

The Senate

Environment and Communications
Legislation Committee

Environment Legislation Amendment
(Protecting Dugongs and Turtles) Bill 2019

March 2019

© Commonwealth of Australia 2019

ISBN 978-1-76010-918-9

Committee contact details

PO Box 6100
Parliament House
Canberra ACT 2600

Tel: 02 6277 3526

Fax: 02 6277 5818

Email: ec.sen@aph.gov.au

Internet: www.aph.gov.au/senate_ec

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia License.



The details of this licence are available on the Creative Commons website:
<http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.

This document was printed by the Senate Printing Unit, Parliament House, Canberra

Committee membership

Committee members

Senator Jonathon Duniam, Chair	LP, Tasmania
Senator Janet Rice, Deputy Chair	AG, Victoria
Senator Anthony Chisholm	ALP, Queensland
Senator Steve Martin	NATS, Tasmania
Senator Anne Urquhart	ALP, Tasmania
Senator John Williams	NAT, New South Wales

Committee secretariat

Ms Christine McDonald, Committee Secretary
Ms Monika Sheppard, Senior Research Officer
Ms Georgia Fletcher, Administration Officer

Table of contents

Committee membership	iii
Chapter 1: Introduction	1
Referral	1
Conduct of the inquiry	1
Structure of the report.....	1
Background of the Bill	1
Purpose of the Bill	2
Key provisions of the Bill.....	3
Reports of other parliamentary committees	4
Chapter 2: Key issues	5
Schedule 1 – Arrangements with community groups	6
Schedule 1 – Arrangements with TUMRAs.....	7
Schedule 2 – Custodial penalties	12
Committee view.....	13
Australian Greens' additional comments	15
Appendix 1: Submissions	17

Chapter 1

Introduction

Referral

1.1 On 14 February 2019, the Senate, on the recommendation of the Selection of Bills Committee, referred the Environment Legislation Amendment (Protecting Dugongs and Turtles) Bill 2019 (Bill) to the Senate Environment and Communications Legislation Committee (committee) for inquiry and report by 26 March 2019.¹ The bill was introduced as a private member's bill by Senator Derryn Hinch.²

Conduct of the inquiry

1.2 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to relevant individuals and organisations inviting submissions by 4 March 2019.

1.3 The committee received 10 submissions, which are listed at Appendix 1. These submissions are available at www.aph.gov.au/senate_ec. The committee agreed to conduct its inquiry without holding public hearings.

1.4 The committee thanks all the organisations and individuals who assisted with the conduct of the inquiry.

Structure of the report

1.5 This report comprises two chapters:

- chapter 1 provides administrative details of the inquiry, background to the Bill and an overview of the proposed provisions; and
- chapter 2 outlines the key issues raised in submissions and evidence, as well as setting out the committee's views and recommendations.

Background of the Bill

1.6 On 15 August 2013, during the federal election campaign, the Coalition announced its 'Dugong and Turtle Protection Plan'.³ The plan included various

1 *Journals of the Senate*, No. 140–14 February 2019, pp. 4667–4670.

2 *Journals of the Senate*, No. 140–14 February 2019, p. 4677.

3 Hon Greg Hunt MP, Shadow Minister for Climate Action, Environment and Heritage, 'Coalition announces Dugong & Turtle Protection Plan', 15 August 2013, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2664355%22> (accessed 12 March 2019).

funding measures—such as for specialised Indigenous Ranger Programs and an Australian Crime Commission investigation—and commitments toward future actions. These commitments included collaborations with Indigenous leaders and the introduction of legislation to enhance protection of dugongs and turtles along the Great Barrier Reef.⁴

1.7 Following the 2013 election, the Coalition Government introduced the Environment Legislation Amendment Bill 2013 into the Parliament and it was referred by the Senate to the committee for inquiry and report by 14 February 2014.⁵ This bill sought to amend the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the *Great Barrier Reef Marine Park Act 1975* (GBRMP Act), to increase the financial penalties for various offence and civil penalty provisions relating to listed dugongs and turtles.⁶

1.8 In welcoming passage of the 2013 bill, the then Minister for the Environment, the Hon Greg Hunt MP, stated:

The amendments are in response to concerns about ongoing illegal poaching and trading of turtles and dugong and are part of a broader suite of initiatives to manage and protect our World Heritage listed Great Barrier Reef and its wildlife...There are now increased criminal and civil financial penalties for killing, injuring, taking, trading, keeping or moving a turtle or a dugong in a Commonwealth marine area, and for taking or injuring turtles and dugong within the Great Barrier Reef Marine Park.⁷

Purpose of the Bill

1.9 The *Environment Legislation Amendment Act 2015* came into operation on 5 March 2015.⁸ However, in his second reading speech, Senator Hinch stated that while there had been 'positive steps'—such as that legislation—more action is required:

4 For the seven core elements of the 'Dugong and Turtle Protection Plan', see: Department of the Environment, 'National Dugong and Turtle Protection Plan 2014–2017', <http://www.environment.gov.au/resource/national-dugong-and-turtle-protection-plan-2014-2017> (accessed 12 March 2019).

5 *Journals of the Senate*, No. 11–12 December 2013, p. 361.

6 Environment Legislation Amendment Bill 2013, Schedule 2.

7 Hon Greg Hunt MP, Minister, 'Our commitment to greater protection for turtles and dugong passes parliament', *Media release*, 12 February 2015, <https://www.greghunt.com.au/our-commitment-to-greater-protection-for-turtles-and-dugong-passes-parliament/> (accessed 12 March 2019).

8 Parliament of Australia, 'Bills of previous Parliaments, Environment Legislation Amendment Bill 2013', <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22legislation%2Fbillhome%2Fr5128%22> (accessed 12 March 2019).

Positive steps have been made to deter offenders from illegally poaching, injuring and killing dugongs and sea turtles, such as the tripling of financial penalties for poaching, illegal commercial trade and illegal transportation of listed threatened species...Despite these changes however, local communities in Queensland and the Northern Territory continue to raise credible allegations of animal cruelty committed by those hunting dugongs and turtles. Such allegations include the use of high-power motorboats, machetes and other cruel methods which maim animals and leave them suffering for hours before dying. It is clear that offenders have not been deterred by the threat of mere financial penalties. This Bill builds upon the measures introduced in 2015 and creates further transparency and accountability for the agencies that seek to conserve these precious animals.⁹

Key provisions of the Bill

1.10 The key provisions of the Bill seek to amend:

- the GBRMP Act to require that agreements between the Great Barrier Reef Marine Park Authority (GBRMPA) and community groups include consideration of the protection and conservation of dugong and turtle species (items 1–2, Schedule 1);¹⁰
- the Great Barrier Reef Marine Park Regulations 1983 (GBRMP Regulations) to require that:
 - a traditional use of marine resources agreement (TUMRA) must specify the method by which a protected animal species is proposed to be harvested; and
 - the GBRMPA can only accredit and/or fund TUMRAs when satisfied that the population of a protected species will be able to sustain any proposed harvesting and that the proposed harvesting methods are humane (items 3–8, Schedule 1);
- the GBRMP Act and the EPBC Act to increase the custodial penalties for aggravated offences (items 1–10, Schedule 2); and
- the *Australian Border Force Act 2015*, *Australian Federal Police Act 1975*, EPBC Act and GBRMP Act to require Commonwealth agencies to annually report on their investigation and enforcement of statutory offences (items 1–6, Schedule 3).

9 Senator Derryn Hinch, *Proof Senate Hansard*, 14 February 2019, p. 42.

10 Specifically, species in the genus *Dugong*; species in the family Cheloniidae (marine turtles); species *Dermochelys coriacea* (leatherback turtles).

Reports of other parliamentary committees

1.11 As at the time of writing, neither the Scrutiny of Bills Committee nor the Parliamentary Joint Committee on Human Rights had considered and reported on the Bill.

1.12 The Explanatory Memorandum's Statement of Compatibility with Human Rights, as required by Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, states that the Bill is compatible with the human rights and freedoms specified in section 3 of that Act, as 'it does not limit any absolute rights and to the extent it may limit human rights, those limitations are reasonable, necessary and proportionate'.¹¹

11 Environment Legislation Amendment (Protecting Dugongs and Turtles) Bill 2019, Explanatory Memorandum, p. 6.

Chapter 2

Key issues

2.1 This chapter examines the key issues raised in submissions in relation to the amendments proposed in Schedules 1 to 3 of the Environment Legislation Amendment (Protecting Dugongs and Turtles) Bill 2019 (Bill).

Consultation with Traditional Owners

2.2 The *Native Title Act 1993* (Cth) recognises the rights and interests of Aboriginal and Torres Strait Islander Traditional Owners to hunt on their land and sea country.¹ This includes within the Great Barrier Reef Marine Park (GBRMP) which stretches 2300km along the Queensland Coast. There are more than 70 Traditional Owner clan groups within the Great Barrier Reef region.²

2.3 The GBRMP Authority (GBRMPA), which has managed the GBRMP for over 40 years, noted the importance of turtle and dugong to Traditional Owners. It stated:

Turtle and dugong are important species for Aboriginal and Torres Strait Islander people's livelihoods, traditions, customs and connection and is based on conservation and sustainability of marine resources.³

2.4 The GBRMPA argued that effective and meaningful partnerships with Traditional Owners are 'essential to protect cultural and heritage values, conserve biodiversity and enhance the resilience of the Great Barrier Reef into the future'.⁴

2.5 Other submitters agreed that Traditional Owners must be involved in the management of dugong and turtle in the Great Barrier Reef region. Helene Marsh, a Distinguished Professor of Environmental Science at James Cook University, noted however that Traditional Owners have not been consulted in relation to the Bill.⁵

2.6 The Cape York Land Council Aboriginal Corporation—which supports, protects and promotes Cape York Aboriginal peoples' interests in land and sea—did

1 Australian Government, 'Federal Register of Legislation, *Native Title Act 1993*', <https://www.legislation.gov.au/Details/C2019C00054> (accessed 12 March 2019).

2 Great Barrier Reef Marine Park Authority, *Submission 5*, p. 1.

3 Great Barrier Reef Marine Park Authority, *Submission 5*, p. 1.

4 Great Barrier Reef Marine Park Authority, *Submission 5*, p. 1.

5 Professor Helene Marsh, *Submission 1*, p. 1. Also see: Great Barrier Reef Marine Park Authority, *Submission 5*, pp. 1 and 4; Department of the Prime Minister and Cabinet, *Submission 8*, p. 2, which also expressed concern about the lack of consultation with government agencies.

not support the Bill due to a lack of notice and opportunity to consider and respond to the proposals. Its submission highlighted that Aboriginal people in the Cape York region are one of the main groups who would be affected by the Bill:

The Bill has significant relevance for Cape York's Aboriginal people because they are the traditional owners of approximately one third of the Great Barrier Reef and other sea country around Cape York and engage in the hunting of turtle and dugong as part of their traditional practice. As such Cape York's Aboriginal people will be one of the main groups affected by the proposed additional requirements of a traditional use of marine resource agreements (TUMRAs).⁶

Schedule 1 – Arrangements with community groups

2.7 Section 39ZA of the *Great Barrier Reef Marine Park Act 1975* (GBRMP Act) provides that the GBRMPA may enter into an agreement or arrangement with a group of people who are representative of a community group that has a special interest in an area of the GBRMP, for the purposes of Part VB (Plans of Management).

2.8 The agreement or arrangement may relate to the development and/or the implementation of a plan of management for the area concerned, or for a species or ecological community within that area. It may also provide for the community group and the GBRMPA to jointly manage the area, or the species or ecological community within the area, in accordance with the plan.

2.9 Item 1 in Schedule 1 of the Bill seeks to amend section 39ZA of the GBRMP Act to:

- include a requirement relating to how the community group will ensure the recovery and continued protection and conservation of special and ecological communities, including dugongs and turtles (proposed subsection (3)); and
- if the GBRMPA considers that the requirement has not been fulfilled, it may at any time refuse to approve or cancel the agreement or arrangement, or request additional information in relation to compliance (proposed subsection (4)).

2.10 Senator Derryn Hinch stated:

These amendments will ensure that any agreement or arrangement made between the Authority and community groups directly considers the impact such an agreement or arrangement may have on dugong and turtle populations.⁷

2.11 The Cairns Turtle Rehabilitation Centre (CTRC) agreed with the proposed provisions but added that data must be provided to support the requirement.

6 Cape York Land Council Aboriginal Corporation, *Submission 7*, p. 1.

7 Senator Derryn Hinch, *Proof Senate Hansard*, 14 February 2019, p. 42.

Its submission argued that current arrangements are not evidence-based and therefore fail to adequately protect dugong and turtle:

Where data shows that a population is quantifiably depleted, the Authority must have ability to refuse or suspend hunting practices until evidence demonstrates that a population can support any hunting at all.

In the example of the Fitzroy and Green Island populations, research presented by Dr Ian Bell at the Turtle Symposium held in Bundaberg, 2018, found that there are no adult green turtles (*Chelonia mydas*) in the Green Island area and that the cause of this population decimation is hunting. Further photographic evidence in 2016 showed that this traditional owner group had resorted to the taking of sub-adult and younger turtles.

Observations during nesting seasons on Fitzroy Island in 2016, 2017 and 2018 yielded evidence of only one (1) nesting attempt in 2017 (with no lay) and only seven (7) successful nests in 2018 (from one turtle) resulting in the hatching of seven (7) clutches with an estimate of five hundred (500) total hatchlings successfully launched (2018 anecdotal information, Fitzroy Island Resort).

And yet, the traditional owner groups in this area are authorised and entitled to hunt.⁸

2.12 The Department of the Prime Minister and Cabinet (PM&C), the GBRMPA and the Department of the Environment and Energy (DEE) strongly supported the right of Indigenous Australians to hunt dugong and turtle for personal, domestic or non-commercial communal needs in accordance with traditional laws and custom.⁹ There is no clear evidence the existing arrangements aren't working effectively.¹⁰

Schedule 1 – Arrangements with TUMRAs

2.13 Traditional Use of Marine Resources Agreements (TUMRAs) are formal agreements developed by Traditional Owners and accredited by the GBRMPA and the Queensland Department of Environment and Science. They describe how Great Barrier Reef Traditional Owners work in partnership with the Australian and Queensland Governments to manage traditional use activities on their sea country.¹¹

8 Cairns Turtle Rehabilitation Centre, *Submission 6*, p. 2.

9 Great Barrier Reef Marine Park Authority, *Submission 5*, p. 2, which argued also that the existing legislative framework for managing the Great Barrier Reef Marine Park complements the *Native Title Act 1993* (Cth); Department of the Prime Minister and Cabinet, *Submission 8*, p. 1; Department of the Environment and Energy, *Submission 9*, p. 1.

10 Department of the Environment and Energy, *Submission 9*, p. 3.

11 Great Barrier Reef Marine Park Authority, 'Traditional Use of Marine Resources Agreements', <http://www.gbrmpa.gov.au/our-partners/traditional-owners/traditional-use-of-marine-resources-agreements> (accessed 12 March 2019). Also see: Great Barrier Reef Marine Park Authority, *Submission 5*, p. 2 for a definition of 'traditional use activities'.

2.14 PM&C and the GBRMPA argued that TUMRAs are an effective Indigenous-led approach to managing the sustainable customary harvest of dugongs and turtles. The GBRMPA particularly noted that the agreements are supported by a compliance regime that can include specialised compliance capacity with Traditional Owners—such as within the Capacity Building of Indigenous Ranger Strategy.¹²

Matters for inclusion in a TUMRA

2.15 Regulation 89D of the Great Barrier Reef Marine Park Regulations 1983 (GBRMP Regulations) sets out the matters that must be included in a TUMRA.

2.16 However, the Explanatory Memorandum to the Bill (EM) identifies harvesting methods as a matter that need not be addressed in a TUMRA:

The GBRMP Regulations do not require Traditional Owner groups, when applying to have a TUMRA accredited, to describe or report on the methods by which protected species will be harvested.¹³

2.17 Items 3 and 4 of Schedule 1 of the Bill seek to address these matters, by repealing and substituting proposed paragraphs 89D(1)(e) and 89D(1)(g) of the GBRMP Regulations.

2.18 The CTRC focussed upon proposed paragraph 89D(1)(e) that would require Traditional Owners to describe the proposed take and method of harvesting for each protected species. CTRC submitted that 'strict articulation' of these provisions—the take based on empirical evidence—must be enforced by the GBRMPA when it determines accreditation of a TUMRA.¹⁴

2.19 Further:

Traditional hunting methods of take and harvest vary by group and availability of resources, as do the levels of commitment or motivation of individuals to practice methods or adhere to processes they do not agree with.

Groups making application or under review should be required to clearly and thoroughly articulate the tools and methods that will be used during traditional hunting on their country. Furthermore, the documentation should outline how the group intends to ensure these, and only these tools and

12 Great Barrier Reef Marine Park Authority, *Submission 5*, p. 3; Department of the Prime Minister and Cabinet, *Submission 8*, p. 2, which argued that Indigenous involvement in the management of traditional sea country should be increased. Also see: Australian Government, 'Capacity Building for Indigenous Rangers Strategy', <https://www.pmc.gov.au/sites/default/files/publications/cbir-factsheet.PDF> (accessed 12 March 2019).

13 Environment Legislation Amendment (Protecting Dugongs and Turtles) Bill 2019, Explanatory Memorandum, p. 3.

14 Cairns Turtle Rehabilitation Centre, *Submission 6*, p. 2.

methods are used, as well as what ramifications and/or reprisals will be made for breaches.¹⁵

2.20 The GBRMPA also commented on proposed paragraph 89D(1)(e), as well as 89D(1)(g), arguing that there is no need for the Bill to seek to introduce animal welfare matters into the development or accreditation of a TUMRA. It submitted that such matters are already covered by state legislation:

In Queensland, animal welfare is managed in accordance with the *Animal Care and Protection Act 2001*. This Act was amended in September 2012 to ensure animal welfare obligations apply to acts taken under Aboriginal tradition or Torres Strait Islander custom. This means a person is not exempt from animal cruelty legislation even if the activity was conducted under Native Title or a TUMRA.¹⁶

2.21 However, the CTCRC, which opposes the hunting of dugong and turtle, submitted that there needs to be an open and frank discussion about the harvesting methods used by Traditional Owners: 'evidence of these unthinking and often abusive practices are seen repeatedly at the CTCRC rehabilitation centres'.¹⁷

2.22 PM&C raised another argument in relation to proposed subparagraph 89D(1)(g)(i), which would require Traditional Owners to describe how they would monitor and report on the take of protected species. The department submitted that this proposal could be a sensitive issue for some communities, with potential for adverse outcomes:

This has the potential to diminish the effectiveness of education and community awareness programmes, compliance monitoring and self-regulation of capture rates, and may lead to the establishment of fewer TUMRAs. Together, these issues could have a negative impact on the conservation of dugongs and turtles in northern Australia.¹⁸

2.23 The committee notes that proposed subparagraph 89D(1)(e)(i)—regarding a description of the number of specimens proposed to be harvested—appears to duplicate information already required in an application for accreditation of a TUMRA.¹⁹

15 Cairns Turtle Rehabilitation Centre, *Submission 6*, p. 3.

16 Great Barrier Reef Marine Park Authority, *Submission 5*, p. 5. Also see: Department of the Environment and Energy, *Submission 9*, p. 2.

17 Cairns Turtle Rehabilitation Centre, *Submission 6*, p. 2. Also see: Name Withheld, *Submission 3*, pp. 1–2; Name Withheld, *Submission 10*, p. 2, which commented on cruel and inhumane methods employed in traditional hunting.

18 Department of the Prime Minister and Cabinet, *Submission 8*, p. 1.

19 <http://elibrary.gbrmpa.gov.au/jspui/bitstream/11017/1018/1/TUMRA-Workbook-Final2009.pdf> (accessed 12 March 2019).

Determination of applications for accreditation of a TUMRA

2.24 Regulation 89G of the GBRMP Regulations sets out matters in relation to the GBRMPA's determination of an application for TUMRA accreditation.

2.25 Item 7 of Schedule 1 of the Bill proposes to insert proposed sub-regulation 89G(3) to prohibit the GBRMPA from accrediting a TUMRA unless satisfied of two additional matters:

- (a) the relevant population of each protected species will be able to sustain any proposed harvesting; and
- (b) the proposed harvesting of each protected species will be undertaken in a humane manner.

2.26 Proposed sub-regulation 89G(3B) seeks to describe what will be a 'humane manner'—harvesting 'in a way that causes the animal as little pain as possible'—and proposed sub-regulation 89G(3C) would provide specific examples of acts or omissions that would not fall within this definition:

- (a) injuring the animal to stop it escaping after it has been caught;
- (b) injuring the animal or prolonging its life to attract another animal;
- (c) taking flesh from the animal for human consumption before the animal is dead;
- (d) doing a thing or omitting to do a thing that causes the animal to die from dehydration or starvation.

2.27 Humane Society International considered that genuine subsistence hunting must be ecologically sustainable and humane. For that reason, it supported the changes proposed in the Bill.²⁰

2.28 Other submitters questioned whether the hunting of dugong and turtle can ever be humane, with CTRC contending that today's methods of harvesting are inhumane, as well as wholly inconsistent with traditional methods:

The use of powered & high-powered boats, spearguns and nets to list a few examples, does not support the concept or ethos of tradition. This is a clear and obvious improvement on tradition that allows higher yields and requires less effort. In addition, the assessment of whether a practice is cruel or humane has changed along with societal development and constructs. Drowning or baiting dugongs, mutilation of live animals and inflicting suffering by unsuccessful captures is unacceptable and should be considered an unnecessary tradition to carry forth.²¹

20 Humane Society International, *Submission 2*, p. 1.

21 Cairns Turtle Rehabilitation Centre, *Submission 6*, p. 2. Also see: Name Withheld, *Submission 3*, p. 2.

2.29 CTRC agreed that the Bill should clearly define the term 'humane' and illustrate the phrase 'causes the animal as little pain as is reasonable'. However, its submission expressed doubts regarding how those concepts can ultimately be measured and agreed. Further:

...the policing, reporting and infringement of such activities would require a significant amount of oversight. In order to ensure such an enterprise in its entirety and at every occurrence would require permanent and consistent evaluation of all takes and harvests. This is clearly unactionable in its present allowance of hunting at any time and location by individuals.²²

Overall potential effect of Schedule 1 of the Bill

2.30 Submissions from PM&C and the GBRMPA expressed concern that the measures proposed in Schedule 1 of the Bill could have a range of unintended and negative consequences—such as hindering or discouraging Traditional Owners from agreeing to or withdrawing from a TUMRA.²³

2.31 The GBRMPA especially highlighted the importance of Traditional Owners' monitoring and reporting programs, supported by existing compliance regimes:

A core component of the TUMRA program is an effective Traditional Owner lead monitoring and reporting program which regularly provides updates to the Authority on the take of turtle and dugong. This is supported with TUMRA Compliance Plans which address any reported illegal hunting. The Authority is concerned Traditional Owners may be disappointed if further measures are imposed, given the TUMRA program is driven by Traditional Owner groups who have shown they are managing their sea country sustainably.²⁴

2.32 PM&C cautioned against a top-down approach that it argued could undermine achievements and outcomes to date in the sustainable management of marine resources in the GBRMP:

Parliament imposing a set of pre-determined conditions on TUMRAs risks compromising the integrity of an agreement negotiated between the Commonwealth, Queensland Government and Traditional Owners. This top down approach puts at risk previous successes achieved by community-led approaches and partnerships.²⁵

22 Cairns Turtle Rehabilitation Centre, *Submission 6*, p. 3.

23 Great Barrier Reef Marine Park Authority, *Submission 5*, p. 3; Department of the Prime Minister and Cabinet, *Submission 8*, pp. 1–2. The authority argued also that these consequences would likely encompass a wider range of activities with Traditional Owners and affect other Australian Government programs and outcomes.

24 Great Barrier Reef Marine Park Authority, *Submission 5*, p. 3.

25 Department of the Prime Minister and Cabinet, *Submission 8*, p. 2.

2.33 The committee particularly notes that the GBRMP Regulations will be repealed on 1 April 2019 and replaced by the Great Barrier Reef Marine Park Regulations 2019.²⁶ Accordingly, items in Schedule 1 of the Bill would need to be reconsidered and amended as necessary if the Bill is to proceed.

2.34 The 2017 Recovery Plan for Marine Turtles in Australia lists the Indigenous take for meat and eggs as the lowest of nine actionable threats, behind climate change, marine debris, chemical discharge, international take, predation, fisheries bycatch, light pollution and coastal development.²⁷

Schedule 2 – Custodial penalties

2.35 Schedule 2 of the Bill proposes to amend various provisions in the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and subsection 38GA(9) of the GBRMP Act to increase custodial penalties:

- from two to five years for aggravated offences relating to listed threatened species, listed migratory species and listed marine species (EPBC Act, items 1–9); and
- in the GBRMP Act, from three to five years for the aggravated offence of engaging in prohibited conduct (or conduct without permission) that results in the taking of or injury to an animal of a protected species, where the animal is a member of:
 - a species in the genus *Dugong* (dugong);
 - a species in the family Cheloniidae (marine turtles); orthe species *Dermochelys coriacea* (leatherback turtles) (item 10).²⁸

2.36 The EM to the Bill notes that, while the *Environment Legislation Amendment Act 2015* increased financial penalties for various offences and civil penalty provisions, that Act did not increase custodial penalties. The EM anticipates:

These amendments [in the Bill] will deter persons from committing offences by imposing increased custodial sentences in respect of the illegal killing, injuring, taking, trading, keeping or moving of listed marine species.²⁹

26 Australian Government, 'Federal Register of Legislation, Great Barrier Reef Marine Park Regulations 2019', <https://www.legislation.gov.au/Details/F2019L00166> (accessed 12 March 2019).

27 Department of the Environment and Energy, *Submission 9*, p. 2.

28 These are strict liability offences: subsection 38BA(2) of the *Great Barrier Reef Marine park Act 1975*.

29 Environment Legislation Amendment (Protecting Dugongs and Turtles) Bill 2019, Explanatory Memorandum, p. 4.

2.37 PM&C expressed doubt as to whether Schedule 2 of the Bill would have this deterrent effect 'given the small number of prosecutions in this area it is difficult to determine the impact of increased sanctions'.³⁰

2.38 DEE submitted that the Australian Criminal Intelligence Commission has extensively investigated the illegal killing, poaching and transportation of turtle and dugong on Australia's coastlines, following introduction of the increased financial penalties in 2015:

The investigation found that the poaching and sale of meat was minimal and usually opportunistic, and that there was no substantive evidence to suggest an organised commercial trade existed in Queensland or the Torres Strait. It is unclear what additional deterrence would be provided by the proposed amendments to custodial penalties.³¹

Committee view

2.39 Some submitters to the inquiry supported the Bill, while those who did not argued that there has been insufficient consultation with Traditional Owners in the Great Barrier Reef and/or Torres Strait regions. The committee considers that it would be imprudent to legislate without consulting Traditional Owners in all regions impacted by the proposed legislation.

2.40 The committee considers the best way to deliver results in regard to turtle and dugong conservation is self-management by communities. Governments must work closely with native title holders and other stakeholders to continuously monitor and to develop solutions to ensure the sustainability of dugongs and marine turtles.

2.41 Further, Commonwealth departments and the GBRMPA argued that TUMRAs have been highly successful in the sustainable management of dugong and turtle in the Great Barrier Reef region. The committee accepts that implementation of the Bill might have a range of unintended consequences, including jeopardising plans of management, which would not be a desirable legislative outcome.

2.42 In addition, the committee notes that the Bill contains provisions that appear to be duplicative and/or unnecessary, and provisions that might be superseded by the imminent commencement of the Great Barrier Reef Marine Park Regulations 2019.

30 Department of the Prime Minister and Cabinet, *Submission 8*, p. 2.

31 Department of the Environment and Energy, *Submission 9*, p. 2.

Recommendation 1

2.43 The committee recommends that the Senate not pass the Bill.

Senator Jonathon Duniam

Chair

Australian Greens' additional comments

1.1 This Bill introduces amendments to traditional use of marine resources agreements, which are agreements developed by Traditional Owner groups and accredited by the Great Barrier Reef Marine Park Authority (GBRMPA). These agreements describe how Traditional Owner groups intend to manage their take of natural resources, which may include protected species.

1.2 The Bill introduces the requirement that these agreements must describe harvesting methods of protected animal species, and that the GBRMPA will only accredit agreements if it is satisfied the protected species can sustain harvesting.

1.3 The Greens share concerns that there was a lack of consultation with Traditional Owners. The Cape York Land Council Aboriginal Corporation notes in its submission:

Despite being a major stakeholder affected by the Bill's proposed amendments, we are not aware of any informed consultation with Cape York Aboriginal people about the Bill to discuss how it affects them or the practicality of implementing the proposed amendments.¹

1.4 The GBRMPA also highlighted concerns around the lack of consultation about the Bill in its submission:

The Authority is concerned the changes proposed in the Bill have not undergone prior and informed consultation with those likely affected, particularly Traditional Owners and relevant Government agencies charged with the responsibility for managing these iconic species and the habitats in which they reside.²

1.5 Further, several submissions to the inquiry discussed the negative impacts of amending the traditional use of marine resource agreements. For example, the GBRMPA emphasised that the amendments could risk hindering and discouraging Traditional Owners from entering into agreements and may lead Traditional Owners to withdraw from existing agreements.³ As the Department of the Prime Minister and Cabinet said in its submission:

The proposed legislative amendments...may create disincentives for Traditional Owners to enter into new agreements with government to maintain sustainable turtle and dugong populations.⁴

1 Cape York Land Council Aboriginal Corporation, *Submission 7*, p. 1.

2 Great Barrier Reef Marine Park Authority, *Submission 5*, p. 4.

3 Great Barrier Reef Marine Park Authority, *Submission 5*, p. 3.

4 Department of the Prime Minister and Cabinet, *Submission 8*, p. 2.

1.6 These amendments also do not take into consideration the evidence that Traditional Owners have already demonstrated they are managing marine resources sustainably. GBRMPA notes in its submission:

It has been the experience of the Authority that Traditional Owners consider all the latest science and traditional lore and custom when considering harvest of these species in their sea country, and voluntarily adjust these figures according to the health of the ecosystem.⁵

1.7 The Greens share the committee's concerns that it would be unwise to legislate without consulting Traditional Owners as highlighted in the Chair's Report. The Greens are disappointed in the lack of consultation given the central role Traditional Owners play in negotiating these agreements and managing sea country sustainably.

1.8 The Greens recognise that there are serious threats to dugong and turtle populations. However we believe any changes to the traditional use of marine resources agreements must be led by Traditional Owners and First Nations peoples.

Senator Janet Rice
Deputy Chair
Senator for Victoria

5 Great Barrier Reef Marine Park Authority, *Submission 5*, p. 4.

Appendix 1

Submissions

Submissions

- 1 Professor Helene Marsh
- 2 Humane Society International
- 3 Name Withheld
- 4 Name Withheld
- 5 Great Barrier Reef Marine Park Authority
- 6 Cairns Turtle Rehabilitation Centre
- 7 Cape York Land Council Aboriginal Corporation
- 8 Department of the Prime Minister and Cabinet
- 9 Department of the Environment and Energy
- 10 Name Withheld

