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**Great Barrier Reef Marine Park Amendment Bill  
2001**

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Great Barrier Reef Marine Park Amendment Bill 2001

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# Great Barrier Reef Marine Park Amendment Bill 2001

**Date Introduced:** 5 April 2001

**House:** Senate

**Portfolio:** Environment and Heritage

**Commencement:** 28 days after Royal Assent

## Purpose

The Bill creates various offences and/or increases penalties, particularly in relation to certain shipping and fishing activities in the Great Barrier Reef Marine Park. The overall objective is to improve environmental protection from oil pollution, ship grounding and illegal fishing.

## Background

### Management of the Great Barrier Reef Marine Park

Although the *Great Barrier Reef Marine Park Act* (the GBRMP Act) was passed in 1975, the first section of the Park was not actually proclaimed until 1979. The other main sections of the Park were progressively added during the 1980s. In some areas, the western boundary of the Park is the Queensland coastal low water mark, but on others it lies a substantial distance out from the coast.<sup>1</sup> In any case, the GBRMP Act allows the Commonwealth to regulate activities outside the Marine Park where these might pollute water in a manner harmful to animals and plants within the Park.<sup>2</sup>

The respective roles and obligations of the Commonwealth and Queensland Governments in relation to the Park were originally outlined in the 'Emerald Agreement' of 1979. While the Great Barrier Reef Marine Park Authority (GBRMPA) has the overall responsibility for management of the Park under the GBRMP Act, day-to-day management is primarily delivered by Queensland Government marine parks officers and through cooperation with organisations such as the Queensland Boating and Fisheries Patrol (QBFP), Queensland Water Police, Coastwatch and the Australian Maritime Safety Authority (AMSA). A Commonwealth / Queensland Great Barrier Reef Ministerial Council coordinates

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respective government policy at the Ministerial level. A Consultative committee of approximately 18 members also advises GBRMPA and the Commonwealth Environment Minister.

### Commercial Shipping in the Great Barrier Reef Marine Park<sup>3</sup>

There are two major north-south shipping routes in the GBR area.

The inner route is between the coast and the main line of reefs. The northern section from Torres Strait to Cairns in particular involves navigation within confined waters for a long period, normally 40 hours. Compulsory pilotage (see further below) is required for this section. All of the inner route is well charted and marked with navigational aids.

The outer route runs from the eastern limit of the Torres Strait in the north, through the Coral Sea and then back towards to the Queensland coast just south of Gladstone. It lies well outside the boundaries of the Park. The outer route was surveyed and charted to international standards in 1997.

There are four main shipping passages linking the inner route with the Coral Sea: the Grafton Passage near Cairns, Palm Passage near Townsville, Hydrographers Passage near Mackay and Capricorn Channel at the south end of the inner route. Of these, compulsory pilotage is only currently required in the Hydrographers Passage.

The Park is recognised by the International Maritime Organisation (IMO) as a 'Particularly Sensitive Sea Area'. This designation allows Australia to place special requirements on GBR shipping operations including tightened restrictions on discharges from ships, adoption of ship routing measures and other navigational measures such as compulsory pilotage and vessel traffic management systems.

The current compulsory pilotage area is implemented under the *Great Barrier Reef Marine Park Act 1975*. This requires ships of over 70 metres and loaded oil, chemical tankers or liquefied gas carriers of any length to carry a licensed pilot when taking passage through specified routes.

Around 6,000 'movements' of ships over 50 metres in length occur within the GBR region every year. Most are carrying bulk export commodities: coal, bauxite, nickel ores, raw sugar, alumina and silica sand. Between 5% and 10% of ships are oil tankers. Most of these vessels use the inner route with the rest entering or departing through Hydrographers, Palm and Grafton Passages.

During the period 1985 to 2000, there were 11 collisions and 20 groundings within the inner route of the GBR. According to the *Review of Great Barrier Reef Ship Safety and Pollution Prevention Measures* discussion paper,<sup>4</sup> eight of these groundings were considered 'serious' and of these seven groundings were caused by human error and one by machinery failure. Six of the grounded vessels had a coastal pilot on board. None of the incidents resulted in any oil spill.

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On 2 November 2000, the 22 000 tonne Malaysian-registered container ship MV Bunga Teratai Satu ran aground in the Marine Park on Sudbury Reef off Cairns. It was outside the compulsory piloted areas when the accident occurred.

The ship carried 1200 tonnes of fuel oil. It was eventually refloated without loss of fuel or cargo. However about 1500 square metres of the reef was destroyed by the impact of the vessel and the grounding also resulted in contamination from the toxic tributyltin (TBT), a component of the ships antifoulant paint. Analyses of sediment samples subsequently detected elevated levels of TBT in the area. Signs of partial coral mortality (where injury is confined to a part of the colony) were seen on some corals as far as 250 m east of the grounding site.

The ship owners were fined \$400 000, after pleading guilty to causing serious environmental harm under the Queensland *Environmental Protection Act*. This was the heaviest fine ever imposed under Queensland environment protection laws. Similar charges against the captain and first mate were dropped. The company had previously agreed to pay clean-up costs of \$1 million.

On 6 November, the Commonwealth Transport Minister ordered a review of measures to promote ship safety and pollution prevention in the waters of the Great Barrier Reef. A steering committee presented an interim report on 15 December. A final report, incorporating a public consultation phase, is due by the end of June 2001. On 15 November, the Government announced that it would fast track the introduction of a new shore to ship tracking system by mid 2001. The system would mean that licensed coastal pilots would carry portable transponders enabling real-time monitoring of the ship's position while it was under the control of a pilot.

### Illegal Fishing in closed or restricted zones

Substantial commercial, indigenous, recreational and sports fishing takes place in the Marine Park. Queensland's largest commercial fishery, the Eastern Trawl fishery, which targets prawns, scallops, bugs, crabs and squid operates within the Marine Park with about 800 trawlers.

Fishing in the Marine Park is regulated by a combination of State and Commonwealth law. Zoning plans under the GBRMP Act restricts or prohibits fishing in certain areas. At present, the penalty for using or entering a zone for purposes not permitted by the zoning plan, using or entering a zone without a required permit, or contravening a condition on a permit is up to \$22 000 for an individual or \$110 000 for a corporation.

A 1998 environmental report<sup>5</sup> focussing on a 'green zone' closed to fishing found a 'unacceptable level'<sup>6</sup> of illegal fishing in the zone - evidence indicated that up 40 to 50 vessels had regularly trawled the area<sup>7</sup>. In the subsequent 1999-2000 budget, the Government announced an<sup>8</sup>

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additional \$3.4 million over the next three years for improved surveillance and enforcement within the Great Barrier Reef Marine Park. The funds will allow new high-tech boat monitoring systems to be introduced, targeting Dugong protection areas and other illegal fishing zones.

A joint GBRMPA and Queensland Government compliance and enforcement plan was produced in September 2000.

In February 2000, the Government flagged that it was<sup>9</sup>

proceeding with arrangements to increase the maximum level of fines for illegal fishing in the Park up to \$1 million for serious offences following increasing evidence in recent years of illegal fishing.

It is not clear why it has taken the Government 14 months to table legislation enabling these increased fines. However, it is possible that the protracted negotiation of new management plans for the Far Northern Section of the Park and for the Eastern Trawl Fishery during 1999 and 2000 may have delayed the legislation.

Elements for offences: Strict liability, negligence and intention.

The new provisions introduced by the Bill vary in what 'fault' element, if any, is required to be present in order for an offence to be committed.

At the lowest level, some provisions create offences of strict liability. This is the first time strict liability offences have been introduced into the GBRMP Act. Strict liability means that there are no 'fault elements' required for an offence to be committed - thus it is not necessary to show intention, recklessness, negligence etc. However, a reasonable mistake of fact is a defence to a strict liability charge. The penalties for the proposed strict liability offences are substantially less than those offences with a fault element.

Other offences require negligence or intention to be present. Intention is a fairly obvious concept. The concept of negligence for offences was first introduced into the GBRMP Act by the *Environment, Sport and Territories Legislation Amendment Act 1995*. The Explanatory Memorandum to the (then) Bill noted that this change '...is to encourage a greater assumption of responsibility by persons undertaking activities in the Marine Park.' Negligence is defined as a fault element in Chapter 2 of the *Criminal Code Act 1995* as conduct that involves:

- (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
  - (b) such a high risk that the physical element<sup>10</sup> exists or will exist;
- that the conduct merits criminal punishment for the offence.

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## Main Provisions

### Schedule 1

**Item 1** replaces the existing definition of 'compulsory pilotage area' in subsection 3(1) of the GBRMP Act. The effect of **item 1** is that the area can now be defined and amended by regulation rather than have to amend the Act itself. This allows any proposed change to the area to be implemented more quickly. However, a change to the Act would still be necessary if it was decided to, for example, reduce the minimum size of ships subject to the compulsory pilotage provisions.

**Item 2** deletes the existing definition of inner route. With the amendment of the 'compulsory pilotage area' definition in **item 1**, this provision becomes redundant.

**Item 3** inserts **new section 3B** relating to geographic coordinates. The change clarifies that, unless indicated otherwise, geographic coordinates are to be determined with reference to the Australian Geodetic Datum (AGD). It is understood that the AGD is being used as an interim measure until such time as it is feasible to convert to a more contemporary datum such as the Geocentric Datum of Australia (GDA).<sup>11</sup>

**Item 4** inserts **new subsections 38A(2)-(3)** after existing section 38A. As it currently stands, section 38A only gives rise to an offence for using or entering a zone for a purpose other than a purpose that is permitted under the relevant zoning plan if a person uses or enters it 'intentionally or negligently'. **New subsections 38A(2)-(3)** add a strict liability offence for using or entering a zone for a purpose other than a purpose that is permitted under the relevant zoning plan. As mentioned in the background to this Digest, strict liability means that there are no 'fault elements' required for an offence to be committed.

The penalty attached to **new subsections 38A(2)-(3)** is \$6 600<sup>12</sup> (or \$33 000 for a corporation) as against \$22 000 or \$110 000 for a corporation for section 38A. The principles and fault elements of corporate responsibility for the actions of employees, agents or company officers are set out in Part 2.5 of the *Criminal Code 1995*.

**Item 5** inserts **new sections 38CA-CC** to create a range of new offences.

**New section 38CA** creates an offence of intentionally or negligently using or entering a zone for the purpose of fishing where fishing is not permitted under the relevant zoning plan. The penalty for the offence is \$220 000 or \$1.1 million for a corporation. The elements of **new section 38CA** are essentially the same as existing section 38A except that it is targeted at one type of act (fishing) rather than just an unlawful purpose in general. The penalty is also ten times greater.

For the purposes of **new section 38CA**, fishing is defined as

- (a) searching for, or taking, fish;

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- (b) attempting to search for, or take, fish;
- (c) engaging in any other activities that can reasonably be expected to result in the locating, or taking, of fish;
- (d) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
- (e) any operations at sea directly in support of, or in preparation for, any activity described in this definition;
- (f) aircraft use relating to any activity described in this definition except flights in emergencies involving the health or safety of crew members or the safety of a boat;
- (g) the processing, carrying or transshipping of fish that have been taken.

This definition of fishing is taken from section 4 of the Commonwealth *Fisheries Management Act 1991*.

Fish are defined for the purposes of **new section 38CA** as:

[including] all species of bony fish, sharks, rays, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles.

**New section 38CB** applies where a zone may only be used or entered with the permission of the relevant government agency. The offence occurs where a person intentionally or negligently uses or enters the zone for a purpose of fishing where the use or entry has not been duly authorised. The penalty for the offence is \$220 000 or \$1.1 million for a corporation. The elements of section 38CB are essentially the same as existing section 38B except that it is targeted at one type of act (fishing) rather just an unlawful purpose in general.

**New section 38CC** applies when authorisation to use or enter a zone also carries with certain conditions. The offence occurs where a person subject to a relevant condition negligently engages in conduct which contravenes that condition. 'Engage in conduct' can include a failure to do an act. The penalty for the offence is \$220 000 or \$1.1 million for a corporation.

**Item 6** substitutes the existing subsection 38J(1) with a new version, **new subsections 38J(1)-(1D)**. Subsection 38J(1) deals with the discharge of waste. Waste is defined by reference to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*<sup>13</sup> but in general includes oil, oily mixtures, noxious liquids, certain packing, sewage, garbage or any other matter defined by regulations.

**New subsections 38J(1)-(1A)** increase the penalty for intentionally or negligently discharging unauthorised waste<sup>14</sup> in the Marine Park from \$22 000 to \$220 000.

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**New subsections 38J(1B)-(1D)** create a new strict liability offence for discharging unauthorised waste in the Park. The penalty is \$55 000.

**Item 7** repeals existing paragraphs 38J(5)(c) and (d). These relate to waste discharges as a result of damage to the relevant ship or platform, its equipment or to the loss of fishing nets. Existing paragraphs 38J(5)(c) and (d) allow a defence that 'all reasonable precautions were taken' to what would otherwise be an waste discharge offence under section 38J. This defence is inconsistent with the proposed strict liability offence, hence its repeal. Note that defences of securing the safety of the ship or platform, saving life at sea or an approved discharge for the purposes of combating pollution will remain available.

**Item 8** repeals subsection 38J(6). The only purpose of subsection 38J(6) is define the meaning of paragraph 38J(5)(c), and with its repeal, 38J(6) is redundant.

**Item 9** inserts **new sections 38M-38MC** which create a range of new offences.

**New subsection 38M(1)** creates an offence of operating a ship<sup>15</sup> that is not permitted in a zone under the relevant zoning plan. The offence is committed by the person operating the ship if they are negligent about the fact of being in an unauthorised zone. The penalty is \$220 000 or \$1.1 million for a corporation.

**New subsection 38M(2)** creates a strict liability version of **new subsection 38M(1)**. However, both the operator and the ship owner can be charged under this provision. The penalty is a maximum of \$55 000 or \$275 000 for a corporation.

**New subsection 38MA(1)** applies where a zone may only be used or entered with the permission of the relevant government agency. The offence occurs where a person operating a ship is negligent about being in the zone when this has not been duly authorised. The penalty is \$220 000 or \$1.1 million for a corporation.

**New subsection 38MA(2)** creates a strict liability version of **new subsection 38MA(1)**. Again, both the operator and the ship owner are covered by this provision. The penalty is a maximum of \$55 000 or \$275 000 for a corporation.

**New section 38MB** applies when authorisation to be in a zone carries with certain conditions. The offence occurs where a person subject to a relevant condition negligently contravenes that condition by engaging in some conduct, including omitting to perform an act. The penalty for the offence is \$220 000 or \$1.1 million for a corporation.

**New subsection 38MC(1)** relates to a person operating a ship in the Marine Park. The offence occurs if the negligent operation of the ship results in damage to the reef, or is likely to result such damage. The penalty is \$220 000 or \$1.1 million for a corporation.

**New subsection 38MC(2)** creates a strict liability version of **new subsection 38MC(1)**. Again, both the operator and the ship owner are covered by this provision. The penalty is a maximum of \$55 000 or \$275 000 for a corporation.

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**Items 10-11** amend various parts of section 38N. Section 38N allows preventative injunctions to be obtained against persons proposing to engage in conduct that would contravene section 38 to 38L or otherwise refusing to do a act or thing they are required to under section 38 to 38L. Conduct includes aiding, abetting, and conspiring with respect to a contravention. The amendments made by **items 10-11** expands the injunctive power to include the various new offences inserted by **items 5 to 9**.

**Item 12** clarifies the relationship between a regulation and zoning plans under the GBRMP Act. **New subsection 66(4)** provides that a regulation is not inconsistent with a zoning plan if it 'further regulates' an activity allowed or permitted by the plan or 'prohibits an activity that is otherwise allowed or permitted' by the plan. However, a regulation cannot 'allow or permit an activity that is otherwise prohibited by the relevant zoning plan': **subsection 66(4A)**.

**Item 13** repeals **Schedule 2** of the GBRMP Act which defines the boundaries of the compulsory pilotage areas and the inner route.

## Endnotes

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- 1 Notably in the more populated or port areas of the central and southern areas of the Park, but also in some potential port areas in the north. However, over the last year, a series of extensions has moved sections of the Park boundary westward to include many bays and other inshore areas. See for example, 'Great Barrier Reef Marine Park extended' *Media Release* Senator the Hon Robert Hill 3 December 2000; 'Great Barrier Reef extended - again' *Media Statement* The Hon Peter Beattie MP 29 April 2001.
- 2 See GBRMP Act subsection 66(e). This power was used to make the Great Barrier Reef Marine Park (Aquaculture Regulations) 2000.
- 3 Much of the following factual information is drawn from a Discussion Paper *Review of Great Barrier Reef Ship Safety and Pollution Prevention Measures* (<http://www.amsa.gov.au/sd/gbrreview/discuss.htm>) and the GBRMPA website ([http://www.gbrmpa.gov.au/corp\\_site/key\\_issues/water\\_quality/sudbury/index.html](http://www.gbrmpa.gov.au/corp_site/key_issues/water_quality/sudbury/index.html)). The discussion paper, released in January 2001, was authored by a joint Commonwealth / Queensland Steering Committee.
- 4 See note 3.
- 5 *The Environmental Effects of Prawn Trawling in the Far Northern Section of the Great Barrier Reef Marine Park 1991-96*, Poiner et al 1998.
- 6 *ibid* p S-18.
- 7 *ibid* p 7-2. Trawling is only feasible in the interreef areas. In the reef areas, line fishing of some species of fish by commercial and quasi-recreational fishers is of also of significant concern.

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- 8 'Delivering more for the Environment', *Media Release* Senator the Hon Robert Hill 11 May 1999.
- 9 'Illegal Fishing Brings Fines and Loss of Equipment', *Media Release* Senator the Hon Robert Hill 27 February 2000.
- 10 A physical element might be, for example, that the ship in question is inside a particular zone designated under the GBRMP Act.
- 11 *Geocentric* datums have been adopted worldwide for most aeronautical and shipping applications due to their international capabilities. A geocentric datum is directly compatible with the Global Positioning System used in satellite navigation and thus compatible across various geographic information systems from the local to global level.
- 12 Note that the financial penalties in the Bill are actually expressed in terms of 'penalty points'. Currently, one penalty point is equal to \$110.
- 13 This implements the marine pollution convention MARPOL 73/78 and its annexes.
- 14 Sewage may generally be discharged under a number of circumstances: if specific authorisation has been obtained by the relevant vessel or aircraft; if the relevant vessel or aircraft has no sewage tanks, or if it does have such tanks the discharge take place more than 500 metres seaward from the nearest reef.
- 15 'Ship' is defined as having the same meaning as it is given in the relevant zoning plan.

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