



# Great Barrier Reef Marine Park Amendment Act 1993

No. 13 of 1993

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## An Act to amend the *Great Barrier Reef Marine Park Act 1975*

[Assented to 9 June 1993]

The Parliament of Australia enacts:

### Short title etc.

1.(1) This Act may be cited as the *Great Barrier Reef Marine Park Amendment Act 1993*.

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

### Commencement

2. This Act commences on 1 July 1993.

### Interpretation

3. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“**AAT**” means the Administrative Appeals Tribunal;

**'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;

**'late payment penalty'** means an amount payable under subsection 39G(1);”.

### **Functions of Committee**

4. Section 21 of the Principal Act is amended by omitting from paragraph (1)(a) all the words after “matters” and substituting the following: “relating to the operation of:

- (i) this Act; or
- (ii) the *Great Barrier Reef Marine Park (Environmental Management Charge—General) Act 1993*; or
- (iii) the *Great Barrier Reef Marine Park (Environmental Management Charge—Excise) Act 1993*; and”.

5. After Part V of the Principal Act the following Part is inserted:

## **“PART VA—COLLECTION OF ENVIRONMENTAL MANAGEMENT CHARGE**

### *“Division 1—Object*

#### **Object**

“39A. 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*.

### *“Division 2—Liability to charge*

#### **Liability to charge**

##### **[Liability]**

“39B.(1) If a chargeable permission is granted or transferred to a person, the person is liable to pay a charge on the grant or transfer.

**[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.

**Amount of charge**

“39C.(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.

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

“39D. 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.

**When charge due for payment**

“39E.(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.

**Payment of charge by instalments**

“39F.(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 3—Recovery of charge etc.*

**Late payment penalty**

“39G.(1) If any charge 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 (‘late payment penalty’) calculated at the rate of 20% per annum on the amount unpaid, computed from that time.

“(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.

“(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.

#### **Payment of charge and late payment penalty**

“39H. Charge and late payment penalty are payable to the Authority on behalf of the Commonwealth.

#### **Authority to be paid amounts equal to amounts of charge**

“39I.(1) Amounts received, or purporting to be received, under section 39H must be paid into the Consolidated Revenue Fund.

“(2) If an amount (the ‘**CRF amount**’) is paid into the Consolidated Revenue Fund under subsection (1), there must be paid to the Authority an amount equal to the CRF amount.

“(3) A payment of an amount to the Authority under subsection (2) in respect of a particular CRF amount is subject to a condition that, if the Commonwealth becomes liable to refund the whole or a part of the CRF amount, the Authority must pay to the Commonwealth an amount equal to the amount that the Commonwealth is liable to refund.

“(4) For the purposes of subsection (3), in determining whether the Commonwealth becomes liable to refund the whole or a part of the CRF amount, the alternative referred to in paragraph 39K(1)(d) is to be ignored.

“(5) The Consolidated Revenue Fund is appropriated for the purposes of subsection (2).

#### **Recovery of charge and late payment penalty**

“39J.(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;
- (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).

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

“39K.(1) The regulations may make provision for and in relation to the following:

- (a) the methods by which charge 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.

“(4) A refund of an amount in accordance with regulations made for the purposes of paragraph (1)(c) is to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

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

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

“39L.(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.

### **Review of decisions by AAT**

“39M.(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:

(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.

### **Statements to accompany notification of decisions**

“39N.(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.**

**Record-keeping and returns etc.**

“39P.(1) The regulations may make provision for and in relation to requiring a person:

- (a) to keep and retain records, where the records are relevant to ascertaining the person’s liability to charge; 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; 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.

“(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:

- (c) criminal proceedings other than proceedings under, or arising out of, section 39Q or 39R; or
- (d) proceedings for recovery of an amount of late payment penalty.

#### **Failure to give information or returns**

“39Q. A person must not intentionally or recklessly refuse, or intentionally or recklessly 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.

#### **False information or returns**

“39R. A person must not, in purported compliance with regulations made for the purposes of this Division, intentionally give information or a return that, to the person’s knowledge, is false or misleading in a material particular.

Penalty: 80 penalty units.

### ***“Division 6—Enforcement***

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

“39S.(1) An inspector may search an aircraft or vessel for the purpose of ascertaining a person’s liability to charge 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.



“(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) Subsection 48(3) imposes obligations on inspectors in relation to identity cards.

### **Powers of inspector in relation to premises**

“39T.(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.

“(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.

“(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.

“(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:

‘**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)).

### **Warrant to enter premises**

“39U.(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, 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

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(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.”.

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**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; No. 44, 1990; and Nos. 121 and 179, 1991.

[*Minister's second reading speech made in—  
House of Representatives on 5 May 1993  
Senate on 18 May 1993*]