



# **Great Barrier Reef Marine Park Act 1975**

**No. 85, 1975 as amended**

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**Includes amendments up to:** Act No. 136, 2012

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### The compiled Act

This is a compilation of the *Great Barrier Reef Marine Park Act 1975* as amended and in force on 1 July 2013. It includes any amendment affecting the compiled Act to that date.

This compilation was prepared on 1 July 2013.

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

### Uncommenced provisions and amendments

If a provision of the compiled Act is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

### Application, saving and transitional provisions for amendments

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is identified in the endnotes.

### Modifications

If a provision of the compiled Act is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

### Provisions ceasing to have effect

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

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# **An Act to establish a Great Barrier Reef Marine Park and for related purposes**

## **Part I—Preliminary**

### **1 Short title**

This Act may be cited as the *Great Barrier Reef Marine Park Act 1975*.

### **2 Commencement**

This Act shall come into operation on the day on which it receives the Royal Assent.

### **2A Objects of this Act**

- (1) The main object of this Act is to provide for the long term protection and conservation of the environment, biodiversity and heritage values of the Great Barrier Reef Region.
- (2) The other objects of this Act are to do the following, so far as is consistent with the main object:
  - (a) allow ecologically sustainable use of the Great Barrier Reef Region for purposes including the following:
    - (i) public enjoyment and appreciation;
    - (ii) public education about and understanding of the Region;
    - (iii) recreational, economic and cultural activities;
    - (iv) research in relation to the natural, social, economic and cultural systems and value of the Great Barrier Reef Region;
  - (b) encourage engagement in the protection and management of the Great Barrier Reef Region by interested persons and groups, including Queensland and local governments, communities, Indigenous persons, business and industry;

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- (c) assist in meeting Australia's international responsibilities in relation to the environment and protection of world heritage (especially Australia's responsibilities under the World Heritage Convention).
- (3) In order to achieve its objects, this Act:
  - (a) provides for the establishment, control, care and development of the Great Barrier Reef Marine Park; and
  - (b) establishes the Great Barrier Reef Marine Park Authority; and
  - (c) provides for zoning plans and plans of management; and
  - (d) regulates, including by a system of permissions, use of the Great Barrier Reef Marine Park in ways consistent with ecosystem-based management and the principles of ecologically sustainable use; and
  - (e) facilitates partnership with traditional owners in management of marine resources; and
  - (f) facilitates a collaborative approach to management of the Great Barrier Reef World Heritage area with the Queensland government.

### 3 Interpretation

- (1) In this Act, unless the contrary intention appears:

*AAT* means the Administrative Appeals Tribunal.

*aggravated contravention* has the meaning given by section 38GB.

*aggravated offence* has the meaning given by section 38GA.

*agreement* includes a treaty or convention.

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

*amendment*, in relation to a plan of management, means an amendment of such a plan that is prepared under section 39ZG.

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

- (a) eggs or parts of eggs; and

(b) the skin, feathers, shell or any other part of an animal.

**Australian jurisdiction** has the meaning given by subsection 5(4).

**Australian resident** means:

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

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

**Chairperson** means the Chairperson of the Authority.

**charge** means charge imposed by:

- (a) the *Great Barrier Reef Marine Park (Environmental Management Charge—General) Act 1993*; or
- (b) the *Great Barrier Reef Marine Park (Environmental Management Charge—Excise) Act 1993*.

**chargeable permission** means a permission granted under the regulations, where the permission is of a kind declared by the regulations to be a chargeable permission for the purposes of this Act.

**civil penalty provision** has the meaning given by section 61AID.

**class vessel monitoring direction** has the meaning given by subsection 61AAA(7).

**community group having a special interest** has a meaning affected by section 39V.

**compulsory pilotage area** means any part of the Great Barrier Reef Region that is prescribed by the regulations.

**conduct** has the same meaning as in the *Criminal Code*.

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***declaration of contravention*** means a declaration made under section 61AIA.

***discharge***, in relation to waste, means release the waste, however the release is caused, and includes any escape, disposal, depositing, spilling, leaking, pumping, emitting or emptying of the waste.

***dory*** means:

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

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

***ecologically sustainable use*** has the meaning given by section 3AA.

***ecosystem-based management*** means an integrated approach to managing an ecosystem and matters affecting that ecosystem, with the main object being to maintain ecological processes, biodiversity and functioning biological communities.

***emergency direction*** has the meaning given by subsection 61ACA(2).

***enforceable direction*** has the meaning given by subsection 61ADA(2).

***enforcement provision***, in relation to a plan of management or an amendment of a plan of management, has the meaning given by subsection 39ZD(5) or by that subsection as it has effect because of subsection 39ZG(2), as the case may be.

***engage in conduct*** has the same meaning as in the *Criminal Code*.

***environmental management*** means:

- (a) environmental management;
- (b) natural resource management;
- (c) park management (including aquarium management and zoo management); or



(d) any similar matter.

**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.

**farming facility** means a facility for the farming of marine resources.

**Federal Court** means the Federal Court of Australia.

**fish** includes all species of bony fish, sharks, rays, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles.

**fishing** means any of the following:

- (a) taking fish;
- (b) attempting to take fish;
- (c) engaging in any activity (including searching for fish, using fishing apparatus and using fish aggregating devices) in connection with taking, or attempting to take, fish.

**geological storage operations** means:

- (a) operations to inject and store a gas substance in part of a geological formation; or
- (b) operations preparing for or incidental to operations mentioned in paragraph (a).

**Great Barrier Reef Region** means:

- (a) the area described in Schedule 1; and
- (b) such area (if any) contiguous with the northern boundary of that area as is prescribed;

other than any part of such an area that is referred to in section 14 of the *Seas and Submerged Lands Act 1973* or is an island, or a part of an island, that forms part of Queensland and is not owned by the Commonwealth.

**Great Barrier Reef World Heritage Area** means the area described in Schedule 1.

**hovercraft** means a vehicle designed to be supported on a cushion of air.

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**Indigenous person** means a person who is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

**individual vessel monitoring direction** has the meaning given by subsection 61AAA(2).

**inspector** means:

- (a) a person appointed as an inspector under subsection 43(1); or
- (b) a person referred to in section 44.

**landing area** means an area for the landing of aircraft.

**late payment penalty** means an amount payable under subsection 39G(1), (1A) or (1B).

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

**master** means a person having command or charge of a vessel.

**member** means a member of the Authority.

**minerals** means minerals in any form, whether solid, liquid or gaseous and whether organic or inorganic.

**mining operations:**

- (a) means operations or activities connected with, or incidental to, the mining or recovery of minerals; and
- (b) includes prospecting for or exploring for minerals.

**mitigate**, in relation to damage, includes prevent further damage.

**navigate without a pilot** has the meaning given by subsections (5) and (6).

**offence against this Act** includes an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act.

**oil** has the same meaning as in Part II of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

**oil tanker** means a vessel fitted with cargo spaces that are constructed and used to carry oil in bulk of a total capacity of at least 200 cubic metres.

**overall length** has the meaning given by subsection (7) or (8).

**owner**, in relation to a vessel, has the meaning given by subsection (9) or (10).

**part-time member** means a member appointed as a part-time member.

**pecuniary penalty order** means an order referred to in subsection 61AIC(2).

**penalty unit** has the meaning given by section 4AA of the *Crimes Act 1914*.

**pilot** means a person:

- (a) who does not belong to, but has the conduct of, a vessel; and
- (b) who is licensed or registered under a prescribed law of the Commonwealth, a State or a Territory.

**pilot's certificate** means a certificate issued by a pilot under section 59E.

**plan of management** means a plan of management for the Marine Park that is prepared in accordance with Part VB.

**plant** means any member, alive or dead, of the plant kingdom or of the fungus kingdom, and includes seeds and parts of plants.

**port** has the same meaning as in the *Navigation Act 2012*.

**precautionary principle** means the principle 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.

**primary commercial fishing vessel** means:

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

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- (b) a vessel that is used to take fish for commercial purposes.

***principles of ecologically sustainable use*** has the meaning given by section 3AB.

***prohibited***: conduct in a zone is prohibited if the conduct is neither:

- (a) for a purpose for which, under the zoning plan for the zone, the zone may be used or entered without permission; nor
- (b) for a purpose that, under the zoning plan for the zone, requires permission.

***protected species*** means any of the following:

- (a) a cetacean;
- (b) a listed marine species, a listed migratory species, a listed threatened ecological community, or a listed threatened species;
- (c) a species of marine mammal, bird or reptile that is prescribed as endangered wildlife, vulnerable wildlife or rare wildlife under the *Nature Conservation Act 1992* of Queensland;
- (d) a species declared by the regulations to be a protected species for the purposes of this definition;
- (e) a species declared by the regulations to be a strictly protected species for the purposes of this definition.

***public notice*** means a notice published:

- (a) in the *Gazette*; and
- (b) in a newspaper circulating generally in Queensland; and
- (c) on the website of the Authority; and
- (d) in such other manner (if any) as the Authority considers appropriate.

***reef*** includes bommie fields, reef slopes, moats and ramparts.

***regulated ship*** means any kind of vessel:

- (a) that is 70 metres or longer in overall length; or
  - (b) that is a loaded:
    - (i) oil tanker; or
    - (ii) chemical carrier; or
    - (iii) liquefied gas carrier;
- other than:

- (c) a vessel belonging to an arm of the Defence Force of Australia or to the naval, military or air forces of a country other than Australia; or
- (d) a vessel in respect of which an exemption under section 59F is in force.

**remediation order** has the meaning given by subsection 61AHA(1).

**reviewable decision** has the meaning given by subsection 64(3).

**take**, in relation to an animal or plant, includes remove, gather, catch, capture, kill, destroy, dredge for, raise, carry away, bring ashore, interfere with and obtain.

**this Act** includes the regulations.

**traditional owner** means an Indigenous person:

- (a) who is recognised in the Indigenous community or by a relevant representative Aboriginal or Torres Strait Islander body:
  - (i) as having spiritual or cultural affiliations with a site or area in the Marine Park; or
  - (ii) as holding native title in relation to that site or area; and
- (b) who is entitled to undertake activities under Aboriginal or Torres Strait Islander custom or tradition in that site or area.

**unzoned area** means that part (if any) of the Marine Park in respect of which no zoning plan is in force.

**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 hovercraft.

**vessel monitoring direction** means an individual vessel monitoring direction or a class vessel monitoring direction.

**vessel monitoring system** means a system in which vessels are fitted with an electronic device that can provide information about the vessels' course or position, or other such information.

**waste** means any of the following:

- (a) oil within the meaning of Part II of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*;

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- (b) noxious liquid substances within the meaning of Part III of that Act;
- (c) packaged harmful substances within the meaning of Part IIIA of that Act;
- (d) sewage within the meaning of Part IIIB of that Act;
- (e) garbage within the meaning of Part IIIC of that Act;
- (f) mixtures where the oil content is greater than 15 parts in 1,000,000 parts;
- (g) any other matter that is declared by the regulations to be waste for the purposes of this definition.

**zone** means a zone created by a zoning plan (whether designated in the plan as a zone, area or some other designation).

**zoning plan** means a zoning plan prepared in accordance with Division 2 of Part V.

- (1A) In this Act, the following terms have the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*:

***approved conservation advice***

***Australian aircraft***

***Australian IUCN reserve management principles***

***Australian vessel***

***biodiversity***

***bioregional plan***

***cetacean***

***critical habitat***

***ecological community***

***ecosystem***

***environment***

***heritage value***

***IUCN category***

*key threatening process*

*listed marine species*

*listed migratory species*

*listed threatened ecological community*

*listed threatened species*

*recovery plan*

*species*

*threat abatement plan*

*wildlife conservation plan*

*World Heritage Convention*

*world heritage values*

- (2) In this Act, a reference to the sea-bed includes a reference to the surface of any coral formation, and a reference to the sub-soil includes a reference to the coral beneath the surface of any such formation.
- (4) A reference in this Act (other than in this subsection) to an offence against a provision of this Act includes a reference to an offence against:
- (a) section 6 of the *Crimes Act 1914*; or
  - (b) section 11.1, 11.4 or 11.5 of the *Criminal Code*;
- that relates to an offence against a provision of this Act.
- (5) Subject to subsection (6), a vessel ***navigates without a pilot*** if it does not have a pilot on board navigating it.
- (6) If:
- (a) apart from this subsection, a vessel navigates without a pilot; and
  - (b) the vessel is being towed by another vessel that is navigating with a pilot;
- the vessel under tow is to be treated as if it were navigating with a pilot.

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- (7) Subject to subsection (8), the **overall length** of a vessel is 110% of the length as shown on the vessel's load-line certification.
- (8) If the overall length of a vessel cannot be worked out under subsection (7), the length is taken to be the distance between:
  - (a) a vertical line passing through a point that is the foremost part of the stem; and
  - (b) a vertical line passing through a point that is the aftermost part of the stern.
- (9) Subject to subsection (10), **owner**, in relation to a vessel, means the person or each of the persons who are registered as owner of the vessel on the registration certificate granted:
  - (a) by the Registrar of Ships under section 19 of the *Shipping Registration Act 1981*; or
  - (aa) under a law of a State or Territory; or
  - (b) by a foreign registrar of ships.
- (10) If the owner of a vessel does not operate the vessel, a reference in this Act to the owner of the vessel includes a reference to a person who is a party to an agreement with the owner under which the person, or the person and the owner, may determine the activities for which the vessel is used.

**3AA Ecologically sustainable use**

For the purposes of this Act, **ecologically sustainable use** of the Great Barrier Reef Region or its natural resources is use of the Region or resources:

- (a) that is consistent with:
  - (i) protecting and conserving the environment, biodiversity and heritage values of the Great Barrier Reef Region; and
  - (ii) ecosystem-based management; and
- (b) that is within the capacity of the Region and its natural resources 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.



**3AB Principles of ecologically sustainable use**

For the purposes of this Act, the following principles are *principles of ecologically sustainable use*:

- (a) decision-making processes should effectively integrate both long-term and short-term environmental, economic, social and equitable considerations;
- (b) the precautionary principle;
- (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 biodiversity and ecological integrity should be a fundamental consideration in decision-making;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

**3A Interpretation of zoning plans**

- (1) In the interpretation of a zoning plan, this section has effect in addition to section 3.
- (2) If:
  - (a) a provision of a zoning plan (in this subsection called the *first provision*) has the effect that a particular activity in a particular area requires permission; and
  - (b) another provision of the zoning plan (in this subsection called the second provision) would, apart from this subsection, have the effect that the same activity in the same area does not require permission;the first provision prevails over the second provision.
- (3) In a zoning plan, a reference to the operation, to the conduct, or to the establishment, of a tourist program is a reference to an activity (whether consisting of a single act or a series of acts) that:
  - (a) is in the course of carrying on business; and
  - (b) is or includes the provision of transport, accommodation or services for tourists or for persons who include tourists.
- (4) In a zoning plan, a reference to the provision of a tourist facility is a reference to the provision, in the course of carrying on business, of a facility for tourists or for persons who include tourists.

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- (5) In a zoning plan, a reference to the construction or provision of a facility for a tourist program is a reference to the construction or provision, in the course of carrying on business, of a facility for an activity (whether consisting of a single act or a series of acts) that is or includes the provision of transport, accommodation or services for tourists or for persons who include tourists.
- (6) In a zoning plan, a reference to the operation, to the conduct, or to the establishment, of an educational program is a reference to the provision (whether as a single act or a series of acts) of transport, accommodation or services for a group or groups of 6 or more persons (none of whom is a tourist) principally for the purpose of systematically educating those persons.
- (7) In a zoning plan, a reference to the provision of an educational facility is a reference to the provision of a facility for a group of 6 or more persons (none of whom is a tourist) principally for the purpose of systematically educating those persons.
- (8) In a zoning plan, a reference to the construction or provision of a facility for an educational program is a reference to the construction or provision of a facility for the provision (whether as a single act or a series of acts) of transport, accommodation or services for a group or groups of 6 or more persons (none of whom is a tourist) principally for the purpose of systematically educating those persons.
- (9) In this section, and in a zoning plan:  
  
*facility* includes a building, a structure, a vessel, goods, equipment or services.  
  
*tourist* means a person who is in the Marine Park principally for the purpose of recreation (which may include fishing or collecting).
- (10) For the purposes of subsection 38BA(5) and regulations made for the purposes of that subsection, this section is not to be regarded as amending a zoning plan.

### 3B Interpretation of geographic co-ordinates

- (1) Where it is necessary for the purposes of this Act to determine the position on the surface of the Earth of a point, line or area that is specified by reference to one or more geographic co-ordinates, then

that position must be determined, unless the contrary intention appears, by reference to the Australian Geodetic Datum as defined in *Gazette* No. 84 of 6 October 1966.

(2) In this section:

*geographic co-ordinate* includes:

- (a) a meridian of longitude by itself; and
- (b) a parallel of latitude by itself.

*this Act* includes the following:

- (a) the regulations;
- (b) a Proclamation made under this Act;
- (c) a plan of management;
- (d) a zoning plan;
- (e) any other instrument made under this Act.

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

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.
- (1A) Nothing in this Act renders the Crown in right of the Commonwealth, of a State, of the Northern Territory or of Norfolk Island liable to be prosecuted for an offence or to be subject to civil proceedings for a contravention of a civil penalty provision.

#### **4A Application of the *Criminal Code***

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

Note 1: However, Part 2.5 of the *Criminal Code* does not apply to an offence against this Act: see subsection 61ANA(8) of this Act.

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

#### **5 Application of Act**

*Extension to external Territories*

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

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*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 applies.

*Application to everyone in Australia and exclusive economic zone*

- (3) A provision of this Act that has effect in relation to a place that is within the outer limits of the exclusive economic zone of Australia (whether the place is in the zone or in Australia or an external Territory), or that is on or in the continental shelf of Australia, applies in relation to the following:
- (a) all persons (including persons who are not Australian citizens);
  - (b) all vessels (including vessels that are not Australian vessels);
  - (c) all aircraft (including aircraft that are not Australian aircraft);
  - (d) all platforms.

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*.

*Definition of Australian jurisdiction*

- (4) In this Act:

***Australian jurisdiction*** means:

- (a) the land, waters, seabed and airspace in, under or above:
  - (i) Australia; or
  - (ii) an external Territory; or
  - (iii) the exclusive economic zone of Australia; or
- (b) the continental shelf of Australia.

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*.

## **Part II—Establishment, functions and powers of the Great Barrier Reef Marine Park Authority**

### **6 Great Barrier Reef Marine Park Authority**

There is established by this Act an Authority by the name of the Great Barrier Reef Marine Park Authority.

### **7 Functions of the Authority**

- (1) The functions of the Authority are:
  - (a) to make recommendations to the Minister in relation to the care and development of the Marine Park including recommendations, from time to time, as to:
    - (i) the areas that should be declared to be parts of the Marine Park; and
    - (ii) the regulations that should be made under this Act;
  - (b) to carry out, by itself or in co-operation with other institutions and persons, and to arrange for any other institutions or persons to carry out, research and investigations relevant to the Marine Park;
  - (c) to prepare zoning plans for the Marine Park in accordance with Division 2 of Part V;
  - (caa) to make plans of management for the Marine Park in accordance with Part VB;
  - (ca) to furnish information and advice to the Minister in respect of matters relating to the Marine Park, including:
    - (i) information and advice in relation to any agreement (including any proposed agreement) between the Commonwealth and Queensland on such matters;
    - (ii) information and advice on the following matters:
      - (A) whether the Commonwealth should grant financial assistance to Queensland in respect of a matter relating to the Marine Park;
      - (B) the amount and allocation of such assistance;

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- (C) the terms and conditions (if any) on which such assistance should be granted; and
  - (iii) information and advice on the following matters:
    - (A) whether it is desirable that Queensland should make a payment to the Authority in respect of a matter relating to the Marine Park;
    - (B) the amount and allocation of such payment;
    - (C) the terms and conditions (if any) on which such payment should be given;
  - (cb) to receive and disburse moneys appropriated by the Parliament for the purpose of payment of the moneys to Queensland by way of financial assistance to Queensland in respect of matters that relate to the Marine Park;
  - (cc) to receive and disburse moneys paid to the Authority by Queensland under an agreement between:
    - (i) the Commonwealth and Queensland;
    - (ii) Queensland and the Authority; or
    - (iii) the Commonwealth, Queensland and the Authority;
  - (cd) to provide, and arrange for the provision of, educational, advisory and informational services relating to the Marine Park;
  - (d) such functions relating to the Marine Park as are:
    - (i) conferred on the Authority under this or any other Act; or
    - (ii) provided for by the regulations;
  - (daa) to exercise any powers, and perform any functions, relating to the Marine Park that have been delegated to the Authority under this or any other Act;
  - (da) to provide assistance to other institutions and persons in accordance with section 7A; and
  - (e) to do anything incidental or conducive to the performance of any of the foregoing functions.
- (1A) For the purposes of this section but without limiting the generality of paragraph (1)(ca), (cb), (cd), (d) or (daa), a matter shall be taken to relate to the Marine Park if it relates to:
- (a) the use or management of an area (which may be a Queensland national park or a Queensland marine park) the

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- use or management of which would or might affect the Marine Park; or
  - (b) the use of a place outside the Marine Park for a purpose relating to the Marine Park.
- (1B) The Authority is responsible for the management of the Marine Park.
- (2) The Authority shall perform its functions in accordance with any general directions given by the Minister not inconsistent with this Act.
- (3) In managing the Marine Park and performing its other functions, the Authority must have regard to, and seek to act in a way that is consistent with:
- (a) the objects of this Act in section 2A; and
  - (b) the principles of ecologically sustainable use; and
  - (c) the protection of the world heritage values of the Great Barrier Reef World Heritage Area.
- (4) The Authority may prepare and publish plans and policies about:
- (a) the way in which the Authority intends to manage the Marine Park or perform its other functions; and
  - (b) the way in which the Authority considers that this Act or a zoning plan applies:
    - (i) in relation to persons generally or a class of persons; or
    - (ii) in relation to persons generally, or a class of persons, in relation to particular circumstances.
- (5) A plan or policy prepared under subsection (4) is not a legislative instrument.

**7A Provision of assistance to other institutions and persons**

- (1) Subject to this section, the Authority may, at the request of another institution or person, provide assistance to the institution or person in matters relating to environmental management.
- (2) The assistance may be provided by the Authority acting by itself or in co-operation with other institutions and persons.

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- (3) Without limiting the generality of the assistance that may be provided, the assistance may take any of the following forms:
  - (a) the carrying out of research or investigations;
  - (b) the provision of educational, advisory or informational services;
  - (c) the making available of facilities.
- (4) The Authority shall not perform a function that the Authority has only because of this section unless the Minister has approved, in writing, the provision of the assistance concerned.
- (5) The Minister shall not give an approval under subsection (4) unless the Minister is satisfied that the provision of the assistance concerned is not likely to affect adversely the performance of the functions of the Authority conferred by other provisions of this Act.
- (6) An approval under subsection (4) may be given subject to conditions or restrictions set out in the instrument of approval (including conditions requiring the charging of fees).
- (7) Nothing in this section limits the functions that may be conferred on the Authority by the regulations.
- (8) The Minister may, by writing, delegate to the Authority or to the Chairperson his or her power to give approvals under subsection (4).

## 8 Powers of Authority

- (1) The Authority may do all things that are necessary or convenient to be done for or in connexion with the performance of its functions and, in particular, may:
  - (a) subject to this section, enter into contracts, agreements, arrangements or understandings; and
  - (b) occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of the Authority; and
  - (c) subject to this section, acquire, hold and dispose of real or personal property; and
  - (e) do anything incidental to any of its powers.



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- (3) The Authority has power to perform any of its functions in co-operation with Queensland, with an authority of that State or with a local governing body in that State.
- (4) Any contract, agreement, arrangement or understanding entered into by the Authority is to be entered into on behalf of the Commonwealth.
- (5) Any real or personal property held by the Authority is held for and on behalf of the Commonwealth.
- (6) Any money received by the Authority is received for and on behalf of the Commonwealth.
- (7) The Authority cannot hold real or personal property or money on trust.

Note:      The Commonwealth may hold real or personal property or money on trust.
- (8) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (5).

**8A The Authority's liabilities are Commonwealth liabilities**

- (1) Any financial liabilities of the Authority are taken to be liabilities of the Commonwealth.
- (2) In this section:

***financial liability*** means a liability to pay a person an amount where the amount, or the method for working out the amount, has been determined.

**8B Chairperson not subject to direction by the Authority on certain matters**

The Chairperson is not subject to direction by the Authority in relation to the Chairperson's performance of functions, or exercise of powers, under:

- (a) the *Financial Management and Accountability Act 1997*; or
  - (b) the *Public Service Act 1999*;
- in relation to the Authority.

## **Part III—Constitution and meetings of the Authority**

### **9 Nature of Authority**

- (1) The Authority:
  - (a) is a body corporate with perpetual succession;
  - (b) shall have a common seal; and
  - (c) may sue and be sued in its corporate name.
- (2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and shall presume that it was duly affixed.

### **10 Membership of Authority**

- (1) The Authority consists of the following members:
  - (a) a Chairperson;
  - (b) at least 2, but no more than 4, other members.
- (2) The members shall be appointed by the Governor-General, the Chairperson being appointed as a full-time member and the other members being appointed as part-time members.
- (3) Subject to subsection (4), one of the part-time members shall be a person appointed on the nomination of the Queensland Government.
- (4) Where:
  - (a) the Commonwealth Government has invited the Queensland Government to nominate to the Minister a person to be appointed to a vacant office of part-time member (whether or not the office has been previously filled); and
  - (b) at the expiration of 3 months after the invitation, the Queensland Government has not nominated a person having the qualifications referred to in subsection (6) for appointment to the office;a person other than a person nominated by the Queensland Government may be appointed to the office notwithstanding that,

upon the appointment, there will not be a part-time member who is a person appointed on the nomination of the Queensland Government.

- (6) A member shall be a person with qualifications or extensive experience in a field related to the functions of the Authority.
- (6A) At least one member must be an Indigenous person with knowledge of, or experience concerning, indigenous issues relating to the Marine Park.
- (6B) At least one member must have knowledge of or experience in the tourism industry associated with the Marine Park.
- (7) The performance of the functions or the exercise of the powers of the Authority is not affected by reason only of there being a vacancy or vacancies in the membership of the Authority.
- (8) The appointment of a member is not invalidated and shall not be called in question by reason of a defect or irregularity in, or in connexion with, his or her selection or appointment.

### **11 Period of appointment of members of Authority**

- (1) A member shall be appointed for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

### **12 Remuneration and allowances of members of Authority**

- (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he or she shall be paid such remuneration as is prescribed.
- (2) A member shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **13 Leave of absence**

- (1) The Chairperson has such recreation leave entitlements as are determined by the Remuneration Tribunal.

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- (2) The Minister may grant the Chairperson leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

**14 Resignation of members of Authority**

A member may resign his or her office by writing signed by him or her and delivered to the Governor-General, but the resignation does not have effect until it is accepted by the Governor-General.

**15 Acting Chairperson and members**

- (1) The Minister may appoint a person, including a part-time member, to act as Chairperson:
- (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or, for any other reason, is unable to perform the duties of his or her office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (3) The Minister may appoint a person to act as a part-time member:
- (a) during a vacancy in an office of part-time member, whether or not an appointment has previously been made to the office; or
  - (b) during any period or during all periods when a part-time member is acting as Chairperson, is absent from duty or from Australia or, for any other reason, is unable to perform the duties of his or her office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (5) The appointment of a person to act as Chairperson or as a part-time member ceases to have effect if he or she resigns the appointment by writing signed by him or her and delivered to the Minister, but the resignation does not have effect until it is accepted by the Minister.

**16 Termination of appointment of members of Authority**

- (1) The Governor-General may terminate the appointment of a member by reason of misbehaviour or physical or mental incapacity.
- (2) If a member:
  - (a) being the Chairperson, engages in paid employment outside the duties of his or her office without the approval of the Minister;
  - (b) being the Chairperson, is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months;
  - (c) is absent, except on leave granted by the Minister or otherwise with the permission of the Minister, from 3 consecutive meetings of the Authority;
  - (d) becomes bankrupt or 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; or
  - (e) fails, without reasonable excuse, to comply with section 16A or 16B;

the Governor-General shall terminate the appointment of the member.

**16A Disclosure of interests to the Minister**

A member must give written notice to the Minister of all material personal interests that the member has or acquires and that could conflict with the proper performance of the member's functions.

**16B Disclosure of interests to the Authority**

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the Authority must disclose the nature of the interest to a meeting of the Authority.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the Authority.

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- (4) Unless the Authority otherwise determines, the member:
  - (a) must not be present during any deliberation by the Authority on the matter; and
  - (b) must not take part in any decision of the Authority with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the member:
  - (a) must not be present during any deliberation of the Authority for the purpose of making the determination; and
  - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Authority.

**17 Meetings of Authority**

- (1) The Chairperson shall convene such meetings as he or she considers necessary for the performance of the functions of the Authority.

Note: See also section 33B of the *Acts Interpretation Act 1901*.
- (2) The Chairperson shall, on receipt of a request in writing signed by the other members, convene a meeting of the Authority.
- (3) At a meeting of the Authority, 2 members constitute a quorum.
- (4) The Chairperson shall preside at all meetings of the Authority at which he or she is present.
- (5) If the Chairperson is not present at a meeting of the Authority, the members present shall choose one of themselves to preside at the meeting.
- (6) Subject to subsection (8), questions arising at a meeting of the Authority shall be determined by a majority of the votes.
- (7) The member presiding at a meeting of the Authority has a deliberative vote, and, subject to subsection (8), in the event of an equality of votes, also has a casting vote.
- (8) If only 2 members are present at a meeting of the Authority and they differ on a question arising at the meeting, a decision on the question must be deferred:

- (a) until a meeting at which at least 3 members are present; or
  - (b) for decision under section 18.
- (9) In relation to a time when a person is acting as Chairperson, references in this section to the Chairperson shall be read as including references to that person.
- (10) In relation to a time when a person is acting as Chairperson or as a part-time member, references in this section to a member shall be read as including references to that person.

## **18 Decisions without meetings**

- (1) The Authority is taken to have made a decision at a meeting if:
  - (a) without meeting, a majority of the members entitled to vote on the proposed decision indicate agreement with the decision; and
  - (b) that agreement is indicated in accordance with the method determined by the Authority under subsection (2); and
  - (c) all the members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.
- (2) Subsection (1) applies only if the Authority:
  - (a) has determined that it may make decisions of that kind without a meeting; and
  - (b) has determined the method by which members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a member is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that decision if the matter had been considered at a meeting of the Authority.
- (4) The Authority must keep a record of decisions made in accordance with this section.

## **Part V—The Great Barrier Reef Marine Park**

### **Division 1—Great Barrier Reef Marine Park**

#### **30 Great Barrier Reef Marine Park**

There shall be a marine park, to be known as the Great Barrier Reef Marine Park, consisting of such areas in the Great Barrier Reef Region as are, for the time being, declared under section 31 to be parts of that Marine Park.

#### **31 Areas part of Marine Park**

- (1) Subject to subsection (5), the Governor-General may, by Proclamation, declare an area specified in the Proclamation, being an area within the Great Barrier Reef Region, to be a part of the Marine Park and assign a name or other designation to that area.

Note: A Proclamation under subsection (1) is a legislative instrument but is not subject to disallowance or sunseting (see item 23 of the table in subsection 44(2), and item 22 of the table in subsection 54(2), of the *Legislative Instruments Act 2003*).

- (2) Where an area is, for the time being, declared by Proclamation under subsection (1) to be a part of the Marine Park:
- (a) the waters of any sea within the area;
  - (b) the sea-bed beneath any sea within the area;
  - (c) the subsoil beneath any such sea-bed, extending to such depth below the sea-bed as is specified in the Proclamation;
  - (d) the sub-soil beneath any land within the area, extending to such depth below the surface as is specified in the Proclamation; and
  - (e) the airspace above the area, extending to such height above the surface as is specified in the Proclamation;
- shall be taken to be in the Marine Park and, for the purposes of this Act, part of the area.
- (3) Subject to subsections (4) and (5), the Governor-General may, by Proclamation, revoke or amend a Proclamation made under subsection (1).



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Note: A Proclamation under subsection (3) is a legislative instrument but is not subject to disallowance or sunseting (see item 23 of the table in subsection 44(2), and item 22 of the table in subsection 54(2), of the *Legislative Instruments Act 2003*).

- (4) Before the Governor-General makes a Proclamation causing an area in the Great Barrier Reef Region to cease to be part of the Marine Park, the Minister must be satisfied:
  - (a) that the Proclamation, if made, would be in accordance with a resolution passed by each House of the Parliament on a motion; and
  - (b) that notice of the motion was given no less than 15 sitting days of that House before the motion was moved.
- (5) Before the Governor-General makes a Proclamation, the Minister must consider a report by the Authority in relation to the matter dealt with by the Proclamation.
- (6) Before preparing the report, the Authority must, by public notice:
  - (a) state that the area is proposed to be included in the Marine Park; and
  - (b) state the boundaries of the area; and
  - (c) state any name or other designation proposed for the area; and
  - (d) invite the public to make comments in connection with the proposal by the date specified in the notice (which must be at least 60 days after the date the notice is published in the *Gazette*); and
  - (e) specify the address to which comments must be sent.
- (7) The Authority must include in the report any comments made in accordance with the notice and the Authority's views on the comments.

## **Division 2—Zoning plans**

### **32 Objects of Division**

- (1) The objects of this Division are:
  - (a) to regulate the use of the Marine Park so as to:
    - (i) protect the ecosystem within the Great Barrier Reef Region; and
    - (ii) ensure the use is ecologically sustainable use; and
    - (iii) manage competing usage demands; and
  - (b) to protect areas in the Marine Park that are of high conservation value; and
  - (c) to protect and conserve the biodiversity of the Marine Park, including ecosystems, habitats, populations and genes; and
  - (d) to regulate activities that exploit the resources of the Great Barrier Reef Region so as to:
    - (i) minimise the adverse effect of those activities on the Great Barrier Reef; and
    - (ii) ensure the ecologically sustainable use of the resources; and
  - (e) to protect the world heritage values of the Great Barrier Reef World Heritage Area; and
  - (f) to provide for the ecologically sustainable use of marine resources by traditional owners consistent with their traditional practices; and
  - (g) to reserve some areas of the Great Barrier Reef Region for public enjoyment and appreciation; and
  - (h) to preserve some areas of the Great Barrier Reef Region in a natural state, undisturbed except for the purposes of scientific research that cannot be undertaken elsewhere in the Marine Park.
- (2) To achieve these objects, this Division provides for the preparation of zoning plans in respect of areas in the Marine Park.

### **32A When zoning plans must be prepared**

As soon as practicable after an area has been declared under section 31 to be part of the Marine Park, the Authority must prepare a zoning plan in respect of the area.

### **32B Content of zoning plans**

- (1) A zoning plan prepared in respect of an area must provide that, for the purposes of this Act, the area:
  - (a) constitutes a single zone; or
  - (b) is divided into 2 or more zones described in the plan.
- (2) The plan must do the following in relation to the zone or each of the zones:
  - (a) give the zone a name or other designation;
  - (b) make provision with respect to the purposes for which the zone may be used or entered;
  - (c) designate an IUCN category for the zone, or each part of the zone.

### **32C Notice of intention to prepare zoning plan**

- (1) Before preparing a zoning plan in respect of an area, the Authority must, by public notice:
  - (a) state that it intends to prepare a zoning plan in respect of the area; and
  - (b) invite the public to make comments in connection with the proposed plan by the date specified in the notice (which must be at least 3 months after the date the notice is published in the *Gazette*); and
  - (c) specify the address to which comments must be sent; and
  - (d) specify that the following are publicly available and how a copy may be obtained:
    - (i) principles approved under section 34;
    - (ii) a statement prepared under subsection 35(1).
- (2) The Authority must consider any comments made in accordance with the notice.

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**34 Operational principles**

- (1) Before preparing a zoning plan in respect of an area, the Authority must, by writing, determine principles relating to the preparation of the proposed plan.
- (2) The principles must cover the environmental, economic and social objectives of the proposed plan. The principles may cover other matters.
- (3) The Authority must give the principles to the Minister for his or her approval.
- (4) The Minister must:
  - (a) approve the principles; or
  - (b) refer the principles to the Authority, together with the Minister's suggestions, for further consideration.

*Process after principles are referred to the Authority*

- (5) If the principles are referred to the Authority, it must, as soon as practicable after the referral, give further consideration to the principles, having regard to the Minister's suggestions.
- (6) The Authority must again give the principles, with or without alterations, to the Minister, together with its comments on the Minister's suggestions.
- (7) If the principles are again given to the Minister, he or she must, as soon as practicable after receiving them:
  - (a) approve them; or
  - (b) approve them after making such alterations as the Minister thinks fit.
- (8) If the Minister alters the principles under subsection (7), the Minister must prepare a report:
  - (a) specifying the alterations; and
  - (b) setting out any views expressed by the Authority in respect of the matters to which the alterations relate.
- (9) The report must accompany the plan when it is laid before both Houses of the Parliament under section 38 of the *Legislative Instruments Act 2003*.

*Principles to be publicly available*

- (10) The Authority must make the principles publicly available.

*Principles are not a legislative instrument*

- (11) The principles are not a legislative instrument.

**35 Environmental, economic and social assessments**

- (1) Before preparing a zoning plan in respect of an area, the Authority must, by writing, prepare a statement of the environmental, economic and social values of the area.
- (2) After preparing a zoning plan in respect of an area, the Authority must, by writing, prepare a statement covering the expected environmental, economic and social effects of the plan.
- (3) The Authority must make a statement prepared under this section publicly available.
- (4) A statement prepared under this section is not a legislative instrument.

**35A Matters to which Authority must have regard when preparing zoning plans**

- (1) The Authority must, in preparing a zoning plan in respect of an area (the ***zoning plan area***), have regard to the following:
  - (a) the objects of this Division;
  - (b) the principles approved under section 34 relating to the preparation of the plan;
  - (c) any reports that have been given to the Minister under section 54;
  - (d) any matter protected by a provision of Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999* that is relevant to the zoning plan area;
  - (e) any approved conservation advice, bioregional plan, recovery plan, threat abatement plan or wildlife conservation plan that is relevant to the zoning plan area;
  - (f) any value, plan or principle referred to in Part 15 of the *Environment Protection and Biodiversity Conservation Act*

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- 1999* that relates to a property, place, wetland or other area that is in the zoning plan area;
- (g) any habitat in the zoning plan area that is critical habitat;
  - (h) any plan made under the *Marine Parks Act 2004* of Queensland or the *Nature Conservation Act 1992* of Queensland that is relevant to the zoning plan area;
  - (i) any other matter prescribed by the regulations for the purposes of this paragraph.
- (2) In designating an IUCN category in relation to a zone for the purposes of paragraph 32B(2)(c), the Authority must have regard to:
- (a) the purposes for which the zone may be used or entered; and
  - (b) the Australian IUCN Reserve Management Principles for the category.

**35B Notice of preparation of zoning plan**

- (1) When the Authority has prepared a zoning plan in respect of an area, it must, by public notice:
- (a) state that a zoning plan has been prepared in respect of the area; and
  - (b) invite the public to make comments in connection with the plan by the date specified in the notice (which must be at least 3 months after the date the notice is published in the *Gazette*); and
  - (c) specify the address or addresses at which copies of the plan may be inspected or purchased; and
  - (d) specify the address to which comments must be sent; and
  - (e) specify that a statement prepared under subsection 35(2) is publicly available and how a copy may be obtained.
- (2) The Authority must consider any comments made in accordance with the notice and, if it thinks fit, alter the plan accordingly.

**35C Zoning plans must be submitted to Minister**

*Submission to Minister*

- (1) When the Authority has prepared a zoning plan in respect of an area, it must submit to the Minister:
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- (a) the plan; and
- (b) if comments have been made in accordance with a notice under section 35B in connection with the plan—those comments, together with the Authority's views on those comments.

*Plan may be accepted or referred*

- (2) The Minister may:
  - (a) accept the plan; or
  - (b) refer the plan to the Authority, together with the Minister's suggestions, for further consideration.

*Process after plan is referred*

- (3) If the plan is referred to the Authority, it must, as soon as practicable after receiving the plan, further consider the plan, having regard to the Minister's suggestions.
- (4) The Authority must then submit the plan again, with or without alterations, to the Minister, together with its views on the Minister's suggestions.
- (5) When the plan is again submitted to the Minister, the Minister must, as soon as practicable after receiving the plan:
  - (a) accept the plan; or
  - (b) accept the plan after making such alterations as the Minister thinks fit.
- (6) If the Minister alters the plan under subsection (5), the Minister must prepare a report:
  - (a) specifying the alterations; and
  - (b) setting out any views expressed by the Authority in respect of the matters to which the alterations relate.
- (7) The report must accompany the plan when it is laid before both Houses of the Parliament under section 38 of the *Legislative Instruments Act 2003*.

*Matters to which Minister must have regard*

- (8) In deciding whether to accept a zoning plan under this section, the Minister must have regard to the obligations of Australia under

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international law, including obligations under any agreement or arrangement between Australia and another country or countries.

**35D Zoning plans are legislative instruments**

A zoning plan prepared by the Authority and accepted by the Minister is a legislative instrument made by the Minister on the day on which the plan is accepted, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the plan.

**35E Disallowance of zoning plans**

- (1) If notice of a motion to disallow a zoning plan is given in a House of the Parliament within 15 sitting days of that House after a copy of the plan was laid before that House, the House may, within 15 sitting days of that House after the giving of that notice, pass a resolution, in pursuance of the motion, disallowing the plan.

Note: A zoning plan is a legislative instrument (see section 35D) and must be laid before each House of the Parliament under section 38 of the *Legislative Instruments Act 2003*.

- (2) If:
- (a) notice of a motion to disallow a zoning plan is given in a House of the Parliament within 15 sitting days of that House after a copy of the plan was laid before that House; and
  - (b) before the end of 15 sitting days of that House after the giving of that notice of motion, the House of Representatives is dissolved or expires, or the Parliament is prorogued; and
  - (c) at the time of the dissolution, expiry or prorogation, as the case may be:
    - (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 (where relevant) seconded and has not been withdrawn or otherwise disposed of;

the plan is taken, for the purposes of this section, to have been laid before the first-mentioned House on the first sitting day of that first-mentioned House after the dissolution, expiry or prorogation, as the case may be.



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- (3) If either House of the Parliament passes a resolution in accordance with subsection (1) disallowing a zoning plan:
  - (a) the Minister must direct the Authority to prepare a fresh plan; and
  - (b) the Authority must prepare a fresh plan in accordance with this Division.

**35F Commencement of zoning plans**

- (1) If:
  - (a) a zoning plan has been laid before both Houses of the Parliament under section 38 of the *Legislative Instruments Act 2003*; and
  - (b) neither House of the Parliament passes a resolution in accordance with subsection 35E(1) disallowing the plan; the Minister must, as soon as practicable after the end of the last day on which a resolution disallowing the plan could have been passed, state, by public notice, that the plan is to come into operation on the date specified in the notice (which must not be earlier than the date the notice is published in the *Gazette*).
- (2) The plan comes into operation on the date specified in the notice.
- (3) The notice:
  - (a) must specify an address or addresses at which copies of the plan may be inspected or purchased; and
  - (b) may contain:
    - (i) a description of the zone or zones to which the plan relates; and
    - (ii) any other particulars of the plan.

**35G Statement about operational principles**

Within 60 days after the day on which a notice under section 35F is published in the *Gazette* in relation to a zoning plan, the Authority must make publicly available a report that contains a statement of how the Authority, in preparing the plan, had regard to the principles approved under section 34 relating to the preparation of the plan.

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**36 Authority etc. to comply with zoning plans**

- (1) While a zoning plan is in force in relation to a zone the Authority shall perform its functions and exercise its powers in relation to the zone in accordance with that plan and not otherwise.
- (2) While a zoning plan is in force in relation to a zone, each Minister shall give all such directions and do all such things as can be given or done by him or her for ensuring that the Department administered by him or her and each authority of the Commonwealth in relation to which he or she has ministerial responsibilities performs the functions and exercises the powers that it has in relation to the zone in accordance with that plan.

**37 Amendment or revocation of zoning plan—substantive changes**

*Amendment of zoning plan*

- (1) The Authority may amend a zoning plan (other than to correct typographical errors) in respect of an area only if:
  - (a) the plan has been in operation for at least 7 years; or
  - (b) if the plan has been previously amended under this section—the most recent of those amendments has been in operation for at least 7 years.

Note: Section 37A deals with the amendment of a zoning plan to correct typographical errors.

- (2) The Authority must not publish a notice under section 32C in relation to a proposed amendment of a zoning plan in respect of an area unless the Minister has approved the publication of the notice. The Minister's approval cannot be sought until after the end of the period applicable under subsection (1) of this section.

Note: Section 32C applies to this situation because of subsection (8) of this section.

*Amendment is a legislative instrument*

- (2A) An amendment of a zoning plan, prepared by the Authority and accepted by the Minister, is a legislative instrument made by the Minister on the day on which the amendment is accepted, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the amendment.

*Revocation of zoning plan*

- (3) The Authority may:
- (a) revoke a zoning plan (the *existing plan*) in respect of an area; and
  - (b) prepare a new zoning plan in respect of that area;
- only if:
- (c) the existing plan has been in operation for at least 7 years; or
  - (d) if the existing plan has been amended under this section—the most recent of those amendments has been in operation for at least 7 years.

The revocation does not take effect until the new plan comes into operation.

- (4) The Authority must not publish a notice under section 32C in relation to:
- (a) the proposed revocation of a zoning plan in respect of an area; and
  - (b) a proposed new zoning plan in respect of that area;
- unless the Minister has approved the publication of the notice. The Minister's approval cannot be sought until after the end of the period applicable under subsection (3) of this section.

Note: Section 32C applies to this situation because of subsection (8) of this section.

*Revocation is a legislative instrument*

- (4A) A revocation of a zoning plan, prepared by the Authority and accepted by the Minister, is a legislative instrument made by the Minister on the day on which the revocation is accepted, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the revocation.

*Report*

- (5) The Authority must prepare a report setting out the reasons for the action it proposes to take under subsection (1) or (3). The report must refer to the relevant environmental, economic and social information on which those reasons were based.

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*Report to be publicly available*

- (6) The Authority must make the report publicly available.

*Report is not a legislative instrument*

- (7) The report is not a legislative instrument.

*Application of sections 32 to 35C and 35E to 35G*

- (8) Subject to subsection (9) of this section, sections 32 to 35C and 35E to 35G apply in relation to action referred to in subsection (1) or (3) of this section in the same way as they apply to a zoning plan required to be prepared in accordance with this Division.

*Additional obligation for amendment or revocation of zoning plan*

- (9) The notice published under section 32C in relation to action referred to in subsection (1) or (3) of this section must also specify that a report prepared under subsection (5) of this section is publicly available and how a copy may be obtained.

**37A Amendment of zoning plan—typographical errors**

- (1) The Authority may, with the Minister's approval, amend a zoning plan in respect of an area to correct typographical errors.
- (2) Subsections 35E(1) and (2) and section 35F apply in relation to the amendment in the same way as they apply to a zoning plan that has been accepted under section 35C.
- (3) An amendment of a zoning plan, prepared by the Authority and approved by the Minister, is a legislative instrument made by the Minister on the day on which the amendment is approved, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the amendment.

### **Division 3—Duty to prevent or minimise harm to environment in Marine Park**

#### **37AA Duty to prevent or minimise harm to environment in Marine Park**

- (1) A person who uses or enters the Marine Park must take all reasonable steps to prevent or minimise harm to the environment in the Marine Park that might or will be caused by the person's use or entry.

Note: The Minister may accept an enforceable undertaking under section 61ABA, or make an enforceable direction under section 61ADA, in relation to a contravention of this duty.

- (2) For the purposes of subsection (1), *harm* includes the following:
- (a) any adverse effect;
  - (b) direct or indirect harm;
  - (c) harm to which the person's use or entry has contributed, to any extent (whether or not other matters have contributed to the harm).
- (3) In determining whether all reasonable steps have been taken, have regard to the following:
- (a) the nature of the harm to the environment that might or will result from the person's use or entry;
  - (b) the risk of harm from the person's use or entry;
  - (c) the sensitivity of the environment that might or will be affected by the person's use or entry;
  - (d) if the person is using or entering a zone—any objectives specified for the zone in its zoning plan;
  - (e) the practicalities, including cost, of steps that will prevent or minimise the harm;
  - (f) whether or not the person's use or entry complies with the laws applying in the Marine Park in relation to the environment or natural resources;
  - (g) whether or not the person's use or entry complies with any relevant code of practice, standard or guideline;

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- (h) whether or not the person's use or entry is in accordance with any conditions of a permission granted under the regulations for the purposes of a zoning plan or a provision of this Act.

## **Division 4—Relationship with the Environment Protection and Biodiversity Conservation Act 1999**

### **37AB Actions affected by the *Environment Protection and Biodiversity Conservation Act 1999***

(1) If:

- (a) a proposal to take an action is referred to the Minister under Division 1 of Part 7 of the *Environment Protection and Biodiversity Conservation Act 1999*; and
- (b) the action, or a component of the action, involves doing a thing that would be an offence against this Act if done without a permission under the regulations;

the referral is taken to be an application made in accordance with the regulations for that permission.

Note: A subsequent decision under the *Environment Protection and Biodiversity Conservation Act 1999* that the action is not a controlled action does not affect an application that is taken to have been made because of subsection (1).

(2) The Authority, or an agency that has responsibility under a zoning plan for granting permissions, must not grant a person permission under the regulations to do a thing if:

- (a) the thing is, or is part of, an action that is a controlled action for the purposes of the *Environment Protection and Biodiversity Conservation Act 1999*; and
- (b) the Minister has not decided under Part 9 of the *Environment Protection and Biodiversity Conservation Act 1999* to approve the taking of the action by the person for the purposes of each provision that is, for the purposes of that Act, a controlling provision for the action.

### **37AC Great Barrier Reef Region not to be reserved under the *Environment Protection and Biodiversity Conservation Act 1999***

The Governor-General must not make a Proclamation under section 344 of the *Environment Protection and Biodiversity Conservation Act 1999* declaring an area in the Great Barrier Reef Region to be a Commonwealth reserve under that Act.

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## **Part VAA—Offences and penalties in relation to Great Barrier Reef Marine Park and Region**

### **Division 1—Conduct in Great Barrier Reef Region**

#### **38AA Mining or geological storage operations in Great Barrier Reef Region: offence**

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct is mining operations or geological storage operations; and
  - (c) the conduct is engaged in in the Great Barrier Reef Region; and
  - (d) the person is not authorised to engage in the conduct by:
    - (i) a permission granted under the regulations for the purposes of this section; or
    - (ii) an authority given in accordance with a condition of a permission referred to in subparagraph (i).

Penalty:

- (a) for an aggravated offence—imprisonment for 3 years or 2,000 penalty units, or both; or
- (b) in any other case—1,000 penalty units.

Note: See also Division 8.

- (2) Strict liability applies to paragraphs (1)(c) and (d).

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

- (3) The Authority must not grant a person permission to engage in conduct for the purposes of this section unless the Authority is satisfied that the conduct is for the purpose of research or investigations relevant to the conservation of the Marine Park.
- (4) Subsection (1) does not apply if:
- (a) the person is the Authority; and



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- (b) the Authority is engaging in the conduct for the purpose of research or investigations relevant to the conservation of the Marine Park.
- (5) This section applies despite any other law of the Commonwealth, a State or a Territory.

**38AB Mining or geological storage operations in Great Barrier Reef Region: civil penalty provision**

- (1) A person must not engage in mining operations or geological storage operations in the Great Barrier Reef Region unless the person is authorised to engage in the operations by:
    - (a) a permission granted under the regulations for the purposes of section 38AA; or
    - (b) an authority given in accordance with a condition of a permission referred to in paragraph (a).
- Civil penalty:
- (a) for an aggravated contravention by an individual—5,000 penalty units; or
    - (b) for an individual in any other case—2,000 penalty units; or
    - (c) for an aggravated contravention by a body corporate—50,000 penalty units; or
    - (d) for a body corporate in any other case—20,000 penalty units.
  - (2) Subsection (1) does not apply if:
    - (a) the person is the Authority; and
    - (b) the Authority is engaging in the operations for the purpose of research or investigations relevant to the conservation of the Marine Park.

## **Division 2—Conduct in Marine Park zones**

### **38BA Conduct in zone: offence**

*Conduct prohibited or done without required permission*

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct is engaged in in a zone; and
  - (c) under the zoning plan for the zone, the conduct:
    - (i) is prohibited; or
    - (ii) requires permission; and
- Note: **Prohibited** is defined in subsection 3(1).
- (d) if the conduct requires permission—the person is not authorised to engage in the conduct by:
- (i) a permission granted under the regulations for the purposes of the zoning plan; or
  - (ii) an authority given in accordance with a condition of a permission referred to in subparagraph (i).

Penalty:

- (a) for an aggravated offence—imprisonment for 3 years or 2,000 penalty units, or both; or
- (b) in any other case—1,000 penalty units.

Note: See also Division 8.

- (2) Strict liability applies to paragraphs (1)(b), (c) and (d).

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

*Conduct prohibited or done without required permission: strict liability*

- (3) A person commits an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct is engaged in in a zone; and
  - (c) under the zoning plan for the zone, the conduct:
    - (i) is prohibited; or
    - (ii) requires permission; and

Note: **Prohibited** is defined in subsection 3(1).

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- (d) if the conduct requires permission—the person is not authorised to engage in the conduct by:
  - (i) a permission granted under the regulations for the purposes of the zoning plan; or
  - (ii) an authority given in accordance with a condition of a permission referred to in subparagraph (i).

Penalty: 60 penalty units.

- (4) Strict liability applies to subsection (3).

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

*Defence—prescribed circumstances*

- (5) Subsections (1) and (3) do not apply if circumstances prescribed by the regulations for the purposes of this subsection exist in relation to the conduct. Any circumstances prescribed must relate to:
  - (a) conduct engaged in during the period of 120 days after the day on which the zoning plan, or an amendment of the zoning plan, commenced; or
  - (b) conduct engaged in after the end of that period if the person had applied for a permission for the purposes of the zoning plan during that period.

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

**38BB Conduct in zone: civil penalty provision**

- (1) A person must not engage in conduct in a zone that is prohibited under the zoning plan for the zone.

Note: ***Prohibited*** is defined in subsection 3(1).

Civil penalty:

- (a) for an aggravated contravention by an individual—5,000 penalty units; or
- (b) for an individual in any other case—2,000 penalty units; or
- (c) for an aggravated contravention by a body corporate—50,000 penalty units; or
- (d) for a body corporate in any other case—20,000 penalty units.

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- (2) A person must not engage in conduct in a zone if:
- (a) under the zoning plan for the zone, the conduct requires permission; and
  - (b) the person is not authorised to engage in the conduct by:
    - (i) a permission granted under the regulations for the purposes of the zoning plan; or
    - (ii) an authority given in accordance with a condition of a permission referred to in subparagraph (i).

Civil penalty:

- (a) for an aggravated contravention by an individual—5,000 penalty units; or
  - (b) for an individual in any other case—2,000 penalty units; or
  - (c) for an aggravated contravention by a body corporate—50,000 penalty units; or
  - (d) for a body corporate in any other case—20,000 penalty units.
- (3) Subsections (1) and (2) do not apply if circumstances prescribed for the purposes of subsection 38BA(5) exist in relation to the conduct.

**38BC Conduct in zone without required notice: offence**

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct is engaged in in a zone; and
  - (c) the zoning plan for the zone requires that notice must be given to a specified body before the conduct is engaged in; and
  - (d) the person failed to give the specified body notice in accordance with the zoning plan before engaging in the conduct.

Penalty: 200 penalty units.

- (2) Strict liability applies to paragraphs (1)(b) and (c).

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

- (3) The fault element for paragraph (1)(d) is negligence.

Note: For negligence, see section 5.5 of the *Criminal Code*.

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**38BD Operation of fishing vessel in zone: offence**

*Operation of a fishing vessel prohibited or done without permission*

- (1) A person commits an offence if:
- (a) the person operates a vessel; and
  - (b) the person does so in a zone; and
  - (c) the vessel is a primary commercial fishing vessel; and
  - (d) the vessel is an Australian vessel; and
  - (e) the vessel is authorised, under a law of the Commonwealth or of a State (including by a licence granted under such a law), to fish using a particular fishing method or particular fishing apparatus; and
  - (f) under the zoning plan for the zone, fishing using that method or apparatus:
    - (i) is prohibited; or
    - (ii) requires permission; and
- Note: **Prohibited** is defined in subsection 3(1).
- (g) if it requires permission—the person is not authorised to fish using that method or apparatus by:
- (i) a permission granted under the regulations for the purposes of the zoning plan; or
  - (ii) an authority given in accordance with a condition of a permission referred to in subparagraph (i).

Penalty: 500 penalty units.

- (2) Strict liability applies to paragraphs (1)(b), (c), (f) and (g).

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

- (3) Absolute liability applies to paragraphs (1)(d) and (e).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

*Defence—vessel is transiting or anchoring*

- (4) Subsection (1) does not apply if:
- (a) the vessel is transiting through the zone; or
  - (b) the vessel is anchored in the zone; or

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- (c) the vessel is transiting to a place where the vessel is to anchor or transiting from a place where the vessel has been anchored.

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

- (5) For the purposes of subsection (4), a vessel is only ***transiting*** if:
  - (a) the vessel is taking the most direct practicable route:
    - (i) through the zone to a destination outside the zone; or
    - (ii) to or from a place of anchor; and
  - (b) the vessel is maintaining a speed of at least 5 knots.

*Defence—emergency or unavoidable accident*

- (6) Subsection (1) does not apply if:
  - (a) the operation of the vessel in the zone:
    - (i) is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or
    - (ii) is a result of an unavoidable accident, other than an accident caused by reckless or negligent behaviour; and
  - (b) the Authority is notified of the operation, and the emergency or accident, no more than 48 hours after the vessel was first operated in the zone.

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

## **Division 3—Conduct in unzoned area of Marine Park**

### **38CA Conduct in unzoned area: offence**

- (1) A person commits an offence if the person engages in any of the following conduct in the unzoned area:
- (a) building, assembling or fixing in position:
    - (i) a building or similar structure; or
    - (ii) a pontoon or other floating structure; or
    - (iii) a walkway, mooring facility or similar structure; or
    - (iv) a device for catching marine animals;
  - (b) operating a vessel (see subsection (3)) with provision for more than 8 sleeping berths in the one vicinity for more than:
    - (i) 14 consecutive days; or
    - (ii) 30 days in any period of 60 days;
  - (c) carrying out reclamation work, beach protection work, road building work or any other work;
  - (d) constructing a landing area;
  - (e) constructing a farming facility;
  - (f) conducting operations in or on, or maintaining:
    - (i) a building or similar structure; or
    - (ii) a pontoon or other floating structure; or
    - (iii) a walkway, mooring facility or similar structure;
  - (g) maintaining a device for catching marine animals;
  - (h) demolishing or removing:
    - (i) a building or similar structure; or
    - (ii) a pontoon or other floating structure; or
    - (iii) a walkway, mooring facility or similar structure;
- and the person is not authorised to engage in the conduct by:
- (i) a permission granted under the regulations for the purposes of this section; or
  - (j) an authority given in accordance with a condition of a permission referred to in paragraph (i).

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Penalty:

- (a) for an aggravated offence—imprisonment for 3 years or 2,000 penalty units, or both; or
- (b) in any other case—1,000 penalty units.

Note: See also Division 8.

- (2) Strict liability applies to the physical element of circumstance in subsection (1), that the person engages in the conduct in the unzoned area.

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

- (3) The references in subsection (1) and section 38CB to operating a vessel include references to the following:
  - (a) conducting operations in or on the vessel;
  - (b) using the vessel as a base for carrying on other activities;
  - (c) carrying out maintenance of the vessel.

### **38CB Conduct in unzoned area: civil penalty provision**

A person must not engage in any of the following conduct in the unzoned area:

- (a) building, assembling or fixing in position:
  - (i) a building or similar structure; or
  - (ii) a pontoon or other floating structure; or
  - (iii) a walkway, mooring facility or similar structure; or
  - (iv) a device for catching marine animals;
- (b) operating a vessel (see subsection 38CA(3)) with provision for more than 8 sleeping berths in the one vicinity for more than:
  - (i) 14 consecutive days; or
  - (ii) 30 days in any period of 60 days;
- (c) carrying out reclamation work, beach protection work, road building work or any other work;
- (d) constructing a landing area;
- (e) constructing a farming facility;
- (f) conducting operations in or on, or maintaining:
  - (i) a building or similar structure; or
  - (ii) a pontoon or other floating structure; or
  - (iii) a walkway, mooring facility or similar structure;



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- (g) maintaining a device for catching marine animals;
  - (h) demolishing or removing:
    - (i) a building or similar structure; or
    - (ii) a pontoon or other floating structure; or
    - (iii) a walkway, mooring facility or similar structure;
- unless the person is authorised to engage in the conduct by:
- (i) a permission granted under the regulations for the purposes of section 38CA; or
  - (j) an authority given in accordance with a condition of a permission referred to in paragraph (i).

Civil penalty:

- (a) for an aggravated contravention by an individual—20,000 penalty units; or
- (b) for an individual in any other case—2,000 penalty units; or
- (c) for an aggravated contravention by a body corporate—50,000 penalty units; or
- (d) for a body corporate in any other case—5,000 penalty units.

## **Division 3A—Convictions under former section 38CA**

### **38CC Convictions under former section 38CA**

- (1) Despite any other Commonwealth law or any State law or Territory law, if a person was convicted for an offence under section 38CA of the *Great Barrier Reef Marine Park Act 1975*:
  - (a) that occurred during the period 1 July 2004 to 14 December 2006; and
  - (b) that did not attract a monetary penalty exceeding \$5,000;that conviction is for all purposes to be treated as a spent conviction under Part VIIC of the *Crimes Act 1914*.
- (2) For the avoidance of doubt, a conviction referred to in subsection (1) is to be treated as a spent conviction whether or not the waiting period for the offence under Part VIIC of the *Crimes Act 1914* has ended.
- (3) Despite Division 3 of Part VIIC of the *Crimes Act 1914*, the exclusions provided by Division 6 of Part VIIC of the *Crimes Act 1914* do not apply in relation to a conviction referred to in subsection (1).

## **Division 4—Conduct in Marine Park generally**

### **38DA Vessel causing damage in Marine Park: offence**

- (1) A person commits an offence if:
- (a) the person is in charge of a vessel; and
  - (b) the vessel is in the Marine Park; and
  - (c) the person's charge of the vessel results in, or is likely to result in, the vessel causing damage to the environment in the Marine Park.

Penalty:

- (a) for an aggravated offence—imprisonment for 3 years or 2,000 penalty units, or both; or
- (b) in any other case—1,000 penalty units.

Note: See also Division 8.

- (2) Strict liability applies to paragraph (1)(b).

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

- (3) The fault element for paragraph (1)(c) is negligence.

Note: For negligence, see section 5.5 of the *Criminal Code*.

### **38DB Vessel causing damage in Marine Park: civil penalty provision**

A person who is in charge of a vessel that is in the Marine Park must ensure that the person's charge of the vessel does not result in, and is not likely to result in, the vessel causing damage to the environment in the Marine Park.

Civil penalty:

- (a) for an aggravated contravention by an individual—20,000 penalty units; or
- (b) for an individual in any other case—2,000 penalty units; or
- (c) for an aggravated contravention by a body corporate—50,000 penalty units; or
- (d) for a body corporate in any other case—5,000 penalty units.

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**38DC Contravening order or direction: offence**

- (1) A person commits an offence if:
- (a) the Authority or another body gives the person an order or direction under the regulations; and
  - (b) the order or direction is of a kind declared by the regulations to be an order or direction to which this section applies; and
  - (c) the person engages in conduct; and
  - (d) the conduct contravenes the order or direction.

Penalty: 500 penalty units.

- (2) Absolute liability applies to paragraphs (1)(a) and (b).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

- (3) The fault element for paragraph (1)(d) is negligence.

Note: For negligence, see section 5.5 of the *Criminal Code*.

**38DD Discharging waste: offence**

*Discharging waste*

- (1) A person commits an offence if:
- (a) the person discharges waste; and
  - (b) the waste is discharged in the Marine Park; and
  - (c) the person is not authorised to discharge the waste by:
    - (i) a permission granted under the regulations for the purposes of this section; or
    - (ii) an authority given in accordance with a condition of a permission referred to in subparagraph (i).

Penalty:

- (a) for an aggravated offence—imprisonment for 3 years or 2,000 penalty units, or both; or
- (b) in any other case—1,000 penalty units.

Note: See also Division 8.

- (2) The fault element for paragraph (1)(a) is negligence.

Note: For negligence, see section 5.5 of the *Criminal Code*.

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- (3) Strict liability applies to paragraphs (1)(b) and (c).

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

*Discharging waste: strict liability*

- (4) A person commits an offence if:
- (a) the person discharges waste; and
  - (b) the waste is discharged from a vessel; and
  - (c) the waste is discharged in the Marine Park; and
  - (d) the person is not authorised to discharge the waste by:
    - (i) a permission granted under the regulations for the purposes of this section; or
    - (ii) an authority given in accordance with a condition of a permission referred to in subparagraph (i).

Penalty: 500 penalty units.

- (5) Strict liability applies to subsection (4).

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

*Defence—prescribed circumstances*

- (6) Subsections (1) and (4) do not apply if circumstances prescribed by the regulations for the purposes of this subsection exist in relation to the discharge. Any circumstances prescribed must be circumstances that relate to the discharge of sewage from vessels.

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—certain discharges of fish from vessels and aircraft*

- (7) Subsections (1) and (4) do not apply to the discharge of waste from a vessel or aircraft if:
- (a) the waste is fresh fish, or parts of fresh fish, caught in the Marine Park; and
  - (b) the waste is not discharged in a part of the Marine Park specified in the regulations for the purposes of this paragraph.

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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*Defence—certain discharges from vessels, aircraft and platforms*

- (8) Subsections (1) and (4) do not apply to the discharge of waste from a vessel, aircraft or platform if any of the following apply in relation to the discharge:
- (a) it was for the purpose of securing the safety of the vessel, aircraft or platform;
  - (b) it was for the purpose of saving life at sea;
  - (c) it was for the purpose of combating a specific incident of pollution in order to minimise the damage from pollution and had been approved by:
    - (i) a prescribed officer within the meaning of subsection 3(2) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*; or
    - (ii) the Authority under section 38DE.

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—discharge in zone where discharges do not require permission*

- (9) Subsections (1) and (4) do not apply in relation to the discharge of waste in a zone if the discharge of waste is for a purpose for which, under the zoning plan for the zone, the zone may be used or entered without permission.

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

**38DE Pollution-related approval**

For the purposes of subparagraphs 38DD(8)(c)(ii), 38EA(7)(c)(ii) and 38EB(3)(c)(ii), the Authority may approve a proposed discharge of waste from a vessel, aircraft or platform if the Authority is satisfied that the discharge is for the purpose of combating a specific incident of pollution in order to minimise the damage from pollution.

## **Division 5—Conduct contravening conditions**

### **38EA Conduct contravening condition of permission or authority: offence**

#### *Contravening condition of permission or authority*

- (1) A person commits an offence if:
- (a) the person is authorised to do something by:
    - (i) a permission granted under the regulations for the purposes of a provision of this Act or of a zoning plan; or
    - (ii) an authority given in accordance with a condition of a permission referred to in subparagraph (i); and
  - (b) the permission is subject to a condition; and
  - (c) the person engages in conduct; and
  - (d) the conduct contravenes the condition.

#### Penalty:

- (a) for an aggravated offence—1,000 penalty units; or
  - (b) in any other case—500 penalty units.
- (2) Absolute liability applies to paragraphs (1)(a) and (b).
- Note: For absolute liability, see section 6.2 of the *Criminal Code*.
- (3) The fault element for paragraph (1)(d) is negligence.
- Note: For negligence, see section 5.5 of the *Criminal Code*.

#### *Contravening condition of permission or authority: strict liability*

- (4) A person commits an offence if:
- (a) the person is authorised to do something by:
    - (i) a permission granted under the regulations for the purposes of a provision of this Act or of a zoning plan; or
    - (ii) an authority given in accordance with a condition of a permission referred to in subparagraph (i); and
  - (b) the permission is subject to a condition; and
  - (c) the person engages in conduct; and

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(d) the conduct contravenes the condition.

Penalty: 60 penalty units.

(5) Strict liability applies to subsection (4).

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

*Defence—certain discharges of fish from vessels and aircraft*

(6) Subsections (1) and (4) do not apply to the discharge of waste from a vessel or aircraft if:

- (a) the waste is fresh fish, or parts of fresh fish, caught in the Marine Park; and
- (b) the waste is not discharged in a part of the Marine Park specified in the regulations for the purposes of this paragraph.

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—certain discharges from vessels, aircraft and platforms*

(7) Subsections (1) and (4) do not apply to the discharge of waste from a vessel, aircraft or platform if any of the following apply in relation to the discharge:

- (a) it was for the purpose of securing the safety of the vessel, aircraft or platform;
- (b) it was for the purpose of saving life at sea;
- (c) it was for the purpose of combating a specific incident of pollution in order to minimise the damage from pollution and had been approved by:
  - (i) a prescribed officer within the meaning of subsection 3(2) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*; or
  - (ii) the Authority under section 38DE.

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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**38EB Conduct contravening condition of permission or authority:  
civil penalty provision**

- (1) A person who is authorised to do something by:
- (a) a permission granted under the regulations for the purposes of a provision of this Act or of a zoning plan; or
  - (b) an authority given in accordance with a condition of a permission referred to in paragraph (a);
- must not engage in conduct that contravenes a condition of the permission.
- Civil penalty:
- (a) for an aggravated contravention by an individual—2,000 penalty units; or
  - (b) for an individual in any other case—1,000 penalty units; or
  - (c) for an aggravated contravention by a body corporate—20,000 penalty units; or
  - (d) for a body corporate in any other case—10,000 penalty units.
- (2) Subsection (1) does not apply to the discharge of waste from a vessel or aircraft if:
- (a) the waste is fresh fish, or parts of fresh fish, caught in the Marine Park; and
  - (b) the waste is not discharged in a part of the Marine Park specified in the regulations for the purposes of this paragraph.
- (3) Subsection (1) does not apply to the discharge of waste from a vessel, aircraft or platform if any of the following apply:
- (a) it was for the purpose of securing the safety of the vessel, aircraft or platform;
  - (b) it was for the purpose of saving life at sea;
  - (c) it was for the purpose of combating a specific incident of pollution in order to minimise the damage from pollution and had been approved by:
    - (i) a prescribed officer within the meaning of subsection 3(2) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*; or
    - (ii) the Authority under section 38DE.

## **Division 6—Collective and vicarious liability**

### **38FA Liability for vessel, aircraft or platform used in committing offence: offence**

- (1) A person commits an offence if:
- (a) a person is responsible (see subsection (4)) for a vessel, aircraft or platform; and
  - (b) the vessel, aircraft or platform is used in committing an offence against a provision of another Division of this Part; and
  - (c) the person failed to take all reasonable steps and to exercise due diligence to prevent the vessel, aircraft or platform being used in committing the offence.

**Penalty:** The penalty for which the person would have been liable had the person committed the offence referred to in paragraph (1)(b).

**Note:** See also Division 8.

- (2) Strict liability applies to paragraphs (1)(a) and (b).

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

- (3) In determining whether the person took all reasonable steps and exercised due diligence for the purposes of paragraph (1)(c), have regard to:
- (a) any steps the person took to become satisfied that this Act would be complied with; and
  - (b) if the person was, or should have been, aware that there was a risk that the vessel, aircraft or platform would be used in committing an offence—any steps the person took to reduce or remove that risk.
- (4) For the purposes of paragraph (1)(a), each of the following persons is **responsible** for the vessel, aircraft or platform:
- (a) the master of the vessel or the person in charge of the aircraft or platform;
  - (b) the owner or a co-owner, or an owner of any part of or share in, the vessel, aircraft or platform;

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- (c) a party to an agreement with a person referred to in paragraph (a) or (b) under which the party, or the party and the other person, may determine the activities for which the vessel, aircraft or platform is used;
- (d) in relation to a primary commercial fishing vessel used in committing an offence constituted by conduct that is fishing:
  - (i) a person who, under a law of the Commonwealth, a State or Territory, holds a licence or other permission (however described and including one that is suspended) permitting the vessel to be used to take fish for commercial purposes; and
  - (ii) a person who, under a law of the Commonwealth, a State or Territory, holds a licence or other permission (however described and including one that is suspended) permitting the person to be in charge of the vessel's fishing operations;
- (e) in relation to a dory used in committing an offence constituted by conduct that is fishing:
  - (i) the master of the primary commercial fishing vessel in association with which the dory is used; and
  - (ii) a person who, under a law of the Commonwealth, a State or a Territory, holds a licence or other permission (however described and including one that is suspended) permitting the dory to be used in association with a primary commercial fishing vessel; and
  - (iii) a person who, under a law of the Commonwealth, a State or a Territory, holds a licence or other permission (however described and including one that is suspended) permitting the primary commercial fishing vessel in association with which the dory is used to be used to take fish for commercial purposes; and
  - (iv) a person who, under a law of the Commonwealth, a State or a Territory, holds a licence or other permission (however described and including one that is suspended) permitting the person to be in charge of the fishing operations of the primary commercial fishing vessel in association with which the dory is used.

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**38FB Liability for ship used in committing offence: offence**

- (1) A person commits an offence if:
- (a) the person is an owner of or the master of a vessel; and
  - (b) the vessel is used in committing an offence against a provision of another Division of this Part; and
  - (c) the conduct constituting the offence is engaged in in a zone; and
  - (d) the vessel is a ship within the meaning of the zoning plan for the zone.

Penalty: 500 penalty units.

- (2) Strict liability applies to subsection (1).

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

**38FC Liability for vessel causing damage in Marine Park: offence**

- (1) A person commits an offence if:
- (a) the person is an owner of or the master of a vessel; and
  - (b) the vessel is used in committing an offence against section 38DA (vessel causing damage in Marine Park) or 38DD (discharging waste).

Penalty: 500 penalty units.

- (2) Strict liability applies to subsection (1).

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

**38FD Liability of permission holder for conduct contravening permission: offence**

- (1) A person commits an offence if:
- (a) the person gives another person authority to engage in conduct; and
  - (b) the authority is given in accordance with a permission granted under the regulations for the purposes of a provision of this Act or of a zoning plan; and
  - (c) the permission is subject to a condition; and
  - (d) the other person commits an offence against section 38EA involving a contravention of the condition; and
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- (e) the person failed to take all reasonable steps and to exercise due diligence to prevent the other person contravening the condition.

Penalty: The penalty for which the person would have been liable had the person committed the offence referred to in paragraph (1)(d).

- (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) In determining whether the person took all reasonable steps and exercised due diligence for the purposes of paragraph (1)(e), have regard to:
  - (a) any steps the person took to become satisfied that the conditions of the permission would be complied with; and
  - (b) if the person was, or should have been, aware that there was a risk that the other person would contravene a condition of the permission—any steps the person took to reduce or remove that risk.

## **Division 7—Aggravated offences and contraventions**

### **38GA Aggravated offences**

- (1) A person commits an *aggravated offence* against a provision of this Part if the conduct the person engaged in that constituted the offence:
  - (a) was fishing that involved a primary commercial fishing vessel or a dory; or
  - (b) was navigating a vessel that is a ship within the meaning of the zoning plan for the zone in which the vessel was being navigated; or
  - (c) resulted in:
    - (i) the taking of or injury to an animal or plant that is a member of a protected species; or
    - (ii) serious harm to the environment in the Marine Park (see subsection (7)); or
  - (d) had the potential to result in serious harm to the environment in the Marine Park (see subsection (8)); or
  - (e) was done for a commercial purpose.
- (2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.
- (3) In order to prove an aggravated offence, the prosecution must prove the following:
  - (a) if paragraph (1)(a) applies—that the defendant was reckless as to whether the conduct he or she engaged in was fishing;
  - (b) if paragraph (1)(b) applies—that the defendant was reckless as to whether the conduct he or she engaged in was navigating a vessel;
  - (c) if paragraph (1)(c) applies—that the defendant was reckless as to whether the conduct he or she engaged in had the result referred to in paragraph (1)(c);
  - (d) if paragraph (1)(d) applies—that the defendant was reckless as to whether the conduct he or she engaged in had the potential to result in serious harm to the environment in the Marine Park;

- (e) if paragraph (1)(e) applies—that the defendant intended to engage in the conduct for a commercial purpose.
- (4) Strict liability applies to:
  - (a) if paragraph (1)(a) applies—the physical element of circumstance, that the fishing involved a primary commercial fishing vessel or a dory; and
  - (b) if paragraph (1)(b) applies—the physical element of circumstance, that the vessel is a ship within the meaning of the zoning plan for the zone in which it was being navigated; and
  - (c) if subparagraph (1)(c)(i) applies—the physical element of circumstance, that the animal or plant is a member of a protected species.
- Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (5) If, in a prosecution for an aggravated offence against a provision of this Part, the trier of fact:
  - (a) is not satisfied that the defendant has committed an aggravated offence against that provision; and
  - (b) is satisfied beyond reasonable doubt that the defendant has committed an offence against that provision;the trier of fact may find the defendant not guilty of the aggravated offence but guilty of an offence against that provision.
- (6) For the purposes of paragraph (1)(b), **navigate** includes moor, or anchor, in the course of navigation.
- (7) In determining for the purposes of subparagraph (1)(c)(ii) whether conduct has resulted in serious harm to the environment in the Marine Park, have regard to the following:
  - (a) the harm;
  - (b) the size of the affected environment;
  - (c) the sensitivity of the affected environment;
  - (d) the significance of the affected environment;
  - (e) the management objectives contained in the zoning plan for the zone in which the person engaged in the conduct;
  - (f) whether the harm is irreversible;
  - (g) the measures required to remedy the harm.

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- (8) In determining for the purposes of paragraph (1)(d) whether conduct had the potential to result in serious harm to the environment in the Marine Park, have regard to the potential for the conduct to result in serious harm for the purposes of subparagraph (1)(c)(ii).

**38GB Aggravated contraventions**

- (1) A contravention of a civil penalty provision by a person is an ***aggravated contravention*** if the conduct the person engaged in that constituted the contravention:
- (a) was fishing that involved a primary commercial fishing vessel or a dory; or
  - (b) was navigating a vessel that is a ship within the meaning of the zoning plan for the zone in which the vessel is being navigated; or
  - (c) resulted in:
    - (i) the taking of or injury to an animal or plant that is a member of a protected species; or
    - (ii) serious harm to the environment in the Marine Park; or
  - (d) had the potential to result in serious harm to the environment in the Marine Park; or
  - (e) was done for a commercial purpose.
- (2) If the Authority, on behalf of the Commonwealth, intends to prove that the person has committed an aggravated contravention, the Authority's application to the Federal Court under section 61AIA in relation to the contravention must specify the relevant aggravated contravention.
- (3) If, in proceedings for a declaration of contravention in relation to an aggravated contravention of a provision of this Part, the Federal Court:
- (a) is not satisfied that the person has committed an aggravated contravention against that provision; and
  - (b) is satisfied beyond reasonable doubt that the person has contravened that provision;
- the Federal Court may make a pecuniary penalty order against the person not for the aggravated contravention but for the contravention of that provision.



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- (4) Subsection 38GA(6) (about navigation) also applies for the purposes of paragraph (1)(b).
- (5) Subsections 38GA(7) and (8) (about serious harm) also apply for the purposes of subparagraph (1)(c)(ii) and paragraph (1)(d).

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**Division 8—Miscellaneous**

**38HA Commencement of certain prosecutions: time limit**

- (1) A prosecution of an individual for an offence against a provision of this Part, the maximum penalty for which:
- (a) does not include a term of imprisonment (otherwise than because of section 38HC, 38HD, 38HE or 38HF); or
  - (b) includes a term of imprisonment of 6 months or less;
- may be commenced at any time within 2 years of the commission of the offence.

Note: Subsection (1) extends by a year the deadline that would otherwise apply to these offences under section 15B of the *Crimes Act 1914*. For offences with a maximum penalty of more than 6 months' imprisonment, section 15B of that Act means that there is no deadline.

- (2) A prosecution of a body corporate for an offence against a provision of this Part, the maximum penalty for which is a fine of 150 penalty units or less, may be commenced at any time within 2 years of commission of the offence.

Note: Subsection (2) extends by a year the deadline that would otherwise apply to these offences under section 15B of the *Crimes Act 1914*. For offences with a maximum penalty of more than 150 penalty units, section 15B of that Act means that there is no deadline.

- (3) In applying subsection 15B(1) of the *Crimes Act 1914* to an offence against a provision of this Part, disregard the effect of sections 38HC, 38HD, 38HE and 38HF.

**38HB Commencement of certain prosecutions: Attorney-General's consent**

- (1) Proceedings for an offence committed by a person against a provision of Division 6 of this Part must not be commenced without the Attorney-General's written consent if the person is not an Australian citizen, an Australian resident or a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.
- (2) In deciding whether to consent for the purposes of this section, the Attorney-General must have regard to the obligations of Australia under international law, including obligations under any agreement

or arrangement between Australia and another country or countries.

**38HC Conduct in the exclusive economic zone: offences other than Division 6 offences**

- (1) This section applies in relation to an offence committed by a person against a provision of this Part (other than a provision of Division 6) if:
  - (a) the conduct constituting the offence occurs in the exclusive economic zone of Australia; and
  - (b) none of the following apply:
    - (i) the person is an Australian citizen, an Australian resident or a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory;
    - (ii) an Australian vessel is used in committing the offence;
    - (iii) an Australian aircraft is used in committing the offence;
    - (iv) a platform located in the Great Barrier Reef Region is used in committing the offence; and
  - (c) the penalty set out at the foot of the provision for an offence against the provision includes imprisonment.
- (2) Despite the penalty set out at the foot of the provision, the penalty for the offence committed by the person does not include imprisonment.

**38HD Conduct in the exclusive economic zone: Division 6 offences**

- (1) This section applies in relation to an offence (a *vicarious liability offence*) committed by a person against a provision of Division 6 of this Part if:
  - (a) the conduct constituting the offence (the *underlying offence*) to which the vicarious liability offence relates occurs in the exclusive economic zone of Australia; and
  - (b) the person is not an Australian citizen, an Australian resident or a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
  - (c) the penalty set out at the foot of the provision for an offence against the provision includes imprisonment.

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- (2) Despite the penalty set out at the foot of the provision, the penalty for the offence committed by the person does not include imprisonment.

**38HE Conduct in the territorial sea: offences other than Division 6 offences**

- (1) This section applies in relation to an offence committed by a person against a provision of this Part (other than a provision of Division 6) if:
- (a) the result of the conduct constituting the offence is pollution of the marine environment (however described); and
  - (b) the conduct occurs in the territorial sea of Australia; and
  - (c) none of the following apply:
    - (i) the person is an Australian citizen, an Australian resident or a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory;
    - (ii) an Australian vessel is used in committing the offence;
    - (iii) an Australian aircraft is used in committing the offence;
    - (iv) a platform located in the Great Barrier Reef Region is used in committing the offence; and
  - (d) the penalty set out at the foot of the provision for an offence against that provision includes imprisonment.
- (2) Despite the penalty set out at the foot of the provision, the penalty for the offence committed by the person only includes imprisonment if the prosecution proves that:
- (a) the person intended to engage in the conduct that constituted the offence; and
  - (b) the pollution is serious.

**38HF Conduct in the territorial sea: Division 6 offences**

- (1) This section applies in relation to an offence (a ***vicarious liability offence***) committed by a person against a provision of Division 6 of this Part if:
- (a) the result of the conduct constituting the offence (the ***underlying offence***) to which the vicarious liability offence relates is pollution of the marine environment (however described); and

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- (b) the conduct constituting the underlying offence occurs in the territorial sea of Australia; and
  - (c) the person is not an Australian citizen, an Australian resident or a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
  - (d) the penalty set out at the foot of the provision for an offence against that provision includes imprisonment.
- (2) Despite the penalty set out at the foot of the provision, the penalty for the offence committed by the person only includes imprisonment if the prosecution proves that:
- (a) the person who engaged in the conduct that constituted the underlying offence intended to engage in that conduct; and
  - (b) the pollution is serious.

## **Part VA—Collection of environmental management charge**

### **Division 1—Object**

#### **39A Object**

The object of this Part is to make provision with respect to liability to, and collection of, charge imposed by:

- (a) the *Great Barrier Reef Marine Park (Environmental Management Charge—General) Act 1993*; and
- (b) the *Great Barrier Reef Marine Park (Environmental Management Charge—Excise) Act 1993*.

#### **39AA Definitions**

In this Part:

***collected amount*** means an amount that is collected by a holder of a chargeable permission from a visitor on account of charge payable by the visitor.

***penalty amount*** means an amount payable under subsection 39FA(2).

***visitor*** has the meaning given by the regulations.

## **Division 2—Liability to charge**

### **39B Liability to charge**

#### *Liability*

- (1) If a chargeable permission is granted or transferred to a person, then whomever of the following persons is prescribed by the regulations is liable to pay a charge on the grant or transfer:
  - (a) the person who is the holder of the chargeable permission;
  - (b) a visitor who is provided a service by the holder of the chargeable permission under the permission.

#### *Grants or transfers before commencement date*

- (2) A reference in subsection (1) to the grant or transfer of a chargeable permission to a person includes a reference to a grant or transfer that occurs before the date of commencement of this section, where the chargeable permission is in force and held by the person on or after that date.

### **39C Amount of charge**

- (1) The amount of charge is the amount ascertained in accordance with the regulations.
- (2) Without limiting subsection (1), the regulations may provide that the amount of the charge imposed on the grant or transfer of a chargeable permission may be calculated wholly or partly by reference to things which happen during the period:
  - (a) beginning on the later of the following days:
    - (i) the date of commencement of this section;
    - (ii) the date of the grant or transfer of the chargeable permission; and
  - (b) ending on the day on which the chargeable permission ceases to be in force.

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**39D Chargeable permission held jointly—joint and several liability of holders**

If 2 or more persons (the *holders*) are liable to pay the same charge because a chargeable permission is held by them jointly, the holders are jointly and severally liable to pay the charge.

**39DA Payment of charge by chargeable permission holders**

Charge payable by a holder of a chargeable permission is payable to the Authority on behalf of the Commonwealth.

**39DB Payment of charge by visitors**

Charge payable by a visitor in relation to a chargeable permission is payable to the holder of the chargeable permission on behalf of the Commonwealth.

Note: Under Division 2A, the holder is required to collect charge payable by a visitor and pay it to the Authority.

**39E When charge due for payment**

- (1) Charge is due and payable at such time as is ascertained in accordance with the regulations.
- (2) The regulations may provide that different parts of the same charge are due and payable at different times.
- (3) The regulations may provide that charge is due and payable at different times for visitors and holders of chargeable permissions.

**39F Payment of charge by instalments**

- (1) The regulations may make provision for and in relation to the payment of charge, or different parts of the same charge, by instalments.
- (2) If the regulations so provide, charge is due and payable accordingly.



**Division 2A—Collected amounts****39FA Chargeable permission holders must collect charge payable by visitors***Offence for failing to collect charge*

- (1) If:
- (a) a holder of a chargeable permission provides a service to a visitor under the permission; and
  - (b) charge is due and payable by the visitor in relation to the permission;
- then the holder must collect the charge from the visitor.

Penalty: 50 penalty units.

*Civil penalty for failing to collect charge*

- (1A) A holder of a chargeable permission must not fail to collect charge from a visitor if:
- (a) the holder provides a service to the visitor under the permission; and
  - (b) charge is due and payable by the visitor in relation to the permission.

Civil penalty:

- (a) for an individual—100 penalty units; or
- (b) for a body corporate—500 penalty units.

*Penalty for failing to collect charge*

- (2) A holder of a chargeable permission who does not collect charge as required by subsections (1) and (1A) must pay to the Authority, on behalf of the Commonwealth, a penalty (the **penalty amount**) equal to the amount of the charge.
- (3) The penalty amount is due and payable at the time when, if the charge had become a collected amount, the holder would have had to pay the collected amount to the Authority.
- (4) If 2 or more persons (the **holders**) are liable to pay the same penalty amount because a chargeable permission is held by them

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jointly, the holders are jointly and severally liable to pay the penalty amount.

- (5) The penalty amount is in addition to any penalty imposed by a court for an offence against subsection (1) or for a contravention of subsection (1A).
- (6) If a person is convicted before a court of an offence against subsection (1) or a court makes a declaration of contravention against a person for a contravention of subsection (1A), the court may order the person to pay to the Authority, on behalf of the Commonwealth, an amount equal to the sum of:
  - (a) a penalty amount that the person is liable to pay; and
  - (b) a late payment penalty that is payable by the person on the penalty amount.
- (7) An amount a person is ordered to pay under subsection (6) is in addition to the penalty imposed on the person for an offence against subsection (1) or the amount of any pecuniary penalty order made against the person for the contravention of subsection (1A).

**39FB Chargeable permission holders must pay collected amounts to the Authority on time**

*Offence for failing to pay collected amount on time*

- (1) A holder of a chargeable permission must pay a collected amount to the Authority before or on the day it is due and payable.

Penalty: 10 penalty units.

Note: If the holder does not pay the collected amount to the Authority before or on the day it is due and payable, the obligation to pay the amount to the Authority continues after the due day, with daily offences being committed until the obligation is complied with (see section 4K of the *Crimes Act 1914*).

- (2) Subsection 4K(2) of the *Crimes Act 1914* ceases to apply in relation to an offence against subsection (1) of this section on the 21st day after the day on which the collected amount is due and payable.

Note: Because of this subsection, 200 penalty units is the maximum penalty that can be imposed for offences against subsection (1).

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*Civil penalty for failing to pay collected amount on time*

- (2A) A holder of a chargeable permission must not fail to pay a collected amount to the Authority before or on the day it is due and payable.

Civil penalty:

- (a) for an individual—20 penalty units; or
- (b) for a body corporate—100 penalty units.

*Penalty for failing to pay collected amount on time*

- (3) If a person is convicted before a court of an offence against subsection (1) or a court makes a declaration of contravention against a person for a contravention of subsection (2A), the court may order the person to pay to the Authority, on behalf of the Commonwealth, an amount equal to the sum of:
- (a) a collected amount that the person is liable to pay; and
  - (b) a late payment penalty that is payable by the person on the collected amount.
- (4) An amount a person is ordered to pay under subsection (3) is in addition to the penalty imposed on the person for an offence against subsection (1) or the amount of any pecuniary penalty order made against the person for the contravention of subsection (2A).

**39FC Chargeable permission held jointly—joint and several liability of holders**

If 2 or more persons (the *holders*) are liable to pay the same collected amount because a chargeable permission is held by them jointly, the holders are jointly and severally liable to pay the collected amount.

**39FD Payment of collected amounts**

A collected amount is payable by the holder of a chargeable permission to the Authority on behalf of the Commonwealth.

**39FE When collected amount is due for payment**

A collected amount is due and payable at such time as is ascertained in accordance with the regulations.

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**39FF False or misleading representation in relation to tourism services: offence**

- (1) A person commits an offence if:
- (a) the person makes a false or misleading representation; and
  - (b) the person is reckless as to whether the representation is false or misleading; and
  - (c) the representation relates to:
    - (i) a person's liability to pay a tax, charge or fee (however described) imposed by the Commonwealth for purposes connected with use of or entry to the Marine Park; or
    - (ii) the amount of any such tax, charge or fee; and
  - (d) the representation is made in the course of providing a tourism-related service (see subsection (3)).

Penalty: 1,000 penalty units.

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the representation expressly refers to the Marine Park or to an imposition by the Commonwealth.
- (3) For the purposes of subsection (1), a *tourism-related service* means:
- (a) a service provided on a commercial basis to or for the benefit of tourists, or in relation to tourism, in Australia; and
  - (b) any action incidental to such a service (for example, advertising a service).

## **Division 3—Recovery of charge etc.**

### **39G Late payment penalty**

- (1) If any charge payable by a person (other than a visitor) remains unpaid after the time when it became due for payment, the person is liable to pay, by way of penalty, an amount (the *late payment penalty*) equal to:
  - (a) the amount worked out at the rate of 20% per annum of the amount unpaid, as at the time the amount unpaid became due for payment; or
  - (b) if the amount worked out under paragraph (a) is less than \$250—\$250.
- (1A) If a collected amount payable by a person remains unpaid after the time when it became due for payment, the person is liable to pay, by way of penalty, an amount (the *late payment penalty*) equal to:
  - (a) the amount worked out at the rate of 20% per annum of the amount unpaid, as at the time the amount unpaid became due for payment; or
  - (b) if the amount worked out under paragraph (a) is less than \$250—\$250.
- (1B) If a penalty amount payable by a person remains unpaid after the time when it became due for payment, the person is liable to pay, by way of penalty, an amount (the *late payment penalty*) equal to:
  - (a) the amount worked out at the rate of 20% per annum of the amount unpaid, as at the time the amount unpaid became due for payment; or
  - (b) if the amount worked out under paragraph (a) is less than \$250—\$250.
- (2) The Authority may, on behalf of the Commonwealth, remit the whole or a part of an amount of late payment penalty.
- (3) The Authority's powers under subsection (2) may be exercised:
  - (a) on the Authority's own initiative; or
  - (b) at the request of a person who is liable to pay late payment penalty.

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- (4) If the Authority makes a decision under subsection (2) in relation to late payment penalty payable by a person, the Authority must give written notice of its decision to the person.
- (5) If:
  - (a) the Authority makes a decision under subsection (2) in relation to late payment penalty payable by a person; and
  - (b) the decision was made as the result of a request made by the person;the notice of the decision must also set out the reasons for the decision.
- (6) If 2 or more persons (the *holders*) are liable to pay the same late payment penalty because a chargeable permission is held by them jointly, the holders are jointly and severally liable to pay the late payment penalty.

**39H Payment of late payment penalty**

Late payment penalty is payable to the Authority on behalf of the Commonwealth.

**39J Recovery of charge and late payment penalty**

- (1) The following amounts may be recovered by the Authority, on behalf of the Commonwealth, as debts due to the Commonwealth:
  - (a) charge that is due and payable;
  - (aa) a collected amount that is due and payable;
  - (ab) a penalty amount that is due and payable;
  - (b) late payment penalty that is due and payable.
- (2) For the purposes of an action or proceeding under subsection (1), liability to costs is to be determined as if the Authority were a party to the action or proceeding and the Commonwealth were not a party.
- (3) The Authority is not entitled to recover from the Commonwealth any costs or other expenses it incurs in recovering an amount referred to in subsection (1).

**39K Regulations relating to recovery of charge etc.**

- (1) The regulations may make provision for and in relation to the following:
  - (a) the methods by which charge, collected amounts, penalty amounts and late payment penalty may be paid;
  - (b) discounts for early payment of charge;
  - (c) refunds of, or of overpayments of, charge;
  - (d) as an alternative to the refund of the whole or a part of an amount to a person as mentioned in paragraph (c), crediting the amount or the part of the amount against a liability of the person under this Part.
- (2) Without limiting paragraph (1)(a), regulations made for the purposes of that paragraph may make provision for and in relation to the making of payments using:
  - (a) collection agents; or
  - (b) electronic funds transfer systems; or
  - (c) credit cards; or
  - (d) debit cards.
- (3) Without limiting paragraph (1)(d), regulations made for the purposes of that paragraph may make provision for and in relation to the crediting of amounts by the Authority as agent of the Commonwealth.

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**Division 4—Review of decisions relating to remission of late payment penalty**

**39L Reconsideration of decisions relating to remission of late payment penalty**

- (1) A person who is affected by a decision under subsection 39G(2) may, if dissatisfied with the decision, by notice given to the Authority within:
  - (a) the period of 21 days after the day on which notice of the decision is given to the person; or
  - (b) such further period as the Authority allows; request the Authority to reconsider the decision.
- (2) The reasons for making the request must be set out in the request.
- (3) Upon receipt of the request, the Authority must reconsider the decision and may, subject to subsection (4), confirm or revoke the decision or vary the decision in such manner as the Authority thinks fit.
- (4) If the Authority does not confirm, revoke or vary a decision before the end of the period of 40 days after the day on which the Authority received the request, the Authority is taken, at the end of that period, to have confirmed the decision under subsection (3).
- (5) If the Authority confirms, revokes or varies a decision before the end of the period referred to in subsection (4), the Authority must, by notice given to the applicant, inform the applicant of the result of the reconsideration of the decision and the reasons for confirming, revoking or varying the decision, as the case may be.

**39M Review of decisions by AAT**

- (1) Applications may be made to the AAT for review of decisions of the Authority that have been confirmed, revoked or varied under subsection 39L(3).
  - (2) If, because of the operation of subsection 39L(4), a decision is taken to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the decision were the period:
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- (a) beginning on the day on which the decision is taken to have been confirmed; and
  - (b) ending on the 28th day after that day.
- (3) If a request is made under subsection 39L(1) in respect of a decision made under subsection 39G(2), section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the AAT for a review of that decision.

**39N Statements to accompany notification of decisions**

- (1) If written notice is given to a person affected by a decision made under subsection 39G(2) that the decision has been made, that notice must include a statement to the effect that:
  - (a) the person may, if dissatisfied with the decision, seek a reconsideration of the decision by the Authority in accordance with subsection 39L(1); and
  - (b) the person may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision made by the Authority upon that reconsideration confirming, revoking or varying the first-mentioned decision, apply to the AAT for review of the decision so confirmed, revoked or varied.
- (2) If:
  - (a) the Authority, under subsection 39L(3), confirms, revokes or varies a decision made under subsection 39G(2); and
  - (b) gives to the person written notice of the confirmation, revocation or variation of the decision;that notice must include a statement to the effect that the person may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision so confirmed, revoked or varied, apply to the AAT for review of the decision.
- (3) A failure to comply with this section does not affect the validity of a decision.

## **Division 5—Record-keeping and returns etc.**

### **39P Record-keeping and returns etc.**

- (1) The regulations may make provision for and in relation to requiring a person who holds a chargeable permission:
  - (a) to keep and retain records, where the records are relevant to ascertaining a person's liability to charge or to pay a collected amount; and
  - (b) to give information and returns to the Authority, where the information or returns are relevant to ascertaining a person's liability to charge or to pay a collected amount; and
  - (c) to:
    - (i) produce documents to the Authority or an inspector; or
    - (ii) make copies of documents and give the copies to the Authority;where the documents are relevant to ascertaining a person's liability to charge or to pay a collected amount.
- (2) The regulations may provide that information or returns given to the Authority in accordance with a requirement covered by paragraph (1)(b) must be verified by statutory declaration.
- (3) A person is entitled to be paid by the Authority reasonable compensation for making copies in the course of complying with a requirement covered by subparagraph (1)(c)(ii).
- (4) A person is not excused from giving information or a return or producing a document or a copy of a document under regulations made for the purposes of this Division on the ground that the information or return or the production of the document or copy might tend to incriminate the person or expose the person to a penalty. However:
  - (a) giving the information or return or producing the document or copy; or
  - (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or return or producing the document or copy;is not admissible in evidence against the person in:

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- (c) criminal proceedings other than proceedings under, or arising out of, section 39Q of this Act or a prosecution for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Part; or
- (d) proceedings for recovery of an amount of late payment penalty.

**39PA Custody and banking of collected amounts etc.**

- (1) The regulations may make provision for and in relation to:
  - (a) the custody of collected amounts; and
  - (b) the banking of collected amounts; and
  - (c) the keeping of accounts in relation to collected amounts; and
  - (d) the application of interest, or other amounts, derived from the custody or banking of collected amounts.
- (2) Without limiting paragraph (1)(d), regulations made for the purpose of that paragraph may prescribe that interest, or other amounts, derived from the custody or banking of collected amounts be paid to the holder of a chargeable permission who was required to collect those collected amounts.

**39Q Failure to give information or returns**

A holder of a chargeable permission must not refuse, or fail, when and as required under regulations made for the purposes of this Division to do so, to give any information or return to the Authority.

Penalty: 40 penalty units.

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**Division 5A—Application of the Financial Management  
and Accountability Act 1997**

**39QA Collected amounts etc.**

- (1) For the purposes of the *Financial Management and Accountability Act 1997*, a collected amount does not become public money until it is received by the Authority on behalf of the Commonwealth.
- (2) The *Financial Management and Accountability Act 1997* does not apply in relation to interest, or other amounts, derived by holders of chargeable permissions from the custody or banking of collected amounts.

Note: One of the effects of this section is that holders of chargeable permissions will not be subject to the *Financial Management and Accountability Act 1997*.

## **Division 6—Enforcement**

### **39S Power to search aircraft and vessels**

- (1) An inspector may search an aircraft or vessel for the purpose of ascertaining a person's liability to charge or to pay a collected amount and, for that purpose, may stop or detain the aircraft or vessel.
- (2) If an inspector searches an aircraft or vessel under subsection (1), the inspector may:
  - (a) inspect; and
  - (b) take extracts from; and
  - (c) make copies of;any documents in or on the aircraft or vessel that are relevant to ascertaining a person's liability to charge or to pay a collected amount.
- (3) The person in charge of an aircraft or vessel searched, or proposed to be searched, by an inspector must provide the inspector with all reasonable facilities and assistance for the effective exercise of powers under this section.

Penalty: 10 penalty units.
- (4) If an inspector (other than a member of a police force who is in uniform) stops or detains an aircraft or vessel under subsection (1), the inspector must produce for inspection by the person in charge of the aircraft or vessel:
  - (a) if the inspector is a member of a police force—written evidence of the fact that the inspector is a member of that police force; or
  - (b) in any other case—the inspector's identity card.
- (5) An inspector who does not comply with subsection (4) is not authorised to search or detain the aircraft or vessel.

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**39T Powers of inspector in relation to premises**

- (1) An inspector may, with the consent of the occupier of premises, enter the premises for the purpose of ascertaining a person's liability to charge or to pay a collected amount.
- (1A) An inspector is not entitled to enter premises under subsection (1), or exercise any powers referred to in subsection (3) in relation to an entry under subsection (1), if:
  - (a) the occupier of the premises has required the inspector to produce written identification for inspection by the occupier; and
  - (b) the inspector fails to produce:
    - (i) if the inspector is a member of a police force—written evidence of the fact that the inspector is a member of that police force; or
    - (ii) in any other case—the inspector's identity card for inspection by the occupier.
- (2) An inspector may, in accordance with a warrant issued under section 39U, enter premises for the purpose of ascertaining a person's liability to charge or to pay a collected amount.
- (2A) If an inspector is executing a warrant under subsection (2) and the occupier of the premises, or another person who apparently represents the occupier, is present, the inspector must:
  - (a) identify himself or herself to that person; and
  - (b) make available to that person a copy of the warrant (which need not be signed).
- (3) If an inspector enters premises under subsection (1) or (2), the inspector may:
  - (a) search the premises for; and
  - (b) inspect; and
  - (c) take extracts from; and
  - (d) make copies of;any documents that are relevant to ascertaining a person's liability to charge or to pay a collected amount.

- (4) The occupier of premises entered, or proposed to be entered, by an inspector must provide the inspector with all reasonable facilities and assistance for the effective exercise of powers under this section.

Penalty: 10 penalty units.

- (5) In this section:

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

***premises*** includes:

- (a) a structure or building; and
- (b) land or a place (whether enclosed or built upon or not); and
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b)).

### **39U Warrant to enter premises**

- (1) If a magistrate, on application by an inspector, is satisfied, by information on oath, that there are reasonable grounds for suspecting that there are on premises documents that are relevant to ascertaining a person's liability to charge or to pay a collected amount, the magistrate may issue a warrant authorising the inspector to enter the premises:
- (a) with such assistance, and by such force, as is necessary and reasonable; and
  - (b) during such hours as the warrant specifies, or, if the warrant so specifies, at any time.
- (2) A warrant must:
- (a) specify the purpose for which the warrant is issued; and
  - (b) specify the powers exercisable under subsection 39T(3) by the inspector to whom the warrant is issued; and
  - (c) describe the kind of documents to which the warrant relates; and
  - (d) specify the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to have effect.

## **Part VB—Plans of management**

### **39V Interpretation**

A reference in this Act to a community group having a special interest in an area of the Marine Park includes a reference to the people in the group who have some form of native title to the area or its resources or have some other special identification with the area or its resources.

### **39W Preparation of plans of management**

- (1) The Authority may, in writing, prepare plans of management for the Marine Park in accordance with this Part.
- (2) This Part does not prevent the Authority from preparing and implementing a plan of management for an area of the Marine Park under a provision of this Act other than this Part or under a provision of a zoning plan and this Part does not apply in relation to such a plan of management.
- (3) Plans of management prepared in accordance with this Part may set out:
  - (a) policies and strategies in relation to management of the matters referred to in section 39X; and
  - (b) enforcement provisions (see subsection 39ZD(5)).

### **39X Types of plans of management**

The Authority may prepare plans of management for the following:

- (a) one or more areas of the Marine Park;
- (b) one or more species within the Marine Park or within an area or areas of the Marine Park;
- (c) one or more ecological communities within the Marine Park or within an area or areas of the Marine Park.



**39Y Objects of plans of management**

The objects of plans of management are as follows:

- (a) to ensure, for particular areas of the Marine Park in which the Authority considers that nature conservation values, cultural and heritage values, or scientific values, are, or may be, threatened, that appropriate proposals are developed to reduce or eliminate the threats;
- (b) to ensure management for the recovery and continued protection and conservation of species and ecological communities that are, or may become:
  - (i) extinct; or
  - (ii) extinct in the wild; or
  - (iii) critically endangered; or
  - (iv) endangered; or
  - (v) vulnerable; or
  - (vi) conservation dependent;
- (c) to ensure that activities within areas of the Marine Park are managed on the basis of ecologically sustainable use;
- (d) to provide a basis for managing the uses of a particular area of the Marine Park that may conflict with other uses of the area or with the values of the area;
- (e) to provide for the management of areas of the Marine Park in conjunction with community groups in circumstances where those groups have a special interest in the areas concerned;
- (f) to enable people using the Marine Park to participate in a range of recreational activities.

**39ZA Arrangements with community groups that have special interests in areas of the Marine Park**

- (1) The Authority may enter into an agreement or arrangement for the purposes of this Part with a group of people who are representative of a community group that has a special interest in an area of the Marine Park.
- (2) The agreement or arrangement may relate to the development and/or the implementation of a plan of management for, or for a species or ecological community within, the area concerned and may, if the Authority considers it appropriate, provide that, if such a plan of management is prepared, the community group is to

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manage the area, or the species or ecological community within the area, jointly with the Authority in accordance with the plan.

**39ZB Notice of proposal to prepare plan of management**

- (1) Before preparing a plan of management, the Authority must, by public notice:
  - (a) state that it proposes to prepare the plan; and
  - (b) set out the area, species or ecological community to which the plan is to relate; and
  - (c) invite the public to make comments in relation to matters to be included in the plan by the date specified in the notice (which must be at least 1 month after the date the notice is published in the *Gazette*); and
  - (d) specify the address to which comments must be sent.
- (2) The Authority must take into account any comments made in accordance with the notice.
- (4) After the publication of the notice, the Authority may decide that the proposed plan of management is to cover an area, species or ecological community not mentioned in the notice but, if it does so, it is not required to give a further public notice in relation to the proposed plan.

**39ZC Moratorium on grant of new permits while plan of management is being prepared**

- (1) The Authority may, in a public notice given under subsection 39ZB(1) in relation to a proposed plan of management, or in a separate public notice, direct that no relevant permissions (within the meaning of the regulations) of a kind referred to in the notice containing the direction are to be granted under the regulations in relation to the area, species or ecological community to which the proposed plan is to relate during the period beginning on the date of publication in the *Gazette* of the notice containing the direction and ending:
  - (a) at the end of 12 months after that date; or
  - (b) on the day on which the plan of management comes into force;whichever first occurs.

- (2) A direction given under subsection (1) has effect according to its terms.

### **39ZD Preparation of plan of management**

- (1) After taking into account all comments made to it in accordance with section 39ZB, the Authority may prepare the plan of management.
- (1A) The Authority must, in preparing the plan of management, have regard to the following:
- (a) any key threatening process that is relevant to the area, species or ecological community to which the plan relates;
  - (b) any critical habitat that is in the area, or that is relevant to the species or ecological community, to which the plan relates;
  - (c) if the plan relates to a listed threatened species or a listed threatened ecological community—any approved conservation advice, recovery plan, threat abatement plan or wildlife conservation plan that is relevant to the species or ecological community;
  - (d) any plan made under the *Marine Parks Act 2004* of Queensland or the *Nature Conservation Act 1992* of Queensland that is relevant to the area, species or ecological community to which the plan relates.
- (2) The plan of management must not be inconsistent with any of the following:
- (a) a provision of this Act;
  - (b) a provision of a zoning plan in force for the area, or in force for an area relevant to the species or ecological community, to which the plan of management relates;
  - (c) if the plan of management relates to a listed threatened species or a listed threatened ecological community—a recovery plan or threat abatement plan that is relevant to the species or ecological community.
- (3) Without limiting the generality of subsection (2), a reference in that subsection to a plan of management being inconsistent with a provision of a zoning plan includes a reference to a plan of management permitting the doing of anything that is prohibited by the provision.
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- (4) A plan of management is taken not to be inconsistent with a zoning plan merely because it prohibits the doing of something that is not prohibited by the zoning plan.
- (5) If the plan of management contains provisions (the ***enforcement provisions***) prohibiting or regulating the doing of something, or requiring the doing of something, those provisions are to be included in a separate part of the plan.
- (6) The enforcement provisions may prohibit the doing of an act even though the doing of the act would, apart from the enforcement provisions, be permitted or authorised by or under this Act.
- (7) The enforcement provisions may exclude from their operation acts or omissions of a kind that were lawfully engaged in before the enforcement provisions come into force.
- (8) The things the enforcement provisions may do include, but are not limited to, prohibiting or regulating:
  - (a) entry into an area, or a part of an area, to which the plan relates; or
  - (b) the use (generally), or a particular use, of an area, or a part of an area, to which the plan relates.

**39ZE Notice of preparation of plan of management**

- (1) When the Authority has prepared a plan of management, the Authority must cause public notice to be given:
  - (a) stating the plan has been prepared; and
  - (b) setting out the area, species or ecological community to which the plan relates; and
  - (c) invite the public to make comments in connection with the plan by the date specified in the notice (which must be at least 1 month after the date the notice is published in the *Gazette*); and
  - (d) stating:
    - (i) an address from which copies of the plan may be obtained; and
    - (ii) an address to which comments must be sent.

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- (3) The Authority must take into account any comments made in accordance with the notice and:
  - (a) if it thinks fit, alter the plan of management accordingly; or
  - (b) otherwise, confirm the plan of management.
- (4) The Authority must cause public notice to be given:
  - (a) if it has altered the plan of management as mentioned in paragraph (3)(a):
    - (i) stating that the plan of management has been altered; and
    - (ii) stating an address at which copies of the plan of management as altered may be inspected or from which copies of the plan of management as altered may be obtained; or
  - (b) otherwise, stating that the plan of management has been confirmed.

**39ZF Plans of management are legislative instruments**

A plan of management made under subsection 39ZE(3) is a legislative instrument.

Note: A plan of management is not subject to sunseting (see item 22 of the table in subsection 54(2) of the *Legislative Instruments Act 2003*).

**39ZG Amendment of plan of management**

- (1) The Authority may, in writing, prepare an amendment of a plan of management for the Marine Park in accordance with this section.
- (2) Sections 39ZD and 39ZE apply in relation to the preparation of an amendment of a plan of management in the same way as they apply in relation to the preparation of a plan of management.
- (3) For the purposes of those sections as so applying:
  - (a) section 39ZD has effect as if the words “After taking into account all comments made to it in accordance with section 39ZB”, were omitted; and
  - (b) references in those sections to a plan of management are taken to be references to an amendment of a plan of management.

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- (4) An amendment of a plan of management made in accordance with this section is a legislative instrument.

Note: An amendment of a plan of management is not subject to sunseting (see item 22 of the table in subsection 54(2) of the *Legislative Instruments Act 2003*).

**39ZH Revocation of plan of management**

- (1) The Authority may, by legislative instrument, revoke a plan of management.

Note: A revocation of a plan of management is not subject to sunseting (see item 22 of the table in subsection 54(2) of the *Legislative Instruments Act 2003*).

- (4) If the regulations providing for giving effect to the enforcement provisions of a plan of management are repealed or otherwise cease to have effect, the plan of management is, by this subsection, revoked.
- (5) A reference in this section to a plan of management is, if the plan of management has been amended, a reference to the plan of management as amended.

**39ZI Authority to comply with management plans**

- (1) While a plan of management is in force in relation to an area of the Marine Park, the Authority must perform its functions and exercise its powers in relation to the area in accordance with that plan and not otherwise.
- (2) While a plan of management is in force in relation to a species within the Marine Park or within an area of the Marine Park, the Authority must perform its functions and exercise its powers in relation to the species, or in relation to the species within the area, in accordance with that plan and not otherwise.
- (3) While a plan of management is in force in relation to an ecological community within the Marine Park or within an area of the Marine Park, the Authority must perform its functions and exercise its powers in relation to the community, or in relation to the community within the area, in accordance with that plan and not otherwise.

## **Part VI—Administration**

### **40 Staff of Authority**

- (1) The staff of the Authority shall be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the Chairperson and the APS employees assisting the Chairperson together constitute a Statutory Agency; and
  - (b) the Chairperson is the Head of that Statutory Agency.

### **41 Performance of service by other persons**

Notwithstanding section 40, the Authority may, with the consent of the Minister and on terms and conditions determined by the Authority, engage persons, not being persons referred to in that section, to provide services for the Authority.

### **43 Appointment of inspectors**

- (1) The Authority may, by instrument in writing:
  - (a) appoint any person to be an inspector; and
  - (b) specify the powers that the person may exercise as an inspector under this Act; and
  - (c) specify the powers that the person may exercise as an inspector under the *Environment Protection and Biodiversity Conservation Act 1999*.

Note: Inspectors have powers under the *Environment Protection and Biodiversity Conservation Act 1999* to enforce this Act.

- (2) Despite paragraph (1)(a), the Authority must not appoint an officer or employee of an Agency (within the meaning of the *Public Service Act 1999*) that is not the Department or the Authority to be an inspector unless:
  - (a) an arrangement in respect of the officer or employee is in force under subsection 43A(1); and
  - (b) the powers specified for the officer or employee for the purposes of paragraphs (1)(b) and (c) are limited in a way

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that is consistent with any limitation set out in the arrangement.

- (3) Despite paragraph (1)(a), the Authority must not appoint an officer or employee of a Commonwealth authority (within the meaning of the *Commonwealth Authorities and Companies Act 1997*) to be an inspector unless:
- (a) an arrangement in respect of the officer or employee is in force under subsection 43A(2); and
  - (b) the powers specified for the officer or employee for the purposes of paragraphs (1)(b) and (c) are limited in a way that is consistent with any limitation set out in the arrangement.
- (4) Despite paragraph (1)(a), the Authority must not appoint:
- (a) an officer or employee of Queensland or of an authority of Queensland (including a local government body); or
  - (b) a member of the police force of Queensland;
- to be an inspector unless:
- (c) an arrangement in respect of the officer, employee or member is in force under subsection 43A(3); and
  - (d) the powers specified for the officer, employee or member for the purposes of paragraphs (1)(b) and (c) are limited in a way that is consistent with any limitation set out in the arrangement.

**43A Arrangements for certain persons to be inspectors**

*Arrangements with Agency Heads*

- (1) The Authority may enter into an arrangement with an Agency Head (within the meaning of the *Public Service Act 1999*) for officers or employees of the Agency Head's Agency (within the meaning of the *Public Service Act 1999*) to be appointed as inspectors under subsection 43(1) of this Act.

Note: An arrangement must be in force before an officer or employee can be appointed as an inspector (except for employees of the Department and the Authority) (see subsection 43(2)).



*Arrangements with Commonwealth authorities*

- (2) The Authority may enter into an arrangement with a Commonwealth authority (within the meaning of the *Commonwealth Authorities and Companies Act 1997*) for officers or employees of the authority to be appointed as inspectors under subsection 43(1) of this Act.

Note: An arrangement must be in force before an officer or employee can be appointed as an inspector (see subsection 43(3)).

*Arrangements with Queensland*

- (3) The Minister may enter into an arrangement with the appropriate Minister of Queensland for:
- (a) officers or employees of Queensland or of an authority of Queensland (including a local government body); or
  - (b) members of the police force of Queensland;
- to be appointed as inspectors under subsection 43(1) of this Act.

Note: An arrangement must be in force before an officer, employee or member can be appointed as an inspector (see subsection 43(4)).

*Limits on powers*

- (4) An arrangement under this section for persons to be appointed as inspectors may specify that the persons' powers as inspectors are to be limited in the way set out in the arrangement.

**44 Inspectors *ex officio***

By force of this section, every member or special member of the Australian Federal Police is an inspector.

Note: Inspectors have powers under the *Environment Protection and Biodiversity Conservation Act 1999* to enforce this Act.

**45 Identity cards**

- (1) The Authority shall cause to be issued to each inspector, other than a member of a police force, an identity card in the form prescribed containing a photograph of the holder.

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- (2) A person who ceases to be an inspector must not fail to return his or her identity card to the Authority as soon as practicable after ceasing to be an inspector.

Penalty: 1 penalty unit.

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

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

- (2B) Subsection (2) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2B). See subsection 13.3(3) of the *Criminal Code*.

### 46 Delegation by Minister

- (1) The Minister may, by signed writing, delegate to the Authority any or all of the Minister's powers or functions under this Act, other than a power or function under:
- (a) subsection 31(4) or (5); or
  - (b) subsection 34(4), (7) or (8); or
  - (c) subsection 35C(2), (5) or (6); or
  - (d) subsection 37(2) or (4); or
  - (e) subsection 37A(1); or
  - (f) subsection 54(4); or
  - (g) paragraph 61ACA(4)(a); or
  - (h) section 61ADE.
- (2) In exercising a power or performing a function under the delegation, the Authority must comply with any directions of the Minister.

### 47 Delegation by Authority

- (1) The Authority may, by writing under its common seal, delegate any or all of its powers or functions under this Act to any of the following:
- (a) the Chairperson;
  - (b) an employee of the Department or of the Authority;

- (c) an officer or employee of an Agency (within the meaning of the *Public Service Act 1999*) in respect of whom an arrangement is in force under subsection 48A(1);
  - (d) an officer or employee of a Commonwealth authority (within the meaning of the *Commonwealth Authorities and Companies Act 1997*) in respect of whom an arrangement is in force under subsection 48A(2);
  - (e) an officer or employee of Queensland, or of an authority of Queensland (including a local government body), in respect of whom an arrangement is in force under subsection 48A(3).
- (2) The Authority may, by writing under its common seal, sub-delegate to a person mentioned in subsection (1) a power or function delegated to the Authority under this or any other Act.
- (3) Despite subsection (1) or (2), the Authority must not delegate or sub-delegate under that subsection a power or function under Part VAA (Offences and penalties) or Part VIII (Enforcement) of this Act or under Part 17 (Enforcement) of the *Environment Protection and Biodiversity Conservation Act 1999* to a person mentioned in paragraph (1)(b), (c), (d) or (e) unless the person:
  - (a) is an SES employee or an acting SES employee; or
  - (b) holds, or is acting in, an Executive Level 1 or 2, or equivalent, position; or
  - (c) is of equivalent rank to an APS employee who:
    - (i) is an SES employee or acting SES employee; or
    - (ii) holds, or is acting in, an Executive Level 1 or 2, or equivalent, position.
- (4) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply to a sub-delegation under subsection (2) in the same way as they apply to a delegation.
- (5) In exercising powers or performing functions under a delegation, the delegate must comply with any directions of the Authority.
- (6) In exercising powers or performing functions under a sub-delegation, the sub-delegate must comply with any directions of the Authority.

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- (7) If the Authority is subject to a direction in relation to the exercise of a power or the performance of a function sub-delegated under this section, the Authority must give a corresponding direction to the sub-delegate.

**48 Delegation by Chairperson**

- (1) The Chairperson may, by signed writing, sub-delegate a power or function delegated to the Chairperson under this or any other Act to a member of the staff of the Authority. However, this subsection does not allow the Chairperson to sub-delegate a power or function that has been sub-delegated to the Chairperson.
- (2) Despite subsection (1), the Chairperson must not sub-delegate under that subsection a power or function under Part VAA (Offences and penalties) or Part VIII (Enforcement) of this Act or under Part 17 (Enforcement) of the *Environment Protection and Biodiversity Conservation Act 1999* unless the member of staff:
- (a) is an SES employee or an acting SES employee; or
  - (b) holds, or is acting in, an Executive Level 1 or 2, or equivalent, position.
- (3) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply to a sub-delegation under subsection (1) in the same way as they apply to a delegation.
- (4) In exercising powers or performing functions under a sub-delegation, the sub-delegate must comply with any directions of the Chairperson.
- (5) If the Chairperson is subject to a direction in relation to the exercise of a power or the performance of a function sub-delegated under this section, the Chairperson must give a corresponding direction to the sub-delegate.

**48A Arrangements for certain delegations**

*Arrangements with Agency Heads*

- (1) The Authority may enter into an arrangement with an Agency Head (within the meaning of the *Public Service Act 1999*) in relation to officers or employees of the Agency Head's Agency (within the meaning of the *Public Service Act 1999*) for the

purposes of allowing powers or functions to be delegated or sub-delegated under section 47 to the officers or employees.

Note: An arrangement must be in force before a power or function can be delegated to an officer or employee, except for employees of the Department and the Authority (see paragraphs 47(1)(b) and (c)).

*Arrangements with Commonwealth authorities*

- (2) The Authority may enter into an arrangement with a Commonwealth authority (within the meaning of the *Commonwealth Authorities and Companies Act 1997*) in relation to officers or employees of the authority for the purposes of allowing powers or functions to be delegated or sub-delegated under section 47 to the officers or employees.

Note: An arrangement must be in force before a power or function can be delegated to an officer or employee (see paragraph 47(1)(d)).

*Arrangements with Queensland*

- (3) The Minister may enter into an arrangement with an appropriate Minister of Queensland in relation to officers or employees of Queensland or of an authority of Queensland (including a local government body) for the purposes of allowing powers or functions to be delegated or sub-delegated under section 47 to the officers or employees.

Note: An arrangement must be in force before a power or function can be delegated to an officer or employee (see paragraph 47(1)(e)).

## **Part VII—Finance and reporting requirements**

### **Division 1—Great Barrier Reef Field Management Special Account**

#### **49 Great Barrier Reef Field Management Special Account**

- (1) The Great Barrier Reef Field Management Special Account is established by this section.
- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

#### **50 Credits to the Account**

There must be credited to the Account amounts equal to the following:

- (a) amounts that, under an agreement referred to in paragraph 7(1)(cc), are paid by Queensland to the Authority for the purpose of the management, protection or maintenance of the Great Barrier Reef World Heritage Area;
- (b) amounts that, under such an agreement, the Commonwealth agrees to allocate for that purpose;
- (c) amounts received by the Authority in relation to property paid for with amounts debited from the Account;
- (d) amounts of any gifts given or bequests made for the purposes of the Account.

**Note:** An Appropriation Act provides for amounts to be credited to a Special Account if any of the purposes of the Account is a purpose that is covered by an item in the Appropriation Act.

In particular, this mechanism could be used to credit amounts to the Great Barrier Reef Field Management Special Account for the purposes of paragraph (b).

#### **51 Purposes of the Account**

- (1) This section sets out the purposes of the Account.

- (2) Amounts standing to the credit of the Account may be debited for the following purposes:
- (a) the management, protection or maintenance of the Great Barrier Reef World Heritage Area;
  - (b) purposes incidental to the management, protection or maintenance of the Great Barrier Reef World Heritage Area;
  - (c) meeting the expenses of administering the Account.

## **52 Amounts paid by Queensland**

If, under an agreement referred to in paragraph 7(1)(cc), amounts are paid by Queensland to the Authority for the purpose of the management, protection or maintenance of the Great Barrier Reef World Heritage Area, the Authority must expend those amounts in accordance with that agreement and not otherwise.

## **Division 2—Reporting requirements**

### **53 Annual report**

*Annual report to be given to Minister*

- (1) The Chairperson must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister a report on the Authority's operations during that year.

*Contents of annual report*

- (2) The Chairperson must include in the report the following:
  - (a) particulars of all directions given during the year by the Minister under subsection 7(2) or 46(2);
  - (b) the financial statements required by section 49 of the *Financial Management and Accountability Act 1997*;
  - (c) an audit report on those statements under section 57 of the *Financial Management and Accountability Act 1997*.

*Annual report to be tabled in Parliament*

- (3) The Minister must cause a copy of each annual report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

### **54 Great Barrier Reef Outlook Report**

- (1) The Authority must prepare and give to the Minister a report in relation to the Great Barrier Reef Region every 5 years. The first report must be given to the Minister by 30 June 2009.
- (2) The report must be prepared in accordance with the regulations (if any).

*Content of report*

- (3) The report must contain the following matters:
  - (a) an assessment of the current health of the ecosystem within the Great Barrier Reef Region and of the ecosystem outside that region to the extent it affects that region;



- (b) an assessment of the current biodiversity within that region;
- (c) an assessment of the commercial and non-commercial use of that region;
- (d) an assessment of the risks to the ecosystem within that region;
- (e) an assessment of the current resilience of the ecosystem within that region;
- (f) an assessment of the existing measures to protect and manage the ecosystem within that region;
- (g) an assessment of the factors influencing the current and projected future environmental, economic and social values of that region;
- (h) an assessment of the long-term outlook for the ecosystem within that region;
- (i) any other matter prescribed by the regulations for the purposes of this paragraph.

*Peer-review*

- (4) The Minister must arrange for the content of the report to be peer-reviewed by at least 3 persons who, in the Minister's opinion, possess appropriate qualifications to undertake the peer-review. The peer-review must occur before the report is given to the Minister.

*Report to be tabled in Parliament*

- (5) The Minister must cause a copy of each report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

## **Division 3—Exemption from taxation**

### **55 Exemption from taxation**

The Authority is not subject to taxation under the laws of the Commonwealth or of a State or Territory.

## **Part VIIA—Compulsory pilotage**

### **59A Purpose of Part**

The purpose of this Part is to impose a scheme of compulsory pilotage on regulated ships within the compulsory pilotage area of the Great Barrier Reef Region.

### **59B Offence to navigate without a pilot**

- (1) If a regulated ship navigates without a pilot in the compulsory pilotage area, the master and the owner of the ship are each guilty of an offence punishable on conviction by a fine of not more than 500 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

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

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

### **59C Offence to enter an Australian port after navigating without a pilot: master and owner liable**

- (1) If:
- (a) a regulated ship navigates without a pilot in the compulsory pilotage area; and
  - (b) the ship enters an Australian port under the command of the master who was in command of the ship during the navigation referred to in paragraph (a);

the master and the owner of the ship are each guilty of an offence punishable on conviction by a fine of not more than 500 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

- (2) The regulated ship's entry to an Australian port referred to in paragraph (1)(b) may occur on the same voyage on which the

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navigation in the compulsory pilotage area without a pilot occurred or on a later voyage.

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

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

**59D Offence to enter an Australian port after navigating without a pilot: owner liable**

- (1) If:

- (a) a regulated ship navigates without a pilot in the compulsory pilotage area; and
- (b) the ship enters an Australian port under the command of a master other than the master who was in command of the ship during the navigation referred to in paragraph (a);

the owner of the ship is guilty of an offence punishable on conviction by a fine of not more than 500 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

- (2) The regulated ship's entry to an Australian port referred to in paragraph (1)(b) may occur on the same voyage on which the navigation in the compulsory pilotage area without a pilot occurred or on a later voyage.

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

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

**59E Pilots to issue certificates**

- (1) If:

- (a) a pilot boards a regulated ship for the purpose of navigating the ship in the compulsory pilotage area; and
  - (b) the pilot navigates the ship in the compulsory pilotage area;
- the pilot must give the master of the ship a certificate in the form approved by the Minister.

- (2) The pilot must provide the certificate to the master before disembarking from the ship after the navigation through the compulsory pilotage area.

- (3) The certificate must:
  - (a) identify the ship; and
  - (b) state that the pilot has navigated the ship in the compulsory pilotage area; and
  - (c) provide any other information specified by the Minister in the approval of the certificate.

**59F Exemption from requirement to navigate with a pilot**

- (1) The master or owner of a regulated ship may apply to the Minister for an exemption from the requirement to navigate with a pilot in the compulsory pilotage area.
- (2) The application must:
  - (a) be in writing; and
  - (b) contain the prescribed information; and
  - (c) be made in a form approved by the Minister.
- (3) The Minister may grant an exemption if, in the Minister's opinion:
  - (a) to require that ship to navigate with a pilot would not improve environmental protection in the Great Barrier Reef Region; or
  - (b) the ship would not pose a threat to the environment because it is likely to remain:
    - (i) stationary; or
    - (ii) in a limited area;within the compulsory pilotage area.
- (4) Without limiting the considerations the Minister may take into account in deciding whether or not to grant an exemption under paragraph (3)(b), the Minister must consider:
  - (a) the proposed duration of the ship's stay within the compulsory pilotage area; and
  - (b) the nature of the area in which the ship will be stationary or navigating within the compulsory pilotage area; and
  - (c) the purpose of the ship's proposed stay in the compulsory pilotage area.
- (5) The exemption must be in writing and may be given in respect of the whole or part of the ship's proposed navigation in the compulsory pilotage area.

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- (6) The Minister may, by writing, delegate to a person referred to in subsection (7) the Minister's power under this section to grant an exemption.
- (7) The people to whom a delegation may be given under subsection (6) are any of the following:
  - (a) the Authority;
  - (b) the Chairperson;
  - (c) the Executive Officer of the Authority;
  - (d) if an arrangement is in force under subsection 48A(2) between the Authority and another authority of the Commonwealth:
    - (i) the other authority; or
    - (ii) if the other authority is constituted by, or is administered by a body consisting of, 2 or more persons—the Chairperson of the other authority or of the body, as the case may be; or
    - (iii) the chief executive officer of the other authority.

**59G Review by the Administrative Appeals Tribunal**

- (1) In this section:

*decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.
- (2) Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal by a person whose interests are affected by a decision made under section 59F for review of the decision.
- (3) Where the Minister makes a decision under section 59F, a notice must be given to the applicant for an exemption containing:
  - (a) the terms of the decision; and
  - (b) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision.
- (4) A notice under subsection (3), must be given within 28 days of the Minister making a decision.

- (5) Failure to include in a notice under subsection (3) a statement of the kind mentioned in paragraph (3)(b) does not affect the validity of the Minister's decision.

**59H Defence in proceedings for offences**

- (1) In any proceedings for an offence against section 59B, 59C or 59D, it is a defence if the master or owner (as the case may be) proves that the regulated ship navigated in the compulsory pilotage area because of stress of weather or other unavoidable cause.

Note: The defendant bears a legal burden in relation to the matter in subsection (1). See section 13.4 of the *Criminal Code*.

- (2) In any proceedings against the owner of a regulated ship for an offence against section 59B, 59C or 59D, it is a defence if the owner proves that the owner did not know that the regulated ship was in contravention of the relevant section.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

**59I Prosecution of offences**

- (1) An offence against section 59B, 59C or 59D is an indictable offence.
- (2) Even though an offence against section 59B, 59C or 59D is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of those offences if:
- (a) the court is satisfied that it is proper to do so; and
  - (b) the defendant and the prosecutor consent.
- (3) If, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence against section 59B, 59C or 59D, the court may impose a penalty:
- (a) in the case of an individual, of not more than 100 penalty units; and
  - (b) in the case of a body corporate, of not more than 500 penalty units.

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**59J Time for commencing prosecutions**

A prosecution for an offence against section 59B, 59C or 59D may be commenced within 3 years of the commission of the offence.

**59K Service of summons or process**

- (1) Service of any summons or process in any legal proceedings under this Part on the owner or the owners of a regulated ship may be effected:
  - (a) by serving it personally on the owner or on all or any of the owners, as the case may be; or
  - (b) if an owner who is to be served is a body corporate—on a director, secretary or other officer of the body corporate; or
  - (c) by serving it personally on an agent of the owner of the regulated ship; or
  - (d) if an agent who is to be served is a body corporate—on a director, secretary or other officer of the body corporate; or
  - (e) by serving it on the master of the regulated ship.
- (2) Where there is more than one owner of a regulated ship, service on any of the owners is taken to be, for the purposes of this Act, service on all of the owners.
- (3) Service of any summons or process in any legal proceedings under this Part on a master of a regulated ship may be effected by serving it personally on the master.
- (4) If for any reason (including the absence of the master from the regulated ship) it is not practicable to serve the summons or process on the master personally, service may be effected by delivering it to any person on board the regulated ship who appears to be an officer of the regulated ship.
- (5) If it is not reasonably practicable to serve a summons or process in accordance with the preceding provisions, the summons or process is taken to have been served on the person or persons to whom it is issued if the contents are transmitted to the regulated ship concerned by any means and receipt of the transmission is acknowledged by a person on board the regulated ship.



**59L Powers of inspector—compulsory pilotage area**

- (1) If an inspector has reasonable grounds for suspecting that a vessel is a regulated ship that has navigated in the compulsory pilotage area without a pilot, an inspector may stop the vessel to:
  - (a) search the vessel for the purpose of ascertaining whether the vessel has a pilot on board; and
  - (b) search the vessel for anything that will afford evidence of the commission of an offence against this Part.
- (2) An inspector may:
  - (a) require the master or owner of a vessel whom the inspector finds committing, or whom the inspector reasonably suspects of having committed, an offence against this Part, to provide the following information:
    - (i) the person's name and usual place of residence;
    - (ii) details as to the ownership and registration of the vessel; and
  - (b) require the master or owner of a vessel whom the inspector reasonably suspects of having committed an offence against this Part to produce a pilot's certificate in respect of navigation by that vessel in the compulsory pilotage area.
- (3) If an inspector (other than a uniformed member of a police force) stops or proposes to search a vessel, the inspector must:
  - (a) in the case of a member of a police force, produce for inspection by the person in charge of the vessel, written evidence of the fact that the inspector is a member of a police force; or
  - (b) in any other case, produce the inspector's identity card for inspection by the person.
- (4) If an inspector (other than a uniformed member of a police force) fails to produce the documentation referred to in subsection (3) as required by that subsection, the inspector is not authorised to search that vessel.
- (5) If an inspector (other than a uniformed member of a police force) makes a requirement of a person under subsection (2), the inspector must:
  - (a) in the case of a member of a police force, produce for inspection by the person in charge of the vessel, written

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evidence of the fact that the inspector is a member of a police force; or

- (b) in any other case, produce the inspector's identity card for inspection by the person.
- (6) If an inspector (other than a uniformed member of a police force) fails to produce the documentation referred to in subsection (5) in the circumstances referred to in that subsection, a person is not obliged to comply with a requirement made under subsection (2).
- (7) A person who fails to comply with a requirement made of the person under subsection (2), is guilty of an offence punishable upon conviction by a fine of not more than 10 penalty units.
- (8) Subsection (7) does not apply if the person 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*.

**59M Limitation on exercise of powers—location**

- (1) A power conferred on an inspector under subsections 59L(1) and (2) may be exercised only:
  - (a) in a port; or
  - (b) subject to this section, within the compulsory pilotage area.
- (2) An inspector may exercise a power conferred on the inspector under subsections 59L(1) and (2) in respect of a vessel outside the compulsory pilotage area if:
  - (a) if the inspector concerned is not a member of a police force—the inspector believes on reasonable grounds that it is not reasonably practicable for an inspector who is a member of a police force to exercise the power; and
  - (b) one or more inspectors (whether or not including the inspector exercising the power) have pursued the vessel from a place within the compulsory pilotage area to a place outside the area; and
  - (c) the pursuit was not terminated or substantially interrupted at any time before the inspector concerned arrived at that place outside the area with a view to exercising that power.

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- (3) For the purposes of subsection (2), a pursuit of a vessel is not taken to be terminated or substantially interrupted only because the inspector or inspectors concerned lose sight of the vessel.
- (4) A reference in subsection (3) to losing sight of a vessel includes a reference to losing output from a radar or other sensing device.

## Part VIII—Enforcement

### Division 1—Enforcement powers

#### Subdivision A—Vessel monitoring directions

##### 61AAA Making vessel monitoring directions

*Application of this section*

- (1) This section applies in relation to a vessel that is required by a law of the Commonwealth, a State or a Territory to be equipped with a vessel monitoring system.

*Directions for individual vessels*

- (2) The Authority may, in writing, make a direction (an ***individual vessel monitoring direction***) requiring one of the persons responsible, or one of the kinds of persons responsible, for a particular vessel to provide the Authority, or cause the Authority to be provided, with the information specified for the vessel in the direction (which must be information of a kind provided by the vessel monitoring system in relation to the operation of the vessel in the Marine Park).

Note: For ***responsible***, see subsection (10).

- (3) A copy of an individual vessel monitoring direction must be given to the person, or each of the persons, to whom it applies.
- (4) An individual vessel monitoring direction:
  - (a) takes effect:
    - (i) on the day (if any) specified in the direction (which must not be earlier than the day on which a copy of the direction is first given to a person to whom it applies); or
    - (ii) if no day is specified—on the day on which a copy of the direction is first given to a person to whom it applies; and
  - (b) continues in effect for the period specified in the direction.

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- (5) The Authority may vary or revoke an individual vessel monitoring direction:
  - (a) in the same manner as an individual vessel monitoring direction may be made; and
  - (b) subject to the same conditions as apply to the making of an individual vessel monitoring direction.
- (6) An individual vessel monitoring direction is not a legislative instrument.

*Directions for classes of vessels*

- (7) The Authority may, by legislative instrument, make a direction (a ***class vessel monitoring direction***) requiring one of the kinds of persons responsible for a vessel belonging to a particular class of vessels to provide the Authority, or cause the Authority to be provided, with the information specified for the vessel in the direction (which must be information of a kind provided by the vessel monitoring system in relation to the operation of the vessel in the Marine Park).

Note: For ***responsible***, see subsection (10).

- (8) The Authority may vary or revoke a class vessel monitoring direction:
  - (a) in the same manner as a class vessel monitoring direction may be made; and
  - (b) subject to the same conditions as apply to the making of a class vessel monitoring direction.

*Content of individual and class vessel monitoring directions*

- (9) A vessel monitoring direction may require the specified information to be provided:
  - (a) before the end of a specified period; or
  - (b) at specified intervals, either during a specified period or indefinitely; or
  - (c) continuously, either during a specified period or indefinitely; or
  - (d) in any other way the Authority considers appropriate.

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*Persons responsible for a vessel*

- (10) For the purposes of subsections (2) and (7), each of the following persons is **responsible** for a vessel:
- (a) an owner of the vessel;
  - (b) a person who, under a law of the Commonwealth, a State or a Territory, holds a licence or other permission (however described and including one that is suspended) in relation to the vessel that requires the vessel to be fitted with a vessel monitoring system;
  - (c) a person specified in the regulations for the purposes of this paragraph.

**61AAB Use and disclosure of vessel monitoring information**

- (1) This section applies in relation to information that was obtained by the Authority under a vessel monitoring direction and was not publicly available at the time the Authority obtained it.
- (2) The Authority must not disclose the information unless the disclosure is for one or more of the following purposes:
- (a) administering this Act, including performing duties or functions, or exercising powers, under this Act;
  - (b) managing the Marine Park;
  - (c) proceedings in relation to enforcement of this Act, including proceedings:
    - (i) for an injunction; or
    - (ii) by way of prosecution for an offence; or
    - (iii) for the making of a declaration of contravention of a civil penalty provision; or
    - (iv) for the making of a pecuniary penalty order; or
    - (v) for the making of any other court order in relation to an instrument made under this Act;
  - (d) other law enforcement purposes;
  - (e) matters relating to reconsideration or review of a decision made under this Act;
  - (f) a purpose for which the information is required by law to be disclosed.

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**61AAC Failure to comply with vessel monitoring direction: offence**

- (1) A person commits an offence if:
- (a) the person is a kind of person responsible (within the meaning of subsection 61AAA(10)) for a vessel; and
  - (b) a vessel monitoring direction applies for the vessel; and
  - (c) the direction applies to the person, or to that kind of person; and
  - (d) if the direction is an individual vessel monitoring direction—a copy of the direction has been given to the person; and
  - (e) the direction is not complied with.

Penalty: 500 penalty units.

- (2) Strict liability applies to paragraphs (1)(a) and (d).

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

- (3) Absolute liability applies to paragraphs (1)(b) and (c).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

**61AAD Failure to comply with vessel monitoring direction: civil penalty provision**

If:

- (a) a person is a kind of person responsible (within the meaning of subsection 61AAA(10)) for a vessel; and
  - (b) a vessel monitoring direction applies for the vessel; and
  - (c) the direction applies to the person, or to that kind of person; and
  - (d) if the direction is an individual vessel monitoring direction—a copy of the direction has been given to the person;
- the person contravenes this section if the direction is not complied with.

Civil penalty:

- (a) for an individual—250 penalty units; or
- (b) for a body corporate—2,500 penalty units.

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**Subdivision B—Enforceable undertakings**

**61ABA Acceptance of undertaking**

- (1) This section applies if the Minister considers that a person has contravened:
  - (a) the duty in section 37AA to prevent or minimise harm to the environment in the Marine Park; or
  - (b) a civil penalty provision.
- (2) The Minister may accept a written undertaking given by the person in relation to the contravention, in which the person undertakes to do any or all of the following:
  - (a) take specified actions to prevent, repair or mitigate harm of a specified kind in the Great Barrier Reef Region;
  - (b) take specified actions to ensure that the person does not engage, or is unlikely to engage, in conduct that contravenes the duty in section 37AA or a civil penalty provision;
  - (c) pay a specified amount to the Commonwealth, to be used for the purpose of taking actions referred to in paragraph (a) or (b).
- (3) The undertaking must be expressed to be an undertaking under this section.
- (4) The person may withdraw or vary the undertaking at any time, but only with the consent of the Minister.
- (5) The Minister may, by notice in writing given to the person, cancel the undertaking.
- (6) The undertaking may be published on either or both of the following:
  - (a) the website of the Authority;
  - (b) the website of the Department.

**61ABB Enforcement of undertaking**

- (1) If:
  - (a) a person has given an undertaking under section 61ABA; and
  - (b) the undertaking has not been withdrawn or cancelled; and



- (c) the Minister considers that the person has breached the undertaking;  
the Minister may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that the person has breached the undertaking, the Court may make one or more of the following orders:
  - (a) an order directing the person to comply with the undertaking;
  - (b) any other order that the Court considers appropriate.

## **Subdivision C—Emergency directions**

### **61ACA Making emergency directions**

#### *Application of this section*

- (1) This section applies if the Authority is satisfied that circumstances exist amounting to an emergency that poses a serious risk to the environment in the Marine Park.

#### *Emergency directions*

- (2) The Authority may make a direction (an **emergency direction**) requiring a particular person, persons of a particular class, or persons generally, to take, or not to take, specified action for the purposes of avoiding, mitigating or eliminating the risk.
- (3) An emergency direction that applies to a particular person does not have to be in writing, but must be communicated to the person to whom it applies. An emergency direction other than a direction that applies to a particular person must be in writing and a copy of the direction must be published on the website of the Authority as soon as practicable after the direction is made.

#### *Relevant matters*

- (4) The Authority must not make an emergency direction unless:
  - (a) the Minister has consented to the making of the direction; and
  - (b) the Authority is satisfied that the direction is necessary and appropriate for the purposes of avoiding, mitigating or eliminating the risk; and

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- (c) if the circumstances include an incident involving a vessel—the Authority is satisfied that the direction is not inconsistent with Articles III and V of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, done at Brussels on 29 November 1969 [1984] ATS 4.

Note: The text of the Convention is set out in Australian Treaty Series 1984 No. 4. In 2008, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

*Examples of emergency directions*

- (5) The following are examples of emergency directions the Authority may make:
  - (a) a direction regulating or prohibiting the entry or use of a vessel, vehicle or aircraft in the Marine Park or a part of the Marine Park;
  - (b) a direction that a person remove a vessel, vehicle or aircraft from the Marine Park or a part of the Marine Park;
  - (c) a direction that a person responsible for abandoned, stranded, sunk or wrecked property take any action reasonably necessary to avoid, mitigate or eliminate risk arising from the presence of the property in the Marine Park.

*When emergency directions have effect*

- (6) An emergency direction:
  - (a) takes effect on the day the direction is made; and
  - (b) continues in effect until the earlier of:
    - (i) the end of the period (if any) specified in the direction (which must end no later than 2 months after the day the direction is made); or
    - (ii) the day that is 2 months after the day the direction is made.

*Variation and revocation*

- (7) The Authority may vary or revoke an emergency direction:
  - (a) in the same manner as an emergency direction may be made; and

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- (b) subject to the conditions that apply to the making of an emergency direction (for this purpose, subsection (1) and paragraph (4)(b) are not conditions); and
- (c) subject to the Authority being satisfied that the variation or revocation would not be inconsistent with the purposes of avoiding, mitigating or eliminating the risk in relation to which the direction was made.

*Emergency directions are not legislative instruments*

- (8) If a direction under subsection (2) is made in writing, the direction is not a legislative instrument.

**61ACB Failure to comply with emergency direction: offence**

- (1) A person commits an offence if:
  - (a) an emergency direction applies to the person; and
  - (b) if the direction applies to a particular person—the direction was communicated to the person; and
  - (c) if the direction applies to a class of persons or to persons generally—the direction has been published on the website of the Authority; and
  - (d) the person fails to comply with the direction.

Penalty: 500 penalty units.

- (2) Absolute liability applies to paragraph (1)(a).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

- (3) Strict liability applies to paragraphs (1)(b) and (c).

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

- (4) It is a defence to a prosecution for an offence against subsection (1) if it is proved:
  - (a) that the contravention of the direction resulted from the need to save life at sea; or
  - (b) that compliance with the direction was not possible; or
  - (c) if the direction requires a thing to be done before a particular time—that compliance with the direction was not possible before that time and the direction was complied with as soon as possible after that time.

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Note: The defendant bears a legal burden in relation to the matters in this subsection. See section 13.4 of the *Criminal Code*.

**Subdivision D—Enforceable directions**

**61ADA Making enforceable directions**

*Application of this section*

- (1) This section applies if the Minister is satisfied:
  - (a) that a person has engaged, is engaging, or is likely to engage, in conduct that:
    - (i) constitutes or would constitute an offence against this Act; or
    - (ii) contravenes or would contravene a civil penalty provision; or
    - (iii) contravenes or would contravene the duty in section 37AA to prevent or minimise harm to the environment in the Marine Park; and
  - (b) that it would be in the public interest to make a direction under this section for either or both of the following purposes:
    - (i) ensuring the person's future compliance with this Act;
    - (ii) preventing, repairing or mitigating harm to the environment in the Marine Park that has been, might be or will be caused by the person's conduct.

*Enforceable directions*

- (2) The Minister may, in writing, make a direction (an ***enforceable direction***) requiring the person to take or not to take specified action for either or both of the purposes referred to in subparagraphs (1)(b)(i) and (ii).
- (3) A copy of the direction must be given to the person.

*Examples of enforceable directions*

- (4) The following are examples of enforceable directions the Minister may make:
  - (a) a direction that the person stop, or not start, a specified activity (whether indefinitely or for a specified period);

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- (b) a direction that a person undertake a specified activity;
- (c) a direction that a person undertake a specified activity in a specified way;
- (d) a direction that a person prepare and comply with a plan of action, for compliance with this Act or for preventing, repairing or mitigating harm to the environment, that is satisfactory to the Minister;
- (e) a direction that a person arrange for monitoring or auditing of either or both of the following:
  - (i) the person's compliance with this Act;
  - (ii) the effects on the environment in the Marine Park of the person's activities;and provide the results to the Minister.

*Variation and revocation*

- (5) The Minister may vary or revoke an enforceable direction:
  - (a) in the same manner as an enforceable direction may be made; and
  - (b) subject to the conditions that apply to the making of an enforceable direction (for this purpose, subsection (1) is not a condition); and
  - (c) subject to the Minister being satisfied that it would be in the public interest to vary or revoke the direction; and
  - (d) subject to the Minister being satisfied that the variation or revocation would not be inconsistent with the following purposes:
    - (i) ensuring the person's future compliance with this Act;
    - (ii) preventing, repairing or mitigating harm to the environment in the Marine Park that has been, might be or will be caused by the conduct the person engaged in referred to in subsection (1).

*Enforceable directions are not legislative instruments*

- (6) An enforceable direction is not a legislative instrument.

**61ADB Content of enforceable direction**

An enforceable direction must:

- (a) state the name of the person to whom it applies; and

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- (b) set out brief details of the conduct to which it applies; and
- (c) specify whichever of the following apply:
  - (i) the offence referred to in subparagraph 61ADA(1)(a)(i);
  - (ii) the provision referred to in subparagraph 61ADA(1)(a)(ii);
  - (iii) the duty in section 37AA to prevent or minimise harm to the environment in the Marine Park; and
- (d) specify the action that the person is to take or not take; and
- (e) set out the effect of section 61ADE (Ministerial reconsideration of enforceable direction); and
- (f) set out the effect of section 61ADH (failure to comply with enforceable direction); and
- (g) if the direction relates to conduct that a person has engaged in that constitutes an offence or contravention—be given less than 6 years after the offence or contravention occurs.

**61ADC Notifying owners and occupiers of land**

- (1) Before the Minister makes an enforceable direction that requires an action to be taken on land that is not owned or occupied by the person the Minister proposes the direction will apply to, the Minister must:
  - (a) take all practicable steps to identify each person who is an owner or occupier of the land or any part of it; and
  - (b) take all practicable steps to advise each person identified of the enforceable direction the Minister proposes to make; and
  - (c) give persons advised at least 28 days to comment in writing to the Minister on the proposed enforceable direction.
- (2) The Minister must take any comments into account in deciding whether to make the proposed enforceable direction.
- (3) If the Minister decides to make the proposed enforceable direction, the Minister must take all practicable steps to advise each person identified for the purposes of paragraph (1)(a) that the direction has been made.

**61ADD When enforceable directions have effect**

- (1) An enforceable direction takes effect:
  - (a) on the day (if any) specified in the direction (which must not be earlier than the day on which a copy of the direction is given to the person to whom it applies); or
  - (b) if no day is specified—on the day on which a copy of the direction is given to the person to whom it applies.
- (2) An enforceable direction continues in effect:
  - (a) for the period (if any) specified in the direction; or
  - (b) until set aside by the Federal Court under section 61ADF or revoked by the Minister under subsection 61ADA(5).

**61ADE Ministerial reconsideration of enforceable direction**

- (1) A person to whom an enforceable direction is given may, no later than 20 days after:
  - (a) the day on which the person is given a copy of the direction; or
  - (b) the day on which the Minister varies the direction under subsection 61ADA(5);apply in writing to the Minister for reconsideration of the decision to make or vary the direction.
- (2) On receipt of the application, the Minister must:
  - (a) reconsider the decision; and
  - (b) affirm or vary it, or set it aside and substitute a new decision.
- (3) The Minister may take into account information and comments from any source the Minister considers appropriate in deciding what action to take in relation to the application.
- (4) The Minister must:
  - (a) advise the person of the Minister's decision in relation to the application; and
  - (b) take all practicable steps to advise the persons identified for the purposes of paragraph 61ADC(1)(a) of the Minister's decision in relation to the application.

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**61ADF Application to Federal Court**

- (1) A person to whom an enforceable direction applies may apply to the Federal Court to have the direction set aside, as long as the application is made within 28 days after any of the following:
  - (a) the day on which the person is given a copy of the direction;
  - (b) the day on which the Minister affirms or varies the direction under section 61ADE;
  - (c) the day on which the Minister varies the direction under subsection 61ADA(5).
- (2) On application under subsection (1), the Federal Court must set aside the enforceable direction if the Court is satisfied that:
  - (a) the person did not engage in, or was not likely to engage in, the conduct referred to in subsection 61ADA(1); or
  - (b) the conduct did not or would not constitute the offence specified in the direction; or
  - (c) the conduct did not or would not contravene the civil penalty provision specified in the direction; or
  - (d) the conduct did not or would not contravene the duty in section 37AA; or
  - (e) taking or not taking the action specified in the direction is not a reasonable measure for the purposes of:
    - (i) ensuring the person's future compliance with this Act; or
    - (ii) preventing, repairing or mitigating harm to the environment in the Marine Park that has been, might be or will be caused by the person's conduct.
- (3) In considering whether taking or not taking an action is a reasonable measure for the purposes referred to in paragraph (2)(e), the Federal Court must have regard to the following:
  - (a) the nature and extent of the conduct referred to in subsection 61ADA(1);
  - (b) the nature and extent of the harm to the environment that has been, might be or will be caused by the conduct;
  - (c) the circumstances in which the person engaged in the conduct;
  - (d) whether the person has previously been found by a court in proceedings under this Act or under any other law of the



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Commonwealth or a State or Territory to have engaged in any similar conduct;

- (e) the cost to the person of taking or not taking the action;
- (f) any benefit (whether or not financial) that the person has obtained or might obtain as a result of engaging in the conduct.

The Federal Court may also have regard to any other matters it considers relevant.

- (4) The Federal Court must not set aside the enforceable direction unless it is satisfied as mentioned in subsection (2).

**61ADG Enforcement of direction by Federal Court**

- (1) If the Minister considers that the person to whom an enforceable direction applies has failed to comply with the direction, the Minister may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that the person has failed to comply with the direction, the Court may make any one or more of the following orders:
  - (a) an order directing the person to comply with the direction;
  - (b) any other order the Court considers appropriate.

**61ADH Failure to comply with enforceable direction: civil penalty provision**

A person to whom an enforceable direction applies must comply with the direction.

Civil penalty:

- (a) for an individual—600 penalty units; or
- (b) for a body corporate—6,000 penalty units.

## **Subdivision E—Directions limiting access to Marine Park**

### **61AEA Directions limiting access to Marine Park**

#### *Application of this section*

- (1) This section applies in relation to a person if at least 3 strikes against the person have occurred within the last 10 years. For this purpose:
  - (a) there is a **strike** against a person if the person has been convicted of an offence against this Act or a declaration of contravention of a civil penalty provision has been made against the person; and
  - (b) the strike **occurs** on the date the person is convicted of the offence or the date of the declaration of contravention.

#### *Directions limiting access to Marine Park*

- (2) The Minister may, in writing, make a direction:
  - (a) prohibiting the person from entering and using the Marine Park; or
  - (b) imposing conditions on the person's entry to and use of the Marine Park.
- (3) A copy of the direction must be given to the person.

#### *Relevant matters*

- (4) In deciding whether to make a direction under subsection (2), the Minister must have regard to:
  - (a) the nature of the conduct involved in the strikes to which the direction relates; and
  - (b) the objects of ensuring the person's future compliance with this Act and preventing harm to the environment in the Marine Park.
- (5) The Minister must not make a direction under subsection (2) that is inconsistent with the obligations of Australia under international law, including obligations under any agreement or arrangement between Australia and another country or countries.

*When directions have effect*

- (6) A direction made under subsection (2):
- (a) takes effect:
    - (i) on the day (if any) specified in the direction (which must not be earlier than the day on which a copy of the direction is given to the person); or
    - (ii) if no day is specified—on the day a copy of the direction is given to the person; and
  - (b) continues in effect for the period specified in the direction (which must be no longer than 10 years after the strike that occurred most recently before the direction takes effect).

*Variation and revocation*

- (7) The Minister may vary or revoke a direction under subsection (2):
- (a) in the same manner as a direction under that subsection may be made; and
  - (b) subject to the same conditions as apply to the making of a direction under subsection (2) (for this purpose, subsection (1) is not a condition).

*Directions are not legislative instruments*

- (8) A direction made under subsection (2) is not a legislative instrument.

**61AEB Failure to comply with direction: offence**

- (1) A person commits an offence if:
- (a) a direction under subsection 61AEA(2) applies to the person; and
  - (b) the person fails to comply with the direction.

Penalty: 500 penalty units.

- (2) Absolute liability applies to paragraph (1)(a).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

- (3) The fault element for paragraph (1)(b) is negligence.

Note: For negligence, see section 5.5 of the *Criminal Code*.

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**Subdivision F—Publicising offences and contraventions**

**61AFA Publicising offences and contraventions**

- (1) The Minister or the Authority may publicise, in any way the Minister or Authority thinks appropriate, any or all of the following:
  - (a) an offence against this Act of which a person has been convicted;
  - (b) a contravention of a civil penalty provision in respect of which a declaration of contravention has been made against a person or for which a person has been required to pay a pecuniary penalty;
  - (c) a penalty imposed on a person for an offence or contravention of a civil penalty provision.
- (2) This section does not:
  - (a) limit the Minister's or Authority's powers to publicise an offence against or contravention of this Act; or
  - (b) prevent anyone else from publicising an offence against or contravention of this Act; or
  - (c) affect any obligation (however imposed) on anyone to publicise an offence against or contravention of this Act.

**Subdivision G—Injunctions**

**61AGA Injunctions**

- (1) If a person has done, is doing or is proposing to do an act that:
  - (a) constitutes or would constitute an offence against this Act; or
  - (b) contravenes or would contravene a civil penalty provision;the Federal Court or the Supreme Court of Queensland may, on application by the Minister, the Authority or by a person whose interests have been, are or would be affected by the action, grant an injunction, on terms the Court considers appropriate:
  - (c) restraining the person from doing the act; and
  - (d) if, in the Court's opinion, it is desirable to do so—requiring the person to do an act (including prevent, repair or mitigate harm to the environment in the Marine Park).

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- (2) If a person:
  - (a) has refused or failed, is refusing or failing or is proposing to refuse or fail to do an act; and
  - (b) that refusal or failure constitutes or would constitute:
    - (i) an offence against this Act; or
    - (ii) a contravention of a civil penalty provision;the Federal Court or the Supreme Court of Queensland may, on application by the Minister, the Authority or by a person whose interests have been, are or would be affected by the refusal or failure, grant an injunction, on terms the Court considers appropriate, requiring the person to do the act.
- (3) Before deciding to grant an injunction under this section, the Court may grant an interim injunction:
  - (a) restraining a person from doing an act; or
  - (b) requiring a person to do an act.
- (4) The Court may discharge or vary an injunction granted under this section.
- (5) The Court may grant an injunction under subsection (1) restraining a person from doing an act:
  - (a) whether or not it appears to the Court that the person intends to do again, or to continue to do, an act of that kind; and
  - (b) whether or not the person has previously done an act of that kind; and
  - (c) whether or not there is an imminent danger of substantial harm to a person or to the environment in the Marine Park if the person does an act of that kind.
- (6) The Court may grant an injunction under subsection (2) requiring a person to do an act:
  - (a) whether or not it appears to the Court that the person intends to refuse or fail, or to continue to refuse or fail, to do the act; and
  - (b) whether or not the person has previously refused or failed to do the act; and
  - (c) whether or not there is an imminent danger of substantial harm to a person or to the environment in the Marine Park if the person refuses or fails to do the act.

## **Subdivision H—Remediation orders**

### **61AHA Remediation orders**

- (1) If a person has engaged or is engaging in conduct that constitutes:
  - (a) an offence against this Act; or
  - (b) a contravention of a civil penalty provision;the Federal Court may, on application by the Minister, make an order (a **remediation order**) requiring the person to take action to prevent, repair or mitigate harm to the environment in the Marine Park that has been, might be or will be caused by the conduct.
- (2) In considering whether to grant a remediation order, the Federal Court must have regard to the following:
  - (a) the nature and extent of the conduct referred to in subsection (1);
  - (b) the nature and extent of the harm to the environment in the Marine Park that has been, might be or will be caused by the conduct;
  - (c) the circumstances in which the person engaged in the conduct;
  - (d) if the harm was, might be or will be caused in a zone—any objectives specified for the zone in its zoning plan;
  - (e) whether the person has previously been found by a court in proceedings under this Act or under any other law of the Commonwealth or a State or Territory to have engaged in any similar conduct;
  - (f) the cost to the person of taking the action;
  - (g) any benefit (whether or not financial) that the person has obtained or might obtain as a result of engaging in the conduct.
- (3) A remediation order may specify the action that a person is to take in general terms (for example, requiring the person to take whatever action is necessary to prevent, repair or mitigate the harm) or in particular terms.
- (4) If the Federal Court makes a remediation order, it may also make an order requiring the person to provide security for the due taking of the required action.

## **61AHB Variation and discharge of remediation order**

The Federal Court may vary or discharge a remediation order on application by the Minister.

## **Subdivision I—Civil penalty provisions**

### **61AIA Declarations of contravention**

- (1) The Authority may, on behalf of the Commonwealth, apply for a declaration of contravention under this section in relation to a contravention of a civil penalty provision by a person.
- (2) If the Federal Court is satisfied that the person has contravened the civil penalty provision, the Court must make a declaration of contravention.

Note: Once a declaration is made, the Authority can seek a pecuniary penalty order (see section 61AIC).

- (3) The declaration of contravention must specify the following:
  - (a) that the Federal Court made the declaration;
  - (b) the civil penalty provision that was contravened;
  - (c) if the contravention was an aggravated contravention—the applicable aggravating circumstance under section 38GB;
  - (d) the person who contravened the civil penalty provision;
  - (e) the conduct that constituted the contravention.
- (4) Proceedings for a declaration of contravention may be started no later than 6 years after the contravention.

### **61AIB Declaration of contravention is conclusive evidence**

A declaration of contravention is conclusive evidence of the matters referred to in subsection 61AIA(3).

### **61AIC Pecuniary penalty for contravening civil penalty provision**

*Application for order*

- (1) No later than 6 years after a contravention of a civil penalty provision by a person, the Authority may, on behalf of the Commonwealth, apply to the Federal Court for an order that the

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person pay the Commonwealth a pecuniary penalty for the contravention.

*Court may order person to pay pecuniary penalty*

- (2) If the Federal Court has made a declaration of contravention against the person under section 61AIA, the Court may order the person to pay to the Commonwealth for the 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 Federal 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 nature and extent of any harm to the environment that has been, might be or will be caused by the contravention; and
  - (d) if any harm caused by the contravention was, might be or will be caused in a zone—any objectives specified for the zone in its zoning plan; and
  - (e) the circumstances in which the contravention took place; and
  - (f) whether the person has previously been found by a court in proceedings under this Act or under any other law of the Commonwealth or a State or Territory to have engaged in any similar conduct; and
  - (g) any benefit (whether or not financial) obtained by the person directly or indirectly as a result of the contravention.

*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 pecuniary penalty under this section in respect of the same conduct.



**61AID Definition of *civil penalty provision***

For the purposes of this Act, 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) (whether or not any other amount is set out); or
- (b) another provision of this Act specifies that the subsection (or section) is a civil penalty provision.

**61AIE Contravening a civil penalty provision is not an offence**

A contravention of a civil penalty provision is not an offence.

**61AIF 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) A person who contravenes subsection (1) in relation to a civil penalty provision is, for the purposes of:
  - (a) this Act; and
  - (b) Part 17 of the *Environment Protection and Biodiversity Conservation Act 1999*, so far as that Part applies in relation to contraventions of civil penalty provisions of this Act;taken to have contravened the civil penalty provision.

**61AIG 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.

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**61AIH Civil evidence and procedure rules for declarations of contravention and civil penalty orders**

The Federal Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for:

- (a) a declaration of contravention; or
- (b) a pecuniary penalty order.

**61AII Civil proceedings after criminal proceedings**

The Federal Court must not make a declaration of contravention or 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.

**61AIJ Criminal proceedings during civil proceedings**

- (1) Proceedings for a declaration of contravention or 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.
- (2) The proceedings for the declaration or order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

**61AIK 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) a declaration of contravention has been made against the person; or
- (b) a pecuniary penalty order has been made against the person.

**61AIL 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.

**Subdivision J—Court order to pay amount equivalent to avoided charge**

**61AJA Order to pay amount equivalent to avoided charge**

- (1) This section applies if:
  - (a) a court convicts a person of an offence against this Act or orders a person to pay a pecuniary penalty for a contravention of a civil penalty provision; and
  - (b) the person would not have committed the offence or contravention if the conduct constituting the offence or contravention had been authorised by a permission granted under the regulations for the purposes of a zoning plan or a provision of this Act; and
  - (c) the permission would have been a chargeable permission.
- (2) In addition to any fine or sentence of imprisonment imposed on the person for the offence or contravention, the court may, on application by the Authority, order the person to pay to the Authority, on behalf of the Commonwealth, a penalty of an amount determined by the court under subsection (3).

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- (3) In determining the penalty, the court must have regard to the amount of charge that would have been payable if the person had been the holder of the chargeable permission referred to in paragraph (1)(c) at all times when the person engaged in conduct constituting the offence or contravention (whether or not the person was convicted, or ordered to pay a pecuniary penalty, in respect of each particular instance of the conduct).
- (4) To avoid doubt, the total of the penalties that may be payable by a person in relation to an offence or contravention of a civil penalty provision may, because of this section, exceed the maximum penalty set out at the foot of the offence or civil penalty provision.

**Subdivision K—Publicity orders**

**61AKA Publicity orders**

A court that:

- (a) convicts a person of an offence against this Act; or
- (b) makes a declaration of contravention against a person, or imposes a pecuniary penalty on a person, for a contravention of a civil penalty provision;

may make an order that the person take action specified in the order to publicise either or both of the following:

- (c) the offence or contravention;
- (d) any penalty imposed.

## **Division 2—Other enforcement-related matters**

### **Subdivision A—Infringement notices**

#### **61ALA Infringement notices**

- (1) The regulations may make provision enabling a person who is alleged to have committed:
  - (a) an offence against:
    - (i) subsection 38BA(3); or
    - (ii) subsection 38EA(4); or
  - (b) an offence against the regulations;to pay a specified penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must not exceed an amount equal to one-fifth of the maximum fine that a court could impose on the person for that offence.

### **Subdivision B—Evidentiary matters**

#### **61AMA Content of evidentiary certificate**

If the Chairperson has reason to believe that any of the following is the case, the Chairperson may issue a written certificate to that effect:

- (a) that a specified document is a copy of a permission, authority or notice under this Act;
- (b) that on a specified day, or during a specified period, a specified person was or was not authorised to engage in conduct by a specified permission granted under the regulations or specified authority given in accordance with such a permission;
- (c) that on a specified day, a specified person was given a specified notice, order or direction under this Act;
- (d) that a specified fee or charge under this Act is payable by a specified person;
- (e) that a specified fee or charge under this Act payable by a specified person has not been paid by a specified day;

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- (f) that a specified location at which, or specified area of waters in which, a person, animal, plant, aircraft, vessel or platform is alleged to have been at a specified time is in the Great Barrier Reef Region, the Marine Park or in a specified zone;
- (g) that specified information obtained from the vessel monitoring system of a vessel shows that the vessel was, at a specified time, at a specified location or in a specified area of waters;
- (h) that specified information obtained from the vessel monitoring system of a vessel shows that the vessel was, at a specified time, travelling at a specified speed.

**61AMB Evidentiary effect of certificate**

- (1) In any proceedings:
  - (a) in relation to an offence against this Act; or
  - (b) in relation to a contravention of a civil penalty provision; or
  - (c) for an injunction under section 61AGA; or
  - (d) to set aside an enforceable direction under section 61ADF;a certificate under section 61AMA is prima facie evidence of the matters in the certificate.
- (2) A document purporting to be a certificate under section 61AMA must, unless the contrary is proved, be taken to be such a certificate and to have been properly issued.
- (3) A certificate must not be admitted in evidence under subsection (1) in proceedings in relation to an offence unless the person charged, or 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 evidence of the intention to produce the certificate as evidence in the proceedings.
- (4) Subject to subsection (5), if a certificate is admitted in evidence under subsection (1) in proceedings in relation to an offence, the person charged with the offence may require the Chairperson 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.

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- (5) Subsection (4) does not entitle the person charged to require the Chairperson to be called as a witness for the prosecution unless the court, by order, allows the person charged to require the Chairperson to be so called.
- (6) The Authority may certify that a document is a copy of a certificate under section 61AMA.
- (7) This section applies to the certified copy as if it were the original.

**61AMC Varying or revoking certificate**

- (1) The Chairperson may vary a certificate under section 61AMA as long as the variation is of a minor nature.
- (2) If a certificate is varied, the Chairperson must give the person concerned a written notice setting out the terms of the variation.
- (3) The Chairperson may revoke a certificate under section 61AMA.
- (4) If a certificate is revoked, the Chairperson must give the person concerned a written notice stating that the certificate has been revoked.

**61AMD Offences and contraventions in relation to fishing**

- (1) This section applies in relation to an offence against this Act, or a contravention of a civil penalty provision, constituted by conduct that is fishing, if the fishing involved a primary commercial fishing vessel or a dory.
- (2) In determining, in the case of an offence or contravention involving a primary commercial fishing vessel:
  - (a) the penalty, or the amount of a penalty, to be imposed on a person for the offence or contravention; or
  - (b) whether the forfeiture of a thing used in the offence should be ordered under Division 10 of Part 17 of the *Environment Protection and Biodiversity Conservation Act 1999*;all fish on board the primary commercial fishing vessel at the time the vessel was apprehended in relation to the offence or contravention are taken to be fish in relation to which the offence or contravention was committed.

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- (3) In determining, in the case of an offence or contravention involving a dory:
- (a) the penalty, or the amount of a penalty, to be imposed on a person for the offence or contravention; or
  - (b) whether the forfeiture of a thing used in the offence should be ordered;
- all fish:
- (c) on board the dory at the time the dory was apprehended in relation to the offence or contravention; and
  - (d) on board the primary commercial fishing vessel, in association with which the dory is used, at the time the vessel was apprehended in relation to the offence or contravention;
- are taken to be fish in relation to which the offence or contravention was committed.

**Subdivision C—Conduct of directors, employees and agents**

**61ANA Conduct of directors, employees and agents**

*Bodies corporate—conduct*

- (1) Any conduct engaged in on behalf of a body corporate:
- (a) by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent;
- is taken, for the purposes of this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.



*Bodies corporate—state of mind*

- (2) If, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a director, employee, agent or other person as mentioned in paragraph (1)(a) or (b); and
  - (b) that the director, employee, agent or other person had that state of mind.

*Persons other than bodies corporate—conduct*

- (3) Any conduct engaged in on behalf of a person other than a body corporate:
- (a) by an employee or agent of the person within the scope of his or her actual or apparent authority; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent;
- is taken, for the purposes of this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

*Persons other than bodies corporate—state of mind*

- (4) If, for the purposes of this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by an employee, agent or other person as mentioned in paragraph (3)(a) or (b); and
  - (b) that the employee, agent or other person had that state of mind.

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*Reasonable precautions*

- (5) For the purposes of subsection (1) or (3), in determining whether a body corporate or other person took reasonable precautions and exercised due diligence to avoid particular conduct, a court must have regard to what steps (if any) the body or person took directed towards ensuring the following (to the extent that the steps are relevant to the conduct):
- (a) that the body or person regularly assesses, or arranges for regular assessments of, the body's or person's compliance with this Act;
  - (b) that the body or person implements any appropriate recommendations arising from such an assessment;
  - (c) that the directors of the body, or the employees or agents of the body or person, have a reasonable knowledge and understanding of the requirements to comply with this Act, in so far as those requirements affect the directors, employees or agents concerned;
  - (d) that the body or person regularly assesses, or arranges for regular assessments of, the effects of the body's or person's activities on the environment in the Marine Park;
  - (e) that the body or person has an appropriate system established for managing those effects.

*Meaning of **state of mind***

- (6) A reference in subsection (2) or (4) to the **state of mind** of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

*Meaning of **director***

- (7) A reference in this section to a **director** of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

*Disapplying Part 2.5 of Criminal Code*

- (8) Part 2.5 of the *Criminal Code* does not apply to an offence against this Act.

Note: Part 2.5 of the *Criminal Code* deals with corporate criminal responsibility.

**Subdivision D—Liability of executive officers for bodies corporate**

**61AOA Criminal liability of executive officers of bodies corporate**

- (1) If:
- (a) a body corporate commits an offence against Part VAA (other than Division 6); and
  - (b) an executive officer of the body was reckless as to whether the offence would be committed; and
  - (c) the officer was in a position to influence the conduct of the body in relation to the offence; and
  - (d) the officer failed to take all reasonable steps to prevent the offence being committed;
- the officer commits an offence.
- (2) An offence against subsection (1) is punishable on conviction by:
- (a) imprisonment for a term not exceeding the term specified for the offence committed by the body corporate; or
  - (b) if no term of imprisonment is specified for the offence committed by the body corporate—a pecuniary penalty not exceeding the pecuniary penalty specified for the offence committed by the body corporate.

**61AOB Civil penalties for executive officers of bodies corporate**

- (1) If:
- (a) a body corporate contravenes a civil penalty provision; 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

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- (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 61AIC, 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.

**61AOC Reasonable steps to prevent offence or contravention**

- (1) For the purposes of sections 61AOA and 61AOB, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent the offence or contravention, a court must 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 offence or contravention):
    - (i) that the body regularly assesses, or arranges for regular assessments of, the body's compliance with this Act;
    - (ii) that the body implements any appropriate recommendations arising from such an assessment;
    - (iii) that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Act, in so far as those requirements affect the employees, agents or contractors concerned;
    - (iv) that the body regularly assesses, or arranges for regular assessments of, the effects of the body's activities on the environment in the Marine Park;
    - (v) that the body has an appropriate system established for managing those effects; and
  - (b) what action (if any) the officer took when he or she became aware that the body was committing an offence against, or contravening, this Act.
- (2) This section does not, by implication, limit the generality of sections 61AOA and 61AOB.

## **Subdivision E—Miscellaneous**

### **61APA Powers of Federal Court**

The powers conferred on the Federal Court by this Part are in addition to (and do not limit) any other powers of the Court.

#### **61A Restoration of environment etc.**

- (1) Where the Minister believes on reasonable grounds that an act or omission constitutes an offence against this Act or a contravention of a civil penalty provision, the Minister may cause to be taken such steps as the Minister thinks proper:
  - (a) to repair or remedy any condition arising from that act or omission;
  - (b) to mitigate any damage arising from that act or omission; or
  - (c) to prevent any damage likely to arise from that act or omission.
- (2) Where the Minister believes on reasonable grounds that an act or omission constitutes an offence against section 38DC in relation to an order or direction relating to the removal of a structure, landing area, farming facility, vessel, aircraft or other thing, the Minister may cause to be taken such steps as the Minister thinks proper:
  - (a) to remove that structure, landing area, farming facility, vessel, aircraft or other thing;
  - (b) to repair or remedy any condition arising from that removal;
  - (c) to mitigate any damage arising from that removal; or
  - (d) to prevent any damage likely to arise from that removal.
- (6) This section does not authorise the doing of an act or thing outside the Marine Park unless the doing of the act or thing affects the Marine Park.
- (7) Nothing in this section shall be taken to affect the exercise by the Commonwealth or the Authority of powers in accordance with another provision of this Act or in accordance with any other law.

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**61B Liability for expenses incurred by the Commonwealth or the Authority resulting from contravention of this Act**

(1) Subject to this section, where:

- (a) a person has been convicted of an offence against this Act;  
and
- (b) the Commonwealth or the Authority has incurred expenses or other liabilities in relation to:
  - (i) if the offence is an ancillary offence—rectifying the act or omission constituting the primary offence to which the ancillary offence relates; or
  - (ii) in any other case—rectifying the act or omission constituting the offence;

the person convicted is liable to pay to the Commonwealth or to the Authority, as the case requires, an amount equal to the total amount of those expenses and liabilities of the Commonwealth or the Authority.

(1A) Subject to this section, if:

- (a) a declaration of contravention has been made against a person in relation to a contravention of a civil penalty provision; and
- (b) the Commonwealth or the Authority has incurred expenses or other liabilities in relation to:
  - (i) if the contravention is a contravention of subsection 61AIF(1)—rectifying the act or omission constituting the contravention of the civil penalty provision to which that contravention relates; or
  - (ii) in any other case—rectifying the act or omission constituting the contravention;

the person against whom the declaration is made is liable to pay to the Commonwealth or to the Authority, as the case requires, an amount equal to the total amount of those expenses and liabilities of the Commonwealth or the Authority.

(2) Where, apart from this subsection, 2 or more persons would be liable to pay an amount under subsection (1) or (1A) in respect of the same expenses and liabilities, those persons are jointly and severally liable to pay to the Commonwealth or to the Authority, as the case requires, an amount equal to the total amount of those expenses and liabilities.

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- (3) Where:
- (a) apart from this subsection, a person is liable to pay an amount under this section in respect of expenses or liabilities incurred by the Commonwealth or the Authority in relation to rectifying an act or omission; and
  - (b) the total amount of those expenses or liabilities exceeds the amount that was reasonable for the Commonwealth or the Authority to incur in relation to rectifying the act or omission;
- the person is not liable to pay the amount of the excess.
- (4) An amount payable under this section may be recovered, as a debt due to the Commonwealth or to the Authority, as the case requires, by the person, by action in a court of competent jurisdiction.
- (5) Where a person is convicted before a court of an offence against this Act, the court may (whether or not it has imposed a penalty on the person) order the person to pay an amount that the person is liable to pay under this section.
- (5A) If the Federal Court makes a declaration of contravention against a person for a contravention of a civil penalty provision, the Court may (whether or not the Court makes a pecuniary penalty order against the person in respect of the contravention) order the person to pay an amount that the person is liable to pay under this section.
- (6) A recovery under subsection (4), or the making of an order under subsection (5) or (5A), in respect of an expense or liability incurred in relation to rectifying an act or omission does not prevent a recovery under subsection (4), or the making of an order under subsection (5) or (5A), in respect of another expense or liability incurred in relation to rectifying that act or omission.
- (7) For the purposes of this section, where a person is convicted of:
- (a) an offence against section 6 of the *Crimes Act 1914* or section 11.4 or 11.5 of the *Criminal Code*; or
  - (b) an offence against section 38FA or 38FD;
- the following provisions have effect:
- (c) the person shall be taken to have been convicted of an ancillary offence;

**Section 61B**

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- (d) the offence in relation to which the ancillary offence was committed shall be taken to be the primary offence to which the ancillary offence relates.
- (8) For the purposes of this section, where a person is convicted of an offence against this Act because of section 11.2 of the *Criminal Code*:
  - (a) the person shall be taken to have been convicted of an ancillary offence; and
  - (b) the offence the commission of which the person aided, abetted, counselled or procured shall be taken to be the primary offence to which the ancillary offence relates.
- (8A) For the purposes of this section, if a person is convicted of an offence against this Act because of section 11.2A of the *Criminal Code*:
  - (a) the person is taken to have been convicted of an ancillary offence; and
  - (b) the offence that was committed because of that section is taken to be the primary offence to which the ancillary offence relates.
- (9) A reference in this section to rectifying an act or omission constituting an offence against this Act or a contravention of a civil penalty provision is a reference:
  - (a) in the case of an offence against section 38DC in relation to an order or direction relating to the removal of a structure, landing area, farming facility, aircraft, vessel or other thing—to the taking of steps (whether in the exercise of powers conferred by section 61A, by another provision of this Act or by another law):
    - (i) to remove that structure, landing area, farming facility, vessel, aircraft or other thing;
    - (ii) to repair or remedy any condition arising from that removal;
    - (iii) to mitigate any damage arising from that removal; or
    - (iv) to prevent any damage likely to arise from that removal; and



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Section 61C

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- (b) in all cases—to the taking of steps (whether in the exercise of powers conferred by section 61A, by another provision of this Act or by another law):
  - (i) to repair or remedy any condition arising from that act or omission;
  - (ii) to mitigate any damage arising from that act or omission; or
  - (iii) to prevent any damage likely to arise from that act or omission.
- (10) A reference in this section to a conviction of a person of an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.

**61C Enforcement of orders for payment**

- (1) Where:
  - (a) under subsection 39FA(6), 39FB(3), section 61AJA or subsection 61B(5) or (5A), a court orders a person to pay an amount; and
  - (b) the court has civil jurisdiction to the extent of the amount; the order is enforceable in all respects as a final judgment of the court in favour of the Commonwealth or the Authority, as the case requires.
- (2) Where:
  - (a) under subsection 39FA(6), 39FB(3), section 61AJA or subsection 61B(5) or (5A), a court orders a person to pay an amount; and
  - (b) the court:
    - (i) does not have civil jurisdiction; or
    - (ii) has civil jurisdiction, but does not have civil jurisdiction to the extent of the amount;

a proper officer of the court shall issue to the Minister or the Authority, as the case requires, a certificate in the prescribed form containing the prescribed particulars.

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- (3) The certificate may, in a prescribed manner and subject to the prescribed conditions (if any), be registered in a court having civil jurisdiction to the extent of the amount ordered to be paid to the Commonwealth or the Authority, as the case requires.
- (4) Upon registration under subsection (3), the certificate is enforceable in all respects as a final judgment of the court in favour of the Commonwealth or the Authority, as the case requires.
- (5) The cost of registration of the certificate and other proceedings under this section shall, subject to the prescribed conditions (if any), be deemed to be payable under the certificate.

**63 Jurisdiction of courts**

- (1) A provision of the *Judiciary Act 1903* by which a court of a State is invested with jurisdiction with respect to offences against the laws of the Commonwealth has effect, in relation to offences against this Act, as if that jurisdiction were so invested without limitation as to locality.
- (2) Subject to section 80 of the Constitution, where a person has committed an offence against this Act outside a Territory and is found in, or brought into, the Territory, a court of the Territory has the same jurisdiction in respect of the offence as it would have if the offence had been committed in the Territory.
- (3) The trial on indictment of an offence against this Act not committed within a State may be held by a court of competent jurisdiction at any place where the court may sit.

## Part IX—Miscellaneous

### 64 Reconsideration of decisions

- (1) A person who is affected by a reviewable decision made by the Minister may request the Minister, in writing, to reconsider the decision.
- (2) A person who is affected by a reviewable decision made by the Authority may request the Authority, in writing, to reconsider the decision.
- (3) For the purposes of this Act, each of the following decisions is a **reviewable decision**:
  - (a) a decision by the Authority to make an emergency direction under subsection 61ACA(2) or to vary such a direction;
  - (b) a decision by the Minister to make a direction under subsection 61AEA(2) (directions limiting access to the Marine Park), or to vary such a direction;
  - (c) a decision by the Minister prescribed by the regulations for the purposes of this paragraph;
  - (d) a decision by the Authority prescribed by the regulations for the purposes of this paragraph.
- (4) After receiving a request, the Minister or Authority must:
  - (a) reconsider the decision; and
  - (b) affirm or vary it, or set it aside and substitute a new decision.
- (5) The regulations may prescribe any or all of the following:
  - (a) time limits for making requests under this section;
  - (b) matters to be included in requests under this section;
  - (c) time limits for reconsidering decisions under this section;
  - (d) when a decision on reconsideration takes effect.
- (6) In this section:

**decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Section 64A

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**64A Review of decisions by AAT**

If a reviewable decision made by the Minister or the Authority has been reconsidered under subsection 64(4), application may be made to the AAT for review of the decision as affirmed, varied or substituted on reconsideration.

Note: Sections 39M and 59G provide for review of certain other decisions by the AAT.

**65 Act to apply subject to international obligations**

This Act has effect subject to the obligations of Australia under international law, including obligations under any agreement between Australia and another country or countries.

**65A Appropriation of Consolidated Revenue Fund**

- (1) The Consolidated Revenue Fund is appropriated for the following purposes:
  - (a) making refunds of amounts in accordance with regulations made for the purposes of paragraph 39K(1)(c);
  - (b) making payments of interest, or other amounts, derived from the custody or banking of collected amounts in accordance with regulations made for the purposes of paragraph 39PA(1)(d).
- (2) If an amount (the **Commonwealth amount**) is received by the Commonwealth under section 39DA, subsection 39FA(2), section 39FD or 39H or subsection 61AJA(2), an amount equal to the Commonwealth amount is appropriated out of the Consolidated Revenue Fund for the purpose of the performance of the functions of the Authority.
- (3) If the Commonwealth refunds the whole or part of a Commonwealth amount, the amount appropriated under subsection (2) is reduced by the amount of the refund.

Note: Subsection 28(2) of the *Financial Management and Accountability Act 1997* is a standing appropriation for repayments of amounts received by the Commonwealth.

**66 Regulations**

- (1) The Governor-General may make regulations, not inconsistent with this Act or with a zoning plan, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), regulations to do any or all of the following may be made:
  - (a) conferring functions on the Authority for the purposes of the regulations;
  - (b) providing for giving effect to, and enforcing the observance of, zoning plans;
  - (ba) providing for giving effect to the enforcement provisions of a plan of management or to the enforcement provisions of an amendment of a plan of management;
  - (c) conferring functions and powers, and imposing duties upon, inspectors;
  - (d) providing for services and facilities in, or in connexion with, the Marine Park;
  - (e) regulating or prohibiting acts (whether in the Marine Park or elsewhere) that may pollute water in a manner harmful to animals and plants in the Marine Park;
  - (f) providing for the protection and preservation of the Marine Park and property and things in the Marine Park;
  - (g) providing for the removal from the Marine Park of persons unlawfully in the Marine Park or committing offences against this Act in the Marine Park;
  - (h) providing for the safety of persons in the Marine Park;
  - (i) regulating the conduct of persons in the Marine Park;
  - (j) regulating or prohibiting the carrying on of any trade or commerce in the Marine Park;
  - (k) providing for fees and charges to be imposed by the Authority upon persons using services or facilities provided by the Authority in or in connexion with the Marine Park;
  - (l) providing for the imposition and collection of charges for:
    - (a) the mooring of vessels;
    - (b) the landing of aircraft; or
    - (c) the use of vessels;in the Marine Park;

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- (m) providing for the removal of vessels from places in the Marine Park where they have been left in contravention of this Act or have been abandoned and for the impounding of such vessels;
- (o) regulating the use of vessels in, and the passage of vessels through, the Marine Park and the landing and use of aircraft in, and the flying of aircraft over, the Marine Park;
- (p) regulating or prohibiting the taking of animals or plants into, or out of, the Marine Park;
- (q) providing for the impounding, removal, destruction or disposal of animals found straying in the Marine Park;
- (r) regulating or prohibiting the taking into the Marine Park, and the use in the Marine Park, of weapons, traps, nets, snares, fishing apparatus and other devices;
- (s) regulating or prohibiting the laying of baits and the use of explosives and poisons in the Marine Park;
- (t) providing for the collection of specimens and the pursuit of research in the Marine Park for scientific purposes;
- (u) providing for the grant or issue of licences, permissions, permits and authorities, the conditions subject to which they are granted or issued (which may include a requirement to enter into an agreement with the Commonwealth) and the charging of fees by the Authority in respect of such licences, permissions, permits and authorities;
- (ua) providing for the issue of exemptions by the Minister under section 59F and the conditions subject to which they are issued;
- (ub) providing for the use of a vessel monitoring system on vessels in the Marine Park and for the use and disclosure of information provided by the vessel monitoring system;
- (uc) regulating fishing (of any kind, including commercial fishing) in the Marine Park;
- (ud) regulating camping and other activities on islands in the Marine Park;
- (ue) providing for the protection and conservation of protected species in the Marine Park;
- (v) providing for any matter incidental to or connected with any of the foregoing.

- (2A) Without limiting subsection (1), the regulations may prescribe measures for the management of the discharge of sewage from vessels in the Marine Park.
- (3) Without limiting the generality of subsection (1) or (2), the regulations may be expressed to apply to or in relation to:
  - (a) the Marine Park;
  - (b) a specified part of the Marine Park in respect of which no zoning plan is in force;
  - (c) a specified zone; or
  - (d) a specified part of a zone.
- (4) A regulation is taken not to be inconsistent with a zoning plan merely because it:
  - (a) further regulates an activity that is allowed or permitted by the zoning plan; or
  - (b) prohibits an activity that is otherwise allowed or permitted by the zoning plan.
- (4A) Nothing in subsection (4) allows a regulation to allow or permit an activity that is otherwise prohibited by the zoning plan concerned.
- (5) Regulations shall not apply to an area within the Marine Park in respect of which no zoning plan is in force if more than 5 years has elapsed since that area became part of the Marine Park.
- (6) Subject to subsections (7) and (8) and to any contrary intention appearing in a law made after the commencement of this Act, a provision of the regulations has full force and effect notwithstanding that it is inconsistent with a law of the Commonwealth made before or after the commencement of this Act.
- (7) A provision of the regulations regulating navigation in the Marine Park does not have any force or effect to the extent to which it is inconsistent with a law of the Commonwealth, but such a provision shall not be taken for the purposes of this subsection to be inconsistent with such a law if it can be complied with without contravention of that law.
- (8) A provision of the regulations regulating the flying of aircraft over the Marine Park does not have any force or effect to the extent to which it is inconsistent with a law of the Commonwealth, but such

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a provision shall not be taken for the purposes of this subsection to be inconsistent with such a law if it can be complied with without contravention of that law.

- (9) The power to make regulations conferred by this Act may be exercised:
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and
  - (b) so as to make, as respects the cases in relation to which it is exercised, the same provision for all those cases or different provision for different cases or classes of case.
- (10) The power to make regulations conferred by this Act shall not be taken not to include the power to make provision for or in relation to a matter by reason only of the fact that:
- (a) a provision is made by this Act in relation to that matter or another matter; or
  - (b) power is expressly conferred by this Act to make provision by regulation for or in relation to another matter.
- (11) The regulations may prescribe penalties not exceeding a fine of 50 penalty units for offences against the regulations.
- Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.
- (12) The limitation imposed by subsection (10) on the penalties that may be prescribed by the regulations does not prevent the regulations from requiring a person to make a statutory declaration.
- (13) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, the regulations may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.



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## Schedule 1

### Section 3

The area the boundary of which:

- (a) commences at the point that, at low water, is the northernmost extremity of Cape York Peninsula Queensland;
- (b) runs thence easterly along the geodesic to the intersection of parallel of Latitude  $10^{\circ} 41'$  South with meridian of Longitude  $145^{\circ} 00'$  East;
- (c) runs thence southerly along that meridian to its intersection by the parallel of Latitude  $13^{\circ} 00'$  South;
- (d) runs thence south-easterly along the geodesic to a point of Latitude  $15^{\circ} 00'$  South Longitude  $146^{\circ} 00'$  East;
- (e) runs thence south-easterly along the geodesic to a point of Latitude  $17^{\circ} 30'$  South Longitude  $147^{\circ} 00'$  East;
- (f) runs thence south-easterly along the geodesic to a point of Latitude  $21^{\circ} 00'$  South Longitude  $152^{\circ} 55'$  East;
- (g) runs thence south-easterly along the geodesic to a point of Latitude  $24^{\circ} 30'$  South Longitude  $154^{\circ} 00'$  East;
- (h) runs thence westerly along the parallel of Latitude  $24^{\circ} 30'$  South to its intersection by the coastline of Queensland at low water; and
- (j) runs thence generally northerly along that coastline at low water to the point of commencement.

## Endnotes

### Endnote 1—Legislation history

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## Endnotes

### Endnote 1—Legislation history

This endnote sets out details of the legislation history of the *Great Barrier Reef Marine Park Act 1975*.

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Great Barrier Reef Marine Park Act 1975	85, 1975	20 June 1975	20 June 1975	
Administrative Changes (Consequential Provisions) Act 1978	36, 1978	12 June 1978	12 June 1978	s. 8
Great Barrier Reef Marine Park Amendment Act 1978	140, 1978	20 Nov 1978	20 Nov 1978	—
Australian Federal Police (Consequential Amendments) Act 1979	155, 1979	28 Nov 1979	19 Oct 1979 ( <i>see</i> s. 2(1) and <i>Gazette</i> 1979, No. S206)	—
Australian Federal Police (Consequential Amendments) Act 1980	70, 1980	28 May 1980	28 May 1980	—
Statute Law (Miscellaneous Amendments) Act (No. 2) 1982	80, 1982	22 Sept 1982	Part XXXVI (ss. 109, 110): Royal Assent ( <i>a</i> )	—
Great Barrier Reef Marine Park Amendment Act 1983	97, 1983	22 Nov 1983	22 Nov 1983	s. 4(2) and (3)
Public Service Reform Act 1984	63, 1984	25 June 1984	s. 151(1): 1 July 1984 ( <i>see Gazette</i> 1984, No. S245) ( <i>b</i> )	s. 151(9)

## Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Statute Law (Miscellaneous Provisions) Act (No. 1) 1985	65, 1985	5 June 1985	s. 3: 3 July 1985 ( <i>c</i> )	—
Public Service and Statutory Authorities Amendment Act 1985	166, 1985	11 Dec 1985	s. 45: 8 Jan 1986 ( <i>d</i> )	s. 45(2)
Statute Law (Miscellaneous Provisions) Act (No. 2) 1985	193, 1985	16 Dec 1985	s. 3: Royal Assent ( <i>e</i> )	s. 16
Great Barrier Reef Marine Park Amendment Act 1988	105, 1988	6 Dec 1988	s. 14: 1 Sept 1989 ( <i>see Gazette</i> 1989, No. S294) ss. 29(e) and 32: 5 Oct 1989 ( <i>see Gazette</i> 1989, No. S319) Remainder: Royal Assent	ss. 31 and 32
Arts, Territories and Environment Legislation Amendment Act 1989	60, 1989	19 June 1989	ss. 11 and 13: 7 Dec 1988 Part 5 (ss. 14, 15): 11 May 1989 ( <i>see s. 2(3)</i> and <i>Gazette</i> 1989, No. S164) Remainder: Royal Assent	—
Great Barrier Reef Marine Park Amendment Act 1990	44, 1990	16 June 1990	16 June 1990	—
Great Barrier Reef Marine Park Amendment Act 1991	121, 1991	27 June 1991	1 Oct 1991 ( <i>see Gazette</i> 1991, No. S217)	s. 12

## Endnotes

### Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Arts, Sport, Environment, Tourism and Territories Legislation Amendment Act (No. 2) 1991	179, 1991	25 Nov 1991	25 Nov 1991	s. 3(2)
Great Barrier Reef Marine Park Amendment Act 1993	13, 1993	9 June 1993	1 July 1993	—
Environment, Sport and Territories Legislation Amendment Act 1995	25, 1995	6 Apr 1995	6 Apr 1995	Sch. 1 (item 55)
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 4 (items 1, 80, 81): Royal Assent ( <i>f</i> )	—
Environment, Sport and Territories Legislation Amendment Act 1997	118, 1997	7 July 1997	Schedule 1 (items 37–47): Royal Assent ( <i>g</i> )	—
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Schedule 2 (items 795–804): 1 Jan 1998 ( <i>see Gazette</i> 1997, No. GN49) ( <i>h</i> )	—
Environmental Reform (Consequential Provisions) Act 1999	92, 1999	16 July 1999	Schedule 2 (items 11–13), Schedule 4 (items 60–63) and Schedule 7 (items 11–15): 16 July 2000 ( <i>i</i> )	Sch. 2 (item 13) and Sch. 7 (items 12, 14)
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 500–504): 5 Dec 1999 ( <i>see Gazette</i> 1999, No. S584) ( <i>j</i> )	—
Corporate Law Economic Reform Program Act 1999	156, 1999	24 Nov 1999	Schedule 10 (item 85): 13 Mar 2000 ( <i>see Gazette</i> 2000, No. S114) ( <i>k</i> )	—

## Endnote 1—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent date</b>	<b>Commencement date</b>	<b>Application, saving and transitional provisions</b>
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419)
Environment and Heritage Legislation Amendment (Application of Criminal Code) Act 2001	15, 2001	22 Mar 2001	s. 4 and Schedule 1 (items 46–72): 24 May 2001 ( <i>l</i> )	s. 4
Great Barrier Reef Marine Park Amendment Act 2001	48, 2001	21 June 2001	19 July 2001	s. 4
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97)
Great Barrier Reef Marine Park Amendment Act 2004	22, 2004	23 Mar 2004	Schedule 1: 20 Apr 2004 Remainder: Royal Assent	Sch. 1 (item 24)
Financial Framework Legislation Amendment Act 2005	8, 2005	22 Feb 2005	s. 4 and Schedule 1 (items 146–149, 496): Royal Assent	s. 4 and Sch. 1 (item 496)
Great Barrier Reef Marine Park Amendment Act 2007	106, 2007	28 June 2007	1 July 2007	Sch. 2
Great Barrier Reef Marine Park and Other Legislation Amendment Act 2008	125, 2008	25 Nov 2008	Schedule 1 (items 1–25), Schedule 2 and Schedule 3 (items 3–47, 49–52): 26 Nov 2008 Schedule 4 (items 38– 44), Schedule 5 (items 88–157) and Schedule 6: 25 Nov 2009	Sch. 3 (items 49–52), Sch. 4 (items 42–44), Sch. 5 (items 147–157) and Sch. 6 (items 35–42)

## Endnotes

### Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010	4, 2010	19 Feb 2010	Schedule 10 (item 20): 20 Feb 2010	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Schedule 5 (item 60): (m)	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 1 (item 59): Royal Assent	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 661–671) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Navigation (Consequential Amendments) Act 2012	129, 2012	13 Sept 2012	Schedule 2 (item 15): 1 July 2013 ( <i>see s. 2(1)</i> )	—
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Schedule 1 (items 60, 61): Royal Assent	—

- (a) The *Great Barrier Reef Marine Park Act 1975* was amended by Part XXXVI (sections 109 and 110) only of the *Statute Law (Miscellaneous Amendments) Act (No. 2) 1982*, subsection 2(1) of which provides as follows:
- (1) Sections 1, 2, 166 and 195 and Parts III, VI, VII, XVI, XXXVI, XLIV, LI, LIII, LIV, LXI and LXXVII shall come into operation on the day on which this Act receives the Royal Assent.
- (b) The *Great Barrier Reef Marine Park Act 1975* was amended by subsection 151(1) only of the *Public Service Reform Act 1984*, subsection 2(4) of which provides as follows:
- (4) The remaining provisions of this Act shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.
- (c) The *Great Barrier Reef Marine Park Act 1975* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

## Endnote 1—Legislation history

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- (d) The *Great Barrier Reef Marine Park Act 1975* was amended by section 45 only of the *Public Service and Statutory Authorities Amendment Act 1985*, subsection 2(7) of which provides as follows:
- (7) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.
- (e) The *Great Barrier Reef Marine Park Act 1975* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (f) The *Great Barrier Reef Marine Park Act 1975* was amended by Schedule 4 (items 1, 80 and 81) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (g) The *Great Barrier Reef Marine Park Act 1975* was amended by Schedule 1 (items 37–47) only of the *Environment, Sport and Territories Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2), (3) and (4), this Act commences on the day on which it receives the Royal Assent.
- (h) The *Great Barrier Reef Marine Park Act 1975* was amended by Schedule 2 (items 795–804) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.
- (i) The *Great Barrier Reef Marine Park Act 1975* was amended by Schedule 2 (items 11 and 12), Schedule 4 (items 60–63) and Schedule 7 (items 11, 13 and 15) 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.
- (j) The *Great Barrier Reef Marine Park Act 1975* was amended by Schedule 1 (items 500–504) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.
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## Endnotes

### Endnote 1—Legislation history

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- (k) The *Great Barrier Reef Marine Park Act 1975* was amended by Schedule 10 (item 85) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2)(c) of which provides as follows:
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
    - (c) the items in Schedules 10, 11 and 12.
- (l) The *Great Barrier Reef Marine Park Act 1975* was amended by Schedule 1 (items 46–72) only of the *Environment and Heritage Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(c) of which provides as follows:
- (1) Subject to this section, this Act commences on the latest of the following days:
    - (c) the day on which item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* commences.
- (m) Subsection 2(1) (item 34) of the *Statute Law Revision Act 2010* 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.

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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
34. Schedule 5, item 60	Immediately after the commencement of item 125 of Schedule 5 to the <i>Great Barrier Reef Marine Park and Other Legislation Amendment Act 2008</i> .	25 November 2009

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## Endnote 2—Amendment history

**Endnote 2—Amendment history**

This endnote sets out the amendment history of the *Great Barrier Reef Marine Park Act 1975*.

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
<b>Part I</b>	
s. 2A .....	ad. No. 125, 2008
s. 3 .....	am. No. 140, 1978; No. 65, 1985; No. 105, 1988; No. 121, 1991; No. 13, 1993; No. 25, 1995; No. 118, 1997; No. 92, 1999; No. 137, 2000; Nos. 15 and 48, 2001; No. 22, 2004; No. 106, 2007; No. 125, 2008; No. 46, 2011; No. 129, 2012
ss. 3AA, 3AB .....	ad. No. 125, 2008
s. 3A .....	ad. No. 44, 1990 am. No. 125, 2008
s. 3B .....	ad. No. 48, 2001
Heading to s. 4.....	rs. No. 125, 2008
s. 4 .....	am. No. 140, 1978; No. 105, 1988; No. 125, 2008
s. 4A .....	ad. No. 15, 2001
Note 1 to s. 4A.....	am. No. 125, 2008
s. 5 .....	am. No. 140, 1978 rs. No. 125, 2008
<b>Part II</b>	
s. 7 .....	am. No. 140, 1978; No. 97, 1983; No. 65, 1985; No. 105, 1988; No. 121, 1991; No. 25, 1995; No. 152, 1997; No. 106, 2007; No. 125, 2008
s. 7A .....	ad. No. 105, 1988 am. No. 118, 1997
s. 8 .....	am. No. 140, 1978; No. 106, 2007
ss. 8A, 8B .....	ad. No. 106, 2007
<b>Part III</b>	
Note to s. 9(1) .....	ad. No. 152, 1997 rep. No. 106, 2007

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## Endnotes

### Endnote 2—Amendment history

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

Provision affected	How affected
s. 10 .....	am. No. 140, 1978; No. 25, 1995; No. 118, 1997; No. 106, 2007; No. 125, 2008
s. 11 .....	am. No. 25, 1995; No. 159, 2001
s. 12 .....	am. No. 105, 1988; No. 25, 1995; No. 43, 1996
s. 13 .....	rs. No. 179, 1991 am. No. 25, 1995; No. 146, 1999
s. 14 .....	am. No. 25, 1995
s. 15 .....	am. No. 25, 1995; No. 46, 2011
Note to s. 15(1) .....	ad. No. 46, 2011
Note to s. 15(3) .....	ad. No. 46, 2011
s. 16 .....	am. No. 105, 1988; No. 179, 1991; No. 25, 1995; No. 152, 1997; No. 156, 1999; No. 106, 2007
Heading to s. 16A .....	am. No. 152, 1997
s. 16A .....	ad. No. 105, 1988 am. No. 25, 1995; No. 152, 1997 rs. No. 106, 2007
s. 16B .....	ad. No. 106, 2007
s. 17 .....	am. No. 25, 1995; No. 125, 2008
Note to s. 17(1) .....	ad. No. 125, 2008
s. 18 .....	rep. No. 65, 1985 ad. No. 125, 2008
s. 19 .....	rep. No. 65, 1985
Part IV .....	rep. No. 106, 2007
s. 20 .....	rep. No. 106, 2007
s. 21 .....	am. No. 13, 1993; No. 25, 1995 rep. No. 106, 2007
ss. 22, 23 .....	am. No. 140, 1978; No. 25, 1995 rep. No. 106, 2007
s. 24 .....	am. No. 140, 1978; No. 105, 1988; No. 25, 1995; No. 43, 1996 rep. No. 106, 2007
s. 25 .....	am. No. 140, 1978; No. 25, 1995

## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
	rep. No. 106, 2007
s. 26 .....	rs. No. 140, 1978
	am. No. 25, 1995
	rep. No. 106, 2007
s. 27 .....	am. No. 140, 1978; No. 105, 1988; No. 25, 1995
	rep. No. 106, 2007
S. 27A .....	ad. No. 105, 1988
	rep. No. 106, 2007
s. 28 .....	am. No. 25, 1995
	rep. No. 106, 2007
s. 29 .....	rep. No. 106, 2007
<b>Part V</b>	
<b>Division 1</b>	
Heading to Div. 1 of Part V .....	ad. No. 125, 2008
s. 31 .....	am. No. 92, 1999; No. 125, 2008
Note to s. 31(1) .....	ad. No. 125, 2008
Note to s. 31(3) .....	ad. No. 125, 2008
<b>Division 2</b>	
Heading to Div. 2 of Part V .....	ad. No. 125, 2008
s. 32 .....	am. No. 105, 1988; No. 179, 1991; No. 25, 1995; No. 106, 2007
	rs. No. 125, 2008
ss. 32A–32C .....	ad. No. 125, 2008
Heading to s. 33 .....	am. No. 106, 2007
	rep. No. 125, 2008
s. 33 .....	am. No. 97, 1983; No. 106, 2007
	rep. No. 125, 2008
s. 34 .....	am. No. 140, 1978
	rep. No. 105, 1988
	ad. No. 106, 2007
	am. No. 125, 2008

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
s. 35 .....	rep. No. 105, 1988 ad. No. 106, 2007
ss. 35A–35G .....	ad. No. 125, 2008
s. 36 .....	am. No. 140, 1978; No. 105, 1988; No. 25, 1995
Subhead. to s. 37(8) .....	am. No. 125, 2008
s. 37 .....	am. No. 140, 1978; No. 105, 1988 rs. No. 106, 2007 am. No. 125, 2008
Note to s. 37(2) .....	am. No. 125, 2008
Note to s. 32(4) .....	am. No. 125, 2008
s. 37A .....	ad. No. 106, 2007 am. No. 125, 2008
<b>Division 3</b>	
Heading to Div. 3 of Part V .....	ad. No. 125, 2008 rs. No. 125, 2008
s. 37AA .....	ad. No. 125, 2008
<b>Division 4</b>	
Div. 4 of Part V .....	ad. No. 125, 2008
ss. 37AB, 37AC .....	ad. No. 125, 2008
s. 38 .....	am. No. 140, 1978; No. 65, 1985; No. 25, 1995 rep. No. 125, 2008
<b>Part VAA</b>	
Part VAA .....	ad. No. 125, 2008
<b>Division 1</b>	
s. 38A .....	ad. No. 105, 1988 rs. No. 25, 1995 am. No. 48, 2001 rep. No. 125, 2008
ss. 38AA, 38AB .....	ad. No. 125, 2008

## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
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**Division 2**

s. 38B .....	ad. No. 105, 1988
	am. No. 25, 1995
	rep. No. 125, 2008
ss. 38BA–38BD .....	ad. No. 125, 2008

**Division 3**

s. 38C .....	ad. No. 105, 1988
	rs. No. 25, 1995; No. 15, 2001
	rep. No. 125, 2008
ss. 38CA, 38CB .....	ad. No. 48, 2001
	rs. No. 125, 2008

**Division 3A**

s. 38CC .....	ad. No. 48, 2001
	rs. No. 125, 2008

**Division 4**

s. 38D .....	ad. No. 105, 1988
	am. No. 25, 1995
	rep. No. 125, 2008
ss. 38DA–38DE .....	ad. No. 125, 2008

**Division 5**

s. 38E .....	ad. No. 105, 1988
	am. No. 25, 1995
	rep. No. 125, 2008
ss. 38EA, 38EB .....	ad. No. 125, 2008

**Division 6**

s. 38F .....	ad. No. 105, 1988
	am. No. 25, 1995
	rep. No. 125, 2008
ss. 38FA–38FD .....	ad. No. 125, 2008

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
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#### Division 7

s. 38G .....	ad. No. 105, 1988 rs. No. 25, 1995; No. 15, 2001 rep. No. 125, 2008
ss. 38GA, 38GB.....	ad. No. 125, 2008

#### Division 8

s. 38H .....	ad. No. 105, 1988 am. No. 25, 1995 rep. No. 125, 2008
ss. 38HA–38HF .....	ad. No. 125, 2008
s. 38J .....	ad. No. 105, 1988 am. No. 25, 1995; No. 118, 1997; Nos. 15 and 48, 2001 rep. No. 125, 2008
s. 38K .....	ad. No. 105, 1988 am. No. 25, 1995 rep. No. 125, 2008
s. 38L .....	ad. No. 25, 1995 am. No. 48, 2001 rep. No. 125, 2008
s. 38M .....	ad. No. 105, 1988 rep. No. 25, 1995 ad. No. 48, 2001 rep. No. 125, 2008
ss. 38MA–38MC .....	ad. No. 48, 2001 rep. No. 125, 2008
s. 38N .....	ad. No. 105, 1988 am. No. 25, 1995; No. 48, 2001 rep. No. 125, 2008
s. 39 .....	rs. No. 92, 1999 rep. No. 125, 2008

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
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**Part VA**

Part VA..... ad. No. 13, 1993

**Division 1**

s. 39A ..... ad. No. 13, 1993

s. 39AA ..... ad. No. 22, 2004

**Division 2**

s. 39B ..... ad. No. 13, 1993

am. No. 22, 2004

ss. 39C, 39D ..... ad. No. 13, 1993

ss. 39DA, 39DB ..... ad. No. 22, 2004

s. 39E ..... ad. No. 13, 1993

am. No. 22, 2004

s. 39F ..... ad. No. 13, 1993

**Division 2A**

Div. 2A of Part VA ..... ad. No. 22, 2004

s. 39FA ..... ad. No. 22, 2004

am. No. 125, 2008

Subhead. to s. 39FB(1) ..... ad. No. 125, 2008

Subhead. to s. 39FB(3) ..... ad. No. 125, 2008

s. 39FB ..... ad. No. 22, 2004

am. No. 125, 2008

ss. 39FC–39FE ..... ad. No. 22, 2004

s. 39FF ..... ad. No. 125, 2008

**Division 3**

s. 39G ..... ad. No. 13, 1993

am. No. 22, 2004; No. 125, 2008

Heading to s. 39H ..... am. No. 22, 2004

s. 39H ..... ad. No. 13, 1993

am. No. 22, 2004

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
s. 39I.....	ad. No. 13, 1993 am. No. 22, 2004; No. 8, 2005 rs. No. 106, 2007 rep. No. 125, 2008
s. 39J.....	ad. No. 13, 1993 am. No. 22, 2004
s. 39K.....	ad. No. 13, 1993 am. No. 22, 2004; No. 125, 2008
s. 39KA .....	ad. No. 22, 2004 rep. No. 106, 2007
<b>Division 4</b>	
ss. 39L–39N .....	ad. No. 13, 1993
<b>Division 5</b>	
s. 39P .....	ad. No. 13, 1993 am. No. 137, 2000; No. 22, 2004
s. 39PA .....	ad. No. 22, 2004 am. No. 125, 2008
s. 39Q .....	ad. No. 13, 1993 am. No. 15, 2001; No. 22, 2004
s. 39R .....	ad. No. 13, 1993 rep. No. 137, 2000
<b>Division 5A</b>	
Div. 5A of Part VA .....	ad. No. 106, 2007
s. 39QA .....	ad. No. 106, 2007 am. No. 136, 2012
<b>Division 6</b>	
ss. 39S, 39T .....	ad. No. 13, 1993 am. No. 22, 2004; No. 125, 2008
s. 39U .....	ad. No. 13, 1993 am. No. 22, 2004



## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
<b>Part VB</b>	
Part VB.....	ad. No. 25, 1995
ss. 39V, 39W .....	ad. No. 25, 1995
	am. No. 125, 2008
s. 39X .....	ad. No. 25, 1995
s. 39Y .....	ad. No. 25, 1995
	am. No. 92, 1999
s. 39Z.....	ad. No. 25, 1995
	rep. No. 125, 2008
s. 39ZA .....	ad. No. 25, 1995
s. 39ZB .....	ad. No. 25, 1995
	am. No. 125, 2008
s. 39ZC .....	ad. No. 25, 1995
s. 39ZD .....	ad. No. 25, 1995
	am. No. 118, 1997; No. 125, 2008
s. 39ZE .....	ad. No. 25, 1995
	am. No. 125, 2008
s. 39ZF .....	ad. No. 25, 1995
	rs. No. 25, 2008
ss. 39ZG, 39ZH .....	ad. No. 25, 1995
	am. No. 125, 2008
s. 39ZI .....	ad. No. 25, 1995
	rs. No. 125, 2008
<b>Part VI</b>	
s. 40 .....	am. No. 63, 1984; No. 105, 1988; No. 25, 1995; No. 146, 1999
s. 41 .....	am. No. 166, 1985
s. 42 .....	am. No. 140, 1978; No. 63, 1984; No. 121, 1991; No. 146, 1999
	rep. No. 125, 2008
s. 43 .....	rs. No. 121, 1991
	am. No. 25, 1995; No. 125, 2008

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
s. 43A .....	ad. No. 125, 2008
s. 44 .....	am. No. 155, 1979; No. 70, 1980
Note to s. 44 .....	ad. No. 125, 2008
s. 45 .....	am. No. 25, 1995; No. 15, 2001
s. 45A .....	ad. No. 25, 1995
	am. No. 15, 2001
	rep. No. 125, 2008
s. 46 .....	am. No. 105, 1988; No. 121, 1991; No. 25, 1995
	rs. No. 125, 2008
s. 46A .....	ad. No. 105, 1988
	rs. No. 25, 1995
	rep. No. 125, 2008
ss. 46B–46D .....	ad. No. 25, 1995
	rep. No. 125, 2008
s. 47 .....	am. No. 140, 1978; No. 65, 1985; No. 105, 1988; No. 121, 1991; No. 25, 1995
	rs. No. 125, 2008
ss. 47A, 47B .....	ad. No. 25, 1995
	am. No. 15, 2001
	rep. No. 125, 2008
s. 48 .....	am. No. 140, 1978; No. 65, 1985; No. 105, 1988; No. 121, 1991; No. 25, 1995; No. 92, 1999; No. 15, 2001
	rs. No. 125, 2008
	am. No. 5, 2011
ss. 48AA, 48AB .....	ad. No. 25, 1995
	rep. No. 125, 2008
s. 48A .....	ad. No. 105, 1988
	am. No. 25, 1995; No. 118, 1997
	rs. No. 125, 2008
<b>Part VII</b>	
Part VII .....	rs. No. 106, 2007

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
<b>Division 1</b>	
s. 49 .....	am. No. 65, 1985; No. 105, 1988 rep. No. 25, 1995 ad. No. 106, 2007
s. 50 .....	am. No. 65, 1985 rep. No. 105, 1988 ad. No. 106, 2007
s. 51 .....	rep. No. 105, 1988 ad. No. 106, 2007
s. 52 .....	am. No. 36, 1978 rs. No. 106, 2007
<b>Division 2</b>	
s. 53 .....	am. No. 97, 1983; No. 152, 1997 rs. No. 106, 2007 am. No. 125, 2008
s. 53A .....	ad. No. 105, 1988 rep. No. 152, 1997
s. 54 .....	am. No. 97, 1983 rep. No. 152, 1997 ad. No. 106, 2007 am. No. 125, 2008
ss. 54A, 54B .....	ad. No. 97, 1983 rep. No. 106, 2007
<b>Division 3</b>	
s. 55 .....	rs. No. 105, 1988 rep. No. 152, 1997 ad. No. 106, 2007
s. 56 .....	am. No. 97, 1983; No. 60, 1989; No. 152, 1997 rep. No. 106, 2007

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
s. 57 .....	am. No. 97, 1983 rep. No. 105, 1988
s. 58 .....	am. No. 65, 1985 rep. No. 105, 1988
s. 59 .....	am. No. 140, 1978 rep. No. 106, 2007
<b>Part VIIA</b>	
Part VIIA .....	ad. No. 121, 1991
s. 59A .....	ad. No. 121, 1991
ss. 59B–59D .....	ad. No. 121, 1991 am. No. 25, 1995; No. 15, 2001
s. 59E .....	ad. No. 121, 1991
s. 59F .....	ad. No. 121, 1991 am. No. 25, 1995; No. 136, 2012
s. 59G .....	ad. No. 121, 1991
s. 59H .....	ad. No. 121, 1991 am. No. 15, 2001
Note to s. 59H(1) .....	ad. No. 15, 2001
s. 59I .....	ad. No. 121, 1991 am. No. 25, 1995
ss. 59J, 59K .....	ad. No. 121, 1991
s. 59L .....	ad. No. 121, 1991 am. No. 25, 1995; No. 15, 2001
s. 59M .....	ad. No. 121, 1991
<b>Part VIII</b>	
Heading to Part VIII .....	rs. No. 125, 2008
<b>Division 1</b>	
Div. 1 of Part VIII .....	ad. No. 125, 2008
s. 60 .....	am. No. 36, 1978 rep. No. 105, 1988

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
s. 61 .....	rep. No. 125, 2008
<b>Subdivision A</b>	
ss. 61AAA–61AAD .....	ad. No. 125, 2008
<b>Subdivision B</b>	
ss. 61ABA, 61ABB .....	ad. No. 125, 2008
<b>Subdivision C</b>	
s. 61ACA .....	ad. No. 125, 2008
Note to s. 61ACA(4)(c) .....	am. No. 8, 2010
s. 61ACB .....	ad. No. 125, 2008
<b>Subdivision D</b>	
ss. 61ADA–61ADH .....	ad. No. 125, 2008
<b>Subdivision E</b>	
ss. 61AEA, 61AEB .....	ad. No. 125, 2008
<b>Subdivision F</b>	
s. 61AFA .....	ad. No. 125, 2008
<b>Subdivision G</b>	
s. 61AGA .....	ad. No. 125, 2008
<b>Subdivision H</b>	
ss. 61AHA, 61AHB .....	ad. No. 125, 2008
<b>Subdivision I</b>	
ss. 61AIA–61AIL .....	ad. No. 125, 2008
<b>Subdivision J</b>	
s. 61AJA .....	ad. No. 125, 2008
<b>Subdivision K</b>	
s. 61AKA .....	ad. No. 125, 2008
<b>Division 2</b>	
Heading to Div. 2 of Part VIII .....	ad. No. 125, 2008
<b>Subdivision A</b>	
s. 61ALA .....	ad. No. 125, 2008

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## Endnotes

### Endnote 2—Amendment history

---

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
<b>Subdivision B</b>	
ss. 61AMA–61AMD .....	ad. No. 125, 2008
<b>Subdivision C</b>	
s. 61ANA.....	ad. No. 125, 2008
<b>Subdivision D</b>	
ss. 61AOA–61AOC .....	ad. No. 125, 2008
<b>Subdivision E</b>	
s. 61APA .....	ad. No. 125, 2008
s. 61A .....	ad. No. 105, 1988 am. No. 25, 1995; No. 152, 1997; No. 106, 2007; No. 125, 2008
s. 61B .....	ad. No. 105, 1988 am. No. 25, 1995; No. 15, 2001; No. 125, 2008; No. 4, 2010
s. 61C .....	ad. No. 105, 1988 am. No. 22, 2004; No. 125, 2008
s. 62 .....	rep. No. 125, 2008
Note to s. 62 .....	ad. No. 15, 2001 rep. No. 125, 2008
s. 63 .....	am. No. 140, 1978; No. 105, 1988
<b>Part IX</b>	
Heading to Part IX.....	ad. No. 125, 2008
s. 64 .....	rs. No. 105, 1988 am. No. 137, 2000 rs. No. 125, 2008
s. 64A .....	ad. No. 125, 2008
s. 65 .....	am. No. 125, 2008
s. 65A .....	ad. No. 125, 2008
s. 66 .....	am. No. 140, 1978; No. 80, 1982; Nos. 65 and 193, 1985; No. 105, 1988; No. 121, 1991; No. 25, 1995; No. 48, 2001; No. 106, 2007; No. 125, 2008
Heading to Schedule .....	rep. No. 121, 1991
Heading to Schedule 1 .....	ad. No. 121, 1991

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
Schedule .....	rs. No. 140, 1978
Schedule 2 .....	ad. No. 121, 1991
	rep. No. 48, 2001

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## Endnotes

Endnote 3—Uncommenced amendments [none]

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### **Endnote 3—Uncommenced amendments [none]**

There are no uncommenced amendments.



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Endnote 4—Misdescribed amendments [none]

**Endnote 4—Misdescribed amendments [none]**

There are no misdescribed amendments.