Amendment (Application of Criminal Code) Ordinance 2002 (No. 1) No. 1, 2002	21 Feb 2002	21 Feb 2002	—
Environment Protection and Management Amendment Ordinance 2009 (No. 1) No. 1, 2009	3 Aug 2009 (F2009L02987)	4 Aug 2009	s 4
Spent and Redundant Instruments Repeal Regulation 2014 (No. 2) No 146, 2014	16 Oct 2014 (F2014L01358)	Sch 4 (item 2): 17 Oct 2014 (s 2)	—

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
s 4.....	am No 1, 1990; No 1, 2002; No 1, 2009
s 5.....	rep F2014L01358
s 5A.....	ad No 1, 2002
s 6.....	am No 1, 1990
s 7.....	rep No 1, 2009
s 8.....	am No 1, 1990 rep No 1, 2009
s 9.....	rep No 1, 2009
s 10.....	rep No 1, 2009
s 11.....	rep No 1, 2009
s 12.....	rs No 1, 1990 am No 1, 2002
Note to s 12(2).....	ad No 1, 2002
s 13.....	am No 1, 1990; No 1, 2002
Heading to s 14	rs No 1, 2009
s 14.....	am No 1, 1990; No 1, 2002; No 1, 2009
Note to s 14(2).....	ad No 1, 2002
s 15A.....	ad No 1, 2009
s 15.....	am No 1, 1990 rs No 1, 2009
s 16A.....	ad No 1, 2009
s 16.....	am No 1, 2002; No 1, 2009
s 17.....	rs No 1, 2009
s 18.....	am No 1, 1990 rs No 1, 2002 am No 1, 2009
s 19.....	am No 1, 2009
s 19A.....	ad No 1, 1990 rs No 1, 1991; No 1, 2009
Heading to s 20	rs No 1, 2009

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 20.....	am No 1, 1990; No 1, 2009
s 21.....	am No 1, 1990 rs No 1, 2002
s 23.....	am No 1, 1990
s 24.....	am No 1, 2009
s 25.....	am No 1, 2002
s 26.....	am No 1, 2009

Endnote 5—Uncommenced amendments [none]

Endnote 5—Uncommenced amendments [none]

Endnote 6—Modifications [none]

Endnote 7—Misdescribed amendments none]

Endnote 8—Miscellaneous [none]