



# **Environment Legislation Amendment Act 2015**

**No. 11, 2015**

***An Act to amend the *Environment Protection and Biodiversity Conservation Act 1999* and the *Great Barrier Reef Marine Park Act 1975*, and for related purposes***

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**An Act to amend the *Environment Protection and Biodiversity Conservation Act 1999* and the *Great Barrier Reef Marine Park Act 1975*, and for related purposes**

[Assented to 5 March 2015]

The Parliament of Australia enacts:

## 1 Short title

This Act may be cited as the *Environment Legislation Amendment Act 2015*.

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## **2 Commencement**

This Act commences on the day after this Act receives the Royal Assent.

## **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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 2—Amendments relating to turtles and dugong**

### ***Environment Protection and Biodiversity Conservation Act 1999***

#### **1 Subsection 196(1) (note 1)**

Repeal the note, substitute:

Penalty:

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

Note 1: For the extra element of an aggravated offence, see section 196F.

#### **2 Subsection 196(3)**

Repeal the subsection.

#### **3 Subsection 196A(1) (note 1)**

Repeal the note, substitute:

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 196F.

#### **4 Subsection 196A(3)**

Repeal the subsection.

#### **5 Subsection 196B(1) (note 1)**

Repeal the note, substitute:

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

- (b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 196F.

**6 Subsection 196B(3)**

Repeal the subsection.

**7 Subsection 196C(1) (note 1)**

Repeal the note, substitute:

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 196F.

**8 Subsection 196C(3)**

Repeal the subsection.

**9 Subsection 196D(1) (note 1)**

Repeal the note, substitute:

Penalty:

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

Note 1: For the extra element of an aggravated offence, see section 196F.

**10 Subsection 196D(3)**

Repeal the subsection.

**11 Subsection 196E(1) (note 1)**

Repeal the note, substitute:

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 196F.

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## **12 Subsection 196E(3)**

Repeal the subsection.

## **13 After section 196E**

Insert:

### **196F Aggravated offence—member of listed threatened species that is a dugong or turtle**

- (1) For the purposes of this Subdivision, an offence against section 196, 196A, 196B, 196C, 196D or 196E (the *underlying offence*) is an *aggravated offence* if the member to which the underlying offence relates is:
  - (a) a member of a listed threatened species; and
  - (b) a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

Note: Marine turtles and leatherback turtles are members of the species mentioned in paragraphs 248(2)(g) and (h), and on the day this section commenced, these species were listed threatened species.

- (2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.
- (3) Strict liability applies to the physical elements of circumstance, that the member is:
  - (a) a member of a listed threatened species; and
  - (b) a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

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

## **14 Section 198**

After “196E”, insert “, 196F”.

## **15 Subsection 211(1) (note 1)**

Repeal the note, substitute:

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

- (b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 211F.

**16 Subsection 211(3)**

Repeal the subsection.

**17 Subsection 211A(1) (note 1)**

Repeal the note, substitute:

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 211F.

**18 Subsection 211A(3)**

Repeal the subsection.

**19 Subsection 211B(1) (note 1)**

Repeal the note, substitute:

Penalty:

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

Note 1: For the extra element of an aggravated offence, see section 211F.

**20 Subsection 211B(3)**

Repeal the subsection.

**21 Subsection 211C(1) (note 1)**

Repeal the note, substitute:

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 211F.

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**22 Subsection 211C(3)**

Repeal the subsection.

**23 Subsection 211D(1) (note 1)**

Repeal the note, substitute:

Penalty:

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

Note 1: For the extra element of an aggravated offence, see section 211F.

**24 Subsection 211D(3)**

Repeal the subsection.

**25 Subsection 211E(1) (note 1)**

Repeal the note, substitute:

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 211F.

**26 Subsection 211E(3)**

Repeal the subsection.

**27 After section 211E**

Insert:

**211F Aggravated offence—member of listed migratory species that is a dugong or turtle**

- (1) For the purposes of this Subdivision, an offence against section 211, 211A, 211B, 211C, 211D or 211E (the *underlying offence*) is an *aggravated offence* if the member to which the underlying offence relates is a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

Note: Dugong, marine turtles and leatherback turtles are members of the species mentioned in paragraphs 248(2)(f), (g) and (h), and on the day this section commenced, these species were listed migratory species.

- (2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.
- (3) Strict liability applies to the physical element of circumstance, that the member is a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

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

## **28 Section 213**

After “211E”, insert “, 211F”.

## **29 Subsection 254(1) (note 1)**

Repeal the note, substitute:

Penalty:

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

Note 1: For the extra element of an aggravated offence, see section 254F.

## **30 Subsection 254(3)**

Repeal the subsection.

## **31 Subsection 254A(1) (note 1)**

Repeal the note, substitute:

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 254F.

## **32 Subsection 254A(3)**

Repeal the subsection.

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**33 Subsection 254B(1) (note 1)**

Repeal the note, substitute:

Penalty:

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

Note 1: For the extra element of an aggravated offence, see section 254F.

**34 Subsection 254B(3)**

Repeal the subsection.

**35 Subsection 254C(1) (note 1)**

Repeal the note, substitute:

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 254F.

**36 Subsection 254C(3)**

Repeal the subsection.

**37 Subsection 254D(1) (note 1)**

Repeal the note, substitute:

Penalty:

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

Note 1: For the extra element of an aggravated offence, see section 254F.

**38 Subsection 254D(3)**

Repeal the subsection.

### 39 Subsection 254E(1) (note 1)

Repeal the note, substitute:

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 254F.

### 40 Subsection 254E(3)

Repeal the subsection.

### 41 After section 254E

Insert:

#### 254F Aggravated offence—member of listed marine species that is a dugong or turtle

- (1) For the purposes of this Subdivision, an offence against section 254, 254A, 254B, 254C, 254D or 254E (the *underlying offence*) is an *aggravated offence* if the member to which the underlying offence relates is a member of a listed marine species mentioned in paragraph 248(2)(f), (g) or (h).

Note: Dugong, marine turtles and leatherback turtles are the listed marine species mentioned in paragraphs 248(2)(f), (g) and (h).

- (2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.
- (3) Strict liability applies to the physical element of circumstance, that the member is a listed marine species mentioned in paragraph 248(2)(f), (g) or (h).

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

### 42 Section 528

Insert:

*aggravated offence:*

- (a) in Subdivision B of Division 1 of Part 13—has the meaning given by section 196F; and

- (b) in Subdivision B of Division 2 of Part 13—has the meaning given by section 211F; and
- (c) in Subdivision B of Division 4 of Part 13—has the meaning given by section 254F.

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

#### **43 Subsection 38BA(1) (after the penalty)**

Insert:

Note 1: For an aggravated offence, see also subsection 38GA(9).

#### **44 Subsection 38BA(1) (note)**

Omit “Note”, substitute “Note 2”.

#### **45 After subsection 38BA(3)**

Insert:

*Increased penalty for conduct involving a turtle or dugong*

(3A) If:

- (a) a person commits an offence against subsection (3); and
- (b) the conduct the person engaged in that constituted the offence resulted in the taking of or injury to an animal; and
- (c) the animal is a member of a protected species; and
- (d) the protected species is:
  - (i) a species in the genus *Dugong* (dugong); or
  - (ii) a species in the family Cheloniidae (marine turtles); or
  - (iii) the species *Dermochelys coriacea* (leatherback turtles);

then the number of penalty units set out in the penalty for the offence is tripled.

(3B) If the prosecution intends to prove an offence against subsection (3) and rely on subsection (3A), the charge must also allege which subparagraph of paragraph (3A)(d) applies in relation to the animal.

#### **46 At the end of subsection 38BA(4)**

Add “and paragraphs (3A)(b), (c) and (d)”.

**47 Subsection 38BB(1) (note)**

Repeal the note.

**48 At the end of subsection 38BB(1)**

Add:

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

Note 2: For an aggravated contravention, see also subsection 38GB(6).

**49 At the end of subsection 38BB(2)**

Add:

Note: For an aggravated contravention, see also subsection 38GB(6).

**50 At the end of subsection 38GA(1)**

Add:

Note: For subparagraph (c)(i), see also subsection (9).

**51 At the end of section 38GA**

Add:

(9) If:

- (a) a person commits an aggravated offence against subsection 38BA(1) in relation to an animal because of subparagraph (1)(c)(i) of this section; and
- (b) the animal is a member of:
  - (i) a species in the genus *Dugong* (dugong); or
  - (ii) a species in the family Cheloniidae (marine turtles); or
  - (iii) the species *Dermochelys coriacea* (leatherback turtles);

then the number of penalty units set out in the penalty for the aggravated offence is tripled.

- (10) If the prosecution intends to prove an aggravated offence and rely on subsection (9), the charge must also allege which subparagraph of paragraph (9)(b) applies in relation to the animal.
- (11) Strict liability applies to the physical element of circumstance mentioned in paragraph (9)(b) that the animal is a member of a species mentioned in that paragraph.

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



**52 At the end of subsection 38GB(1)**

Add:

Note: For subparagraph (c)(i), see also subsection (6).

**53 At the end of section 38GB**

Add:

(6) If:

- (a) an individual or a body corporate contravenes subsection 38BB(1) or (2); and
- (b) the contravention is an aggravated contravention in relation to an animal because of subparagraph (1)(c)(i) of this section; and
- (c) the animal is a member of:
  - (i) a species in the genus *Dugong* (dugong); or
  - (ii) a species in the family Cheloniidae (marine turtles); or
  - (iii) the species *Dermochelys coriacea* (leatherback turtles);

then the number of penalty units set out in the relevant penalty for the aggravated contravention is tripled.

- (7) If the Authority, on behalf of the Commonwealth, intends to prove that the person has committed an aggravated contravention and rely on subsection (6), the Authority's application to the Federal Court under section 61AIA in relation to the contravention must also specify which subparagraph of paragraph (6)(c) applies in relation to the animal.

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[Minister's second reading speech made in—  
House of Representatives on 14 November 2013  
Senate on 11 December 2013]

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(203/13)