



# **Great Barrier Reef Marine Park Amendment Act 1991**

**No. 121 of 1991**

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SCHEDULE

SCHEDULE TO BE ADDED TO PRINCIPAL ACT



# **Great Barrier Reef Marine Park Amendment Act 1991**

**No. 121 of 1991**

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## **An Act to amend the *Great Barrier Reef Marine Park Act 1975*, and for related purposes**

*[Assented to 27 June 1991]*

The Parliament of Australia enacts:

### **Short title etc.**

**1. (1)** This Act may be cited as the *Great Barrier Reef Marine Park Amendment Act 1991*.

**(2)** In this Act, “Principal Act” means the *Great Barrier Reef Marine Park Act 1975*<sup>1</sup>.

### **Commencement**

**2. (1)** Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

**(2)** If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the

Royal Assent, it commences on the first day after the end of that period.

### **Interpretation**

**3. Section 3 of the Principal Act is amended:**

- (a) by omitting from the definition of "Great Barrier Reef Region" in subsection (1) "the Schedule" and substituting "Schedule 1";**
- (b) by inserting in subsection (1) the following definitions:**

**"'compulsory pilotage area' means:**

- (a) that part of the inner route of the Great Barrier Reef Region that is described in Part 1 of Schedule 2; and**
- (b) Hydrographer's Passage as described in Part 2 of Schedule 2;**

**'inner route', in relation to the Great Barrier Reef Region, means the waters between the Australian mainland and the outer edge of the Great Barrier Reef;**

**'master' means a person having command or charge of a vessel;**

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

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

**'owner' has the meaning given by subsection (9) or (10);**

**'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;**

**'port' has the same meaning as in the *Navigation Act 1912*;**

**'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;";**

(c) by adding at the end the following subsections:

“(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.

“(7) Subject to subsection (8), the **overall length** of a ship is 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.

“(8) If the overall length of the ship cannot be ascertained under subsection (7), the length is taken to be 110% of the length as shown on the vessel’s load-line certification.

“(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 either:

- (a) by the Registrar of Ships under section 19 of the *Shipping Registration Act 1981*; or
- (b) by a foreign registrar of ships.

“(10) In the case of a vessel that is operated by a person who is not an owner of the vessel, a reference in this Act to the owner includes a reference to the operator.”.

### **Functions of the Authority**

4. Section 7 of the Principal Act is amended by omitting from subsection (1) paragraph (d) and substituting the following paragraph:

“(d) such functions relating to the Marine Park as are:

- (i) conferred on the Authority by this Act; or
- (ii) provided for by the regulations;”.

### **Officers and employees of Queensland and government authorities**

5. Section 42 of the Principal Act is amended by adding at the end the following subsection:

“(3) For the purposes of this section, the Australian Maritime Safety Authority is an authority of the Commonwealth.”.

6. Section 43 of the Principal Act is repealed and the following section is substituted:

**Appointment of inspectors**

“43. The Authority may, by instrument in writing:

- (a) appoint:
  - (i) a member of the staff of the Authority; or
  - (ii) an officer or employee of an authority, body or person with whom the Australian Government or the Authority makes an arrangement under section 42; as an inspector; and
- (b) specify the powers that the person may exercise as an inspector under this Act.”.

**Arrest without warrant**

7. Section 46 of the Principal Act is amended by adding at the end the following subsection:

“(5) A reference in this section to an offence against this Act does not include an offence against Part VIIA.”.

**Confiscation and forfeiture**

8. Section 47 of the Principal Act is amended by adding at the end the following subsection:

“(11) A reference in this section to an offence against this Act does not include an offence against Part VIIA.”.

**General powers of inspectors**

9. Section 48 of the Principal Act is amended by adding at the end the following subsection:

“(6) A reference in this section to an offence against this Act does not include an offence against Part VIIA.”.

10. After Part VII of the Principal Act the following Part is inserted:

**“PART VIIA—COMPULSORY PILOTAGE**

**Purpose of Part**

“59A. 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.

**Offence to navigate without a pilot**

“59B. 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.

Penalty: \$50,000.

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

“59C. (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.

Penalty: \$50,000.

“(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.

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

“59D. (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.

Penalty: \$50,000.

“(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.

**Pilots to issue certificates**

“59E. (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.

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

“59F. (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.

**Review by the Administrative Appeals Tribunal**

“59G. (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.

### **Defence in proceedings for offences**

“59H. (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.

“(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:

- (a) did not aid, abet, counsel or procure; or
- (b) was not in any way, directly or indirectly, knowingly concerned in, or a party to;

the navigation of the ship in the compulsory pilotage area without a pilot.

“(3) Any defence established under subsection (1) or (2) need only be established on the balance of probabilities.

### **Prosecution of offences**

“59I. (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, not exceeding \$10,000; and
- (b) in the case of a body corporate, not exceeding \$50,000.

### **Time for commencing prosecutions**

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

**Service of summons or process**

“59K. (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.

**Powers of inspector—compulsory pilotage area**

“59L. (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 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, without reasonable excuse, fails to comply with a requirement made of the person under subsection (2), is guilty of an offence punishable upon conviction by a fine not exceeding \$1,000.

#### **Limitation on exercise of powers—location**

“59M. (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.

“(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.”

### **Regulations**

**11.** Section 66 of the Principal Act is amended by:

- (a) omitting from paragraph (2) (u) “and” (last occurring);
- (b) inserting after paragraph (2) (u) the following paragraph:
  - “(ua) providing for the issue of exemptions by the Minister under section 59F and the conditions subject to which they are issued; and”.

### **Transitional arrangements for inspectors**

**12.** After this Act commences, a person who was an inspector under section 43 of the Principal Act immediately before this Act commences:

- (a) continues as an inspector as if he or she has been appointed under section 43 of the Principal Act as amended by this Act; and
- (b) has all the powers that the person had as an inspector under the Principal Act before that Act was so amended.

### **Schedule**

**13.** The Principal Act is amended by omitting the heading to the Schedule and substituting the following heading:

### **“SCHEDULE 1**

**Section 3”.**

### **Addition of Schedule**

**14.** The Principal Act is amended by adding at the end the Schedule set out in the Schedule to this Act.

**SCHEDULE**

Section 14

**SCHEDULE TO BE ADDED TO PRINCIPAL ACT**

**“SCHEDULE 2**

Section 3

**COMPULSORY PILOTAGE AREA**

**PART 1**

The inner route of the Great Barrier Reef Region between Latitude 10° 41'S and Latitude 16° 40'S.

**PART 2**

The area the boundary of which:

- (a) begins at a point of Latitude 20° 39.2'S, Longitude 149° 49.3'E;
- (b) then runs along the geodesic to a point Latitude 20° 36.0'S, Longitude 150° 07.3'E;
- (c) then runs along the geodesic to a point Latitude 20° 28.4'S, Longitude 150° 18.0'E;
- (d) then runs along the geodesic to a point Latitude 20° 03.0'S, Longitude 150° 03.0'E;
- (e) then runs along the geodesic to a point Latitude 19° 55.0'S, Longitude 150° 16.5'E;
- (f) then runs along the geodesic to a point Latitude 19° 45.0'S, Longitude 150° 12.5'E;
- (g) then runs along the geodesic to a point Latitude 19° 54.0'S, Longitude 150° 31.0'E;
- (h) then runs along the geodesic to a point Latitude 20° 01.5'S, Longitude 150° 25.8'E;
- (i) then runs along the geodesic to a point Latitude 20° 07.0'S, Longitude 150° 17.2'E;
- (j) then runs along the geodesic to a point Latitude 20° 20.0'S, Longitude 150° 27.0'E;
- (k) then runs along meridian of Longitude 150° 27.0'E to its intersection by parallel of Latitude 20° 33.0'S;
- (l) then runs along the geodesic to a point Latitude 20° 41.6'S, Longitude 150° 11.6'E;
- (m) then runs along the geodesic to a point Latitude 20° 54.5'S, Longitude 150° 01.9'E;
- (n) then runs to the point of beginning.”.

*Great Barrier Reef Marine Park Amendment No. 121, 1991*

**NOTE**

1. No. 85, 1975, as amended. For previous amendments, see No. 37, 1976; Nos. 36 and 140, 1978; No. 155, 1979; No. 70, 1980; No. 80, 1982; No. 97, 1983; No. 63, 1984; Nos. 65, 166 and 193, 1985; No. 105, 1988; No. 60, 1989 and No. 44, 1990.

*[Minister's second reading speech made in—  
House of Representatives on 15 May 1991  
Senate on 4 June 1991]*