



Great Barrier Reef Marine Park Amendment Act 2007

No. 106, 2007

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

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Contents

1	Short title	1
2	Commencement	1
3	Schedule(s)	2
Schedule 1—Amendments		3
	<i>Great Barrier Reef Marine Park Act 1975</i>	3
Schedule 2—Application and transitional provisions		16
	Part 1—Definitions	16
	Part 2—Assets, liabilities and legal proceedings	17
	Part 3—Membership of the Authority	20
	Part 4—Zoning plans	21
	Part 5—Reporting requirements and records	22
	Part 6—Other matters	24



Great Barrier Reef Marine Park Amendment Act 2007

No. 106, 2007

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

[Assented to 28 June 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Great Barrier Reef Marine Park
Amendment Act 2007*.

2 Commencement

This Act commences on 1 July 2007.

Great Barrier Reef Marine Park Amendment Act 2007 No. 106, 2007 1

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Great Barrier Reef Marine Park Act 1975

1 Subsection 3(1) (definition of *Committee*)

Repeal the definition.

2 Subsection 3(1)

Insert:

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

3 Paragraph 7(1)(cb)

Omit “for payment to the Authority”.

4 Subsection 7(3)

Repeal the subsection.

5 Paragraph 8(1)(a)

Repeal the paragraph, substitute:

- (a) subject to this section, enter into contracts, agreements, arrangements or understandings; and

6 At the end of paragraph 8(1)(b)

Add “and”.

7 Paragraph 8(1)(c)

Before “acquire”, insert “subject to this section,”.

8 At the end of paragraph 8(1)(c)

Add “and”.

9 Paragraph 8(1)(d)

Repeal the paragraph.

10 Subsection 8(2)

Repeal the subsection.

11 At the end of section 8

Add:

- (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).

12 At the end of Part II

Add:

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.

13 Subsection 9(1) (note)

Repeal the note.

14 Paragraphs 10(1)(b) and (c)

Repeal the paragraphs, substitute:

- (b) at least 2, but no more than 4, other members.

15 Paragraph 16(2)(e)

Repeal the paragraph, substitute:

- (e) fails, without reasonable excuse, to comply with section 16A or 16B;

16 Section 16A

Repeal the section, substitute:

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.
- (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 Part IV

Repeal the Part.

18 At the end of paragraph 32(2)(a)

Add “and”.

19 Paragraph 32(2)(b)

Omit “1 month”, substitute “3 months”.

20 At the end of subsection 32(2)

Add:

- ; 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).

21 After subsection 32(6)

Insert:

- (6A) The Authority must, in preparing the plan, have regard to the principles approved under section 34 in relation to the preparation of the plan.

22 At the end of paragraph 32(8)(a)

Add “and”.

23 Paragraph 32(8)(b)

Omit “1 month”, substitute “3 months”.

24 At the end of paragraph 32(8)(b)

Add “and”.

25 At the end of subsection 32(8)

Add:

; and (e) specify that a statement prepared under subsection 35(2) is publicly available and how a copy may be obtained.

26 At the end of section 33

Add:

- (7) Within the period of 60 days beginning on the day the notice under subsection (5) is published in the *Gazette*, 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 in relation to the plan.

Note: The heading to section 33 is altered by adding at the end “etc.”.

27 After section 33

Insert:

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 33.

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.

28 Section 37

Repeal the section, substitute:

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 subsection 32(2) 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: Subsection 32(2) applies to this situation because of subsection (8) of this section.

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 subsection 32(2) 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: Subsection 32(2) applies to this situation because of subsection (8) of this section.

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.

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 35

- (8) Subject to subsection (9) of this section, sections 32 to 35 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 section 32.

Additional obligation for amendment or revocation of zoning plan

- (9) The notice published under subsection 32(2) 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 33(1) to (3) and (5) and (6) apply in relation to the amendment in the same way as they apply to a zoning plan that has been accepted under section 32.

29 Section 39I

Repeal the section, substitute:

39I Appropriation of amounts for the purposes of the Authority

- (1) If an amount (the *Commonwealth amount*) is received under section 39DA, subsection 39FA(2) or section 39FD or 39H, 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.
- (2) If the Commonwealth refunds the whole or a part of a Commonwealth amount, the amount appropriated under subsection (1) 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.

30 Section 39KA

Repeal the section.

31 After Division 5 of Part VA

Insert:

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:

- (a) interest, or other amounts, derived by holders of chargeable permissions from the custody or banking of collected amounts; and
- (b) payments covered by subsection 39PA(3).

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*.

32 Part VII

Repeal the Part, substitute:

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 61A(4);

- (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.

Definitions

- (6) In this section:

biodiversity has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

ecosystem has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

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.

33 Subsection 61A(5)

Repeal the subsection.

34 Paragraph 66(2)(u)

After “granted or issued”, insert “(which may include a requirement to enter into an agreement with the Commonwealth)”.

Schedule 2—Application and transitional provisions

Part 1—Definitions

1 Definitions

In this Schedule:

asset means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; or
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

assets official, in relation to an asset other than land, means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

Authority means the Great Barrier Reef Marine Park Authority established by the *Great Barrier Reef Marine Park Act 1975*.

Chairperson means the Chairperson of the Authority.

commencement time means the time when this Schedule commences.

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.

land means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

land registration official, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

liability means any liability, duty or obligation, whether actual, contingent or prospective.

Part 2—Assets, liabilities and legal proceedings

2 Existing property, money and financial liabilities

- (1) Any real or personal property or any money that is held by the Authority immediately before the commencement time is taken, at the commencement time, to be held by the Authority for and on behalf of the Commonwealth.
- (2) Any financial liabilities of the Authority that exist immediately before the commencement time are taken, at the commencement time, to be liabilities of the Commonwealth.
- (3) Subitems (1) and (2) have effect subject to items 3 and 4 of this Schedule.
- (4) If an amount of money (the *original amount*) is covered by subitem (1), an amount equal to the original amount is appropriated out of the Consolidated Revenue Fund for the purpose of the performance of the functions of the Authority.

3 Vesting of assets held on trust by the Authority

- (1) This item applies to any assets held on trust by the Authority immediately before the commencement time.
- (2) At the commencement time, the assets cease to be assets held on trust by the Authority and become assets held on trust by the Commonwealth, without any conveyance, transfer or assignment. The Commonwealth becomes the Authority's successor in law in relation to those assets.

4 Vesting of liabilities relating to assets held on trust

- (1) This item applies to the liabilities of the Authority relating to assets to which item 3 of this Schedule applies.
- (2) At the commencement time, the liabilities cease to be liabilities of the Authority relating to the assets and become liabilities of the Commonwealth relating to the assets, without any conveyance, transfer or assignment. The Commonwealth becomes the Authority's successor in law in relation to those liabilities.

5 Contracts etc.

A contract, agreement, arrangement or understanding entered into by the Authority before the commencement time and that is in force immediately before that time has effect after that time as if it had been entered into by the Authority on behalf of the Commonwealth.

6 Certificates relating to vesting of land

- (1) This item applies if:
- (a) any land vests in the Commonwealth under this Schedule; and
 - (b) there is lodged with a land registration official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the land, whether by reference to a map or otherwise; and
 - (iii) states that the land has become vested in the Commonwealth under this Schedule.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 16 of this Schedule.

- (2) The land registration official may:
- (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
 - (b) deal with, and give effect to, the certificate.

7 Certificates relating to vesting of assets other than land

- (1) This item applies if:
- (a) any asset other than land vests in the Commonwealth under this Schedule; and
 - (b) there is lodged with an assets official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has become vested in the Commonwealth under this Schedule.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 16 of this Schedule.

- (2) The assets official may:

- (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
- (b) make such entries in the register as are necessary having regard to the effect of this Part.

8 Substitution of Commonwealth as a party to pending proceedings

If any proceedings relating to an asset held on trust by the Authority, to which the Authority was a party, were pending in any court or tribunal immediately before the commencement time, the Commonwealth is substituted for the Authority, from the commencement time, as a party to the proceedings.

Part 3—Membership of the Authority

9 Membership of the Authority

- (1) A person holding office as a member of the Authority under paragraph 10(1)(c) of the *Great Barrier Reef Marine Park Act 1975* immediately before the commencement time is taken, at the commencement time, to have been appointed by the Governor-General as a member of the Authority under paragraph 10(1)(b) of that Act:
 - (a) for the balance of the person's term of appointment that remained immediately before the commencement time; and
 - (b) on the same terms and conditions as applied to the person immediately before the commencement time.
- (2) An appointment in force immediately before the commencement time under subsection 15(3) of the *Great Barrier Reef Marine Park Act 1975* in relation to a vacancy in an office under paragraph 10(1)(b) or (c) of that Act continues in force after that time as if it were an appointment under subsection 15(3) of that Act in relation to a vacancy in an office under paragraph 10(1)(b) of that Act.
- (3) A determination in force under paragraph 15(4)(a) of the *Great Barrier Reef Marine Park Act 1975* immediately before the commencement time, in relation to an appointment continued in force under subitem (2), continues in force after that time in relation to that appointment.

Part 4—Zoning plans

10 Zoning plans

The amendment made by item 28 of Schedule 1 applies in relation to zoning plans made before or after the commencement of that item.

Part 5—Reporting requirements and records

11 Reporting requirements

Reports for periods ending after the commencement time

- (1) If:
- (a) immediately before the commencement time, a law required the Authority or a member of the Authority to provide a report (whether financial statements or otherwise) for a period; and
 - (b) the period ends after the commencement time;
- the Chairperson must provide the report, as required, for so much of the period as occurs before the commencement time.

- (2) If:
- (a) under subitem (1), the Chairperson is required to provide a report for a part of a period; and
 - (b) the Chairperson is also required to provide a similar report for the remainder of the period;
- the Chairperson may meet the requirements in a single report for the period.

Reports for periods ending before the commencement time

- (3) If:
- (a) a law required the Authority or a member of the Authority to provide a report (whether financial statements or otherwise) for a period that ended before the commencement time; and
 - (b) the report has not been provided by the commencement time;
- the Chairperson must provide the report as required.

Application of law to Chairperson

- (4) To avoid doubt, if, under this item, the Chairperson is required to provide a report under a law, the law applies to the Chairperson in respect of the report in the same way as the law would have applied to the Authority or the member of the Authority in respect of the report.

12 Access to records

For the purposes of the operation of subsection 27L(4) of the *Commonwealth Authorities and Companies Act 1997* in relation to the books of the Authority, the reference in that subsection to a Commonwealth authority is to be read, after the commencement time, as a reference to the Chairperson.

13 Continuing obligation to keep records

Section 20 of the *Commonwealth Authorities and Companies Act 1997* (as in force from time to time) continues to apply after the commencement time in relation to the accounting records kept by the Authority under that section before that time as if the Authority continued to be subject to that Act.

Part 6—Other matters

14 Exemption from stamp duty and other State or Territory taxes

No stamp duty or other tax is payable under a law of a State or Territory in respect of, or in respect of anything connected with:

- (a) the transfer of an asset or liability under this Schedule; or
- (b) the operation of this Schedule in any other respect.

15 Constitutional safety net—acquisition of property

- (1) If the operation of this Schedule would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this item:
acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.
just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

16 Certificates taken to be authentic

A document that appears to be a certificate made or issued under this Schedule:

- (a) is taken to be such a certificate; and
- (b) is taken to have been properly given;

unless the contrary is established.

17 Delegation by Minister

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Schedule to the Chairperson.

- (2) In exercising powers or performing functions under a delegation, the Chairperson must comply with any directions of the Minister.

18 Regulations

- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Schedule to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.
- (2) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by Schedule 1 to this Act.
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*[Minister's second reading speech made in—
House of Representatives on 28 March 2007
Senate on 12 June 2007]*

(45/07)
