

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**ENVIRONMENT, SPORT AND TERRITORIES LEGISLATION  
AMENDMENT BILL (NO 2) 1994**

**EXPLANATORY MEMORANDUM**

(Circulated by authority of the Minister for the Environment, Sport and Territories, Senator  
the Hon John Faulkner)

**ENVIRONMENT, SPORT AND TERRITORIES LEGISLATION  
AMENDMENT BILL(N0 2) 1994**

**GENERAL OUTLINE**

The purpose of the Environment, Sport and Territories Legislation Amendment Bill (No.2) 1994 is to

make amendments to the *Great Barrier Reef Marine Park Act 1975* to:

- add a member of the Authority to represent the interests of Aboriginal people living adjacent to the Park;
- increase many of the penalties under the Act to ensure that they provide an effective deterrent, introduce the mental fault element into the relevant offences, change them from indictable to summary offences and revise the waste discharge provisions to make them consistent (as far as is appropriate) with the MARPOL Convention;
- allow for the making of statutory management plans for areas, species and ecological communities within the Marine Park, which provide for more efficient planning for use of the Marine Park while protecting and conserving the values of the Marine Park and providing for further public participation in planning and management processes of the Marine Park;
- improve the safety and efficiency of the exercise of Marine Park inspectors powers by providing a power to give reasonable directions within the Marine Park to ensure compliance with the Act, clarify the arrest and search of arrested persons provisions to make them consistent with Commonwealth criminal law policy, introducing a penalty provision for failing to comply with the conditions of release of seized items, introduce a "deliver up" power and powers to seize weapons, take and make copies of documents which may provide evidence of an offence, order persons from only a part of the Marine Park, and to exercise certain powers off the Marine Park when a police officer who is an inspector is not available;
- make further amendments of a minor or consequential technical nature including the removal of inappropriate gender terminology and insertion of relevant definitions.

- make minor amendments to the *National Parks and Wildlife Conservation Act 1975* to:
  - allow for the fees collected under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* to be paid into the Australian National Parks and Wildlife Fund; and
  - allow for the use of credit cards by the Director of the National Parks and Wildlife;
- make minor amendments to the *Norfolk Island Act 1979* to change the titles of the presiding officers in the Legislative Assembly as requested by the Legislative Assembly of Norfolk Island;

make minor amendments to the *Australian Sports Commission Act 1989* to allow for the use of credit cards by the Commission, appoint the Secretary of the Department of the Environment, Sport and Territories to the Australian Sports Commission as an ex officio member, repeal an obsolete Part dealing with transitional provisions, and other consequential amendments;

make a minor amendment to the *Australian Heritage Commission Act 1975* and the *Australian Sports Drug Agency Act 1990* to allow for the use of credit cards by these agencies.

## FINANCIAL IMPACT STATEMENT

The proposed amendments will not have any significant financial impact. Increased penalties for breaches of the *Great Barrier Reef Marine Park Act 1975* might possibly result in a small increase in revenue but this is uncertain. An additional part-time member of the Authority is expected to cost approximately \$25,000 per annum.

## **NOTES ON CLAUSES**

### **Clause 1 - Short Title**

1. This clause provides for the Act to be cited as the *Environment, Sport and Territories Legislation Amendment Act (No 2) 1994*.

### **Clause 2 - Commencement**

2. This clause provides that the Act shall come into operation on the day it receives the Royal Assent.

### **Clause 3 - Amendments to the *Great Barrier Reef Marine Park Act 1975***

3. This clause provides for the amendment to the *Great Barrier Reef Marine Park Act 1975* as set out in Schedules 1 and 2. Schedule 1 makes detailed amendments and Schedule 2 deals only with gender amendments throughout the Act.

### **Clause 4 - Amendments to other Acts**

4. This clause provides for amendments to other Acts as set out in Schedule 3.

## **SCHEDULE 1 - Amendments to the Great Barrier Reef Marine Park Act 1975**

### **Item 1 - Interpretation**

5. This item amends subsection 3(1) of the Principal Act by adding definitions which clarify the meaning of "oil tanker" in the Principal Act. This definition is taken from the MARPOL Convention and modified to cover vessels identified in Regulation 2(2) of the Convention. This is to cover vessels which have not traditionally been considered to be oil tankers, but are capable of carrying and possibly spilling oil in quantities which will have significant impact on the Marine Park. New definitions are also added to assist in the interpretation of the new provisions inserted by this Amendment Bill.

### **Item 2 - Interpretation**

6. This item amends subsection 3(1) of the Principal Act by omitting the definition of "Chairman" and substituting the definition of "Chairperson".

### **Item 3 - Interpretation**

7. This item amends subsections 3(7) and (8) of the Principal Act by reversing the sequence for determining the overall length of a vessel for the purposes of the compulsory pilotage provisions. The proposed subsection 3(7) uses a formula which is based upon the vessel's length as entered on its load-line certificate. This method is administratively far easier than actually measuring the length of the vessel by survey. The latter method is used if the vessel does not have a load-line certificate or the length of the vessel is not entered on the certificate.

### **Item 4 - Functions of the Authority**

8. This item amends subsection 7(1) of the Principal Act by adding paragraph 7(1)(caa) which specifies that it is a function of the Authority to make management plans for the Marine Park in accordance with the proposed Part VB of the Principal Act.

### **Item 5 - Membership of the Authority**

9. This item amends subsection 10(1) of the Principal Act by increasing the number of members making up the Authority from three to four. The new fourth member of the Authority is to be appointed to represent the interests of the Aboriginal communities adjacent to the Marine Park.

### **Item 6 - No drilling or mining in Marine Park**

10. This item amends the subsection 38(4) of the Principal Act to ensure that this offence provision is clearer and to convert the penalty to penalty unit format.

11. The mental fault element has been set at "intentionally" or "negligently". The use of the lower level of culpability of "negligently", is to encourage a greater assumption of responsibility by persons undertaking activities in the Marine Park. Damage to the Marine Park arising from drilling or mining activities may be very serious, even irreversible. Therefore, the mental state has been set at a level whereby the standard of care exhibited by the offender is judged by what a reasonable person would have exercised

in the circumstances. "Intentionally" is included to ensure that those undertaking the act intentionally do not avoid sanctions.

Item 7 - No drilling or mining in Marine Park

12. This item amends subsection 38(7) of the Principal Act by converting the penalty to penalty unit format.

Item 8 - Zones to be used only for permitted purposes

13. This item amends section 38A of the Principal Act by including a mental fault element of "intentionally" or "negligently", converting the penalty to penalty unit format and increasing the maximum penalty to 200 penalty units for a natural person.

14. The use of the lower level of culpability of "negligently" is to encourage a greater assumption of responsibility by persons undertaking activities in the Marine Park. Damage to the Marine Park arising from the range of possible unlawful activities may be quite extensive, even irreversible. Examples include the use of explosives for reef fishing, trawling in a Preservation Zone, or the removal of an endangered species. Therefore, the mental state has been set at a level whereby the standard of care exhibited by the offender is judged by what a reasonable person would have exercised in the circumstances. "Intentionally" is included to ensure that those undertaking the act intentionally do not avoid sanctions. Due to the size of the Marine Park, unlawful activities may go undetected for some time before action is taken.

15. Penalties have not been considered by Parliament since 1988, when penalties on indictment were increased to \$10,000 although the maximum summary penalty was reduced from \$5,000 to \$2,000. Significant increases in use, demand and competition for resources in the Marine Park have occurred since 1988. It is proposed in this Amendment Bill to change this provision into a summary offence (refer to item 29).

16. Some industry groups using the Marine Park have called for real deterrents to protect the Park, and consequentially the long term viability of their industry. Illegal activities, especially where commercially oriented, can reap significant financial rewards for the offender. A penalty of 200 penalty units is usually more than the income which can be generated by one single unlawful act. It is essential that the penalty is greater than the reward to have deterrence effect, otherwise it may merely become a cost of business. That the effects on the Marine Park of an unlawful activity may be irreversible, adds to the importance of ensuring a penalty carries an effective deterrence value. A significant penalty will also indicate to the Courts the serious concern held by the Parliament and the community to protect the Marine Park effectively, with such measures in the Principal Act as amended by this Bill.

Item 9 - Permission Requirements to be observed - zoned area

17. This item amends section 38B(1) of the Principal Act by including a mental fault element of intentionally or negligently. The mental fault element has been set at "intentionally" or "negligently". The use of the lower level of culpability of "negligently", is to encourage a greater assumption of responsibility by persons undertaking activities in the Marine Park.

18. Permission is required from the Authority before a range of activities may be undertaken. An assessment of the environmental impacts of the activity must be undertaken prior to the Authority making a decision as to whether to grant permission for the activity to ensure that it is ecologically sustainable. Where serious impacts may arise, an assessment is made if prudent and feasible alternatives exist to undertaking the activity in the Marine Park. If not, safeguards are put in place to minimise identified impacts.

19. Undertaking these activities without the necessary assessment and safeguards may cause extensive damage to the Marine Park which may be irreversible. The mental state has therefore been set at a level whereby the standard of care exhibited by the offender is judged by what a reasonable person would have exercised in the circumstances. "Intentionally" is included to ensure that those undertaking the act intentionally do not avoid sanctions. Due to the size of the Marine Park, unlawful activities may go undetected for some time before enforcement action is taken.

#### Item 10 - Permission Requirements to be observed - zoned area

20. This item amends paragraph 38B(1)(c) of the Principal Act to ensure that persons to whom permits have been transferred can use the Marine Park for the purpose specified in the permit. This will enable the regulations relating to permit transfers to be simplified.

#### Item 11 - Permission Requirements to be observed - zoned area

21. This item amends subsection 38B(1) of the Principal Act by converting the penalty to penalty unit format and increasing the maximum penalty to 200 penalty units for a natural person.

22. Penalties have not been considered by Parliament since 1988, when penalties on indictment were increased to \$10,000 while the maximum summary penalty dropped from \$5,000 to \$2,000. Significant increases in use, demand and competition for resources in the Marine Park have occurred since 1988. It is proposed in this Amendment Bill to change this provision into a summary offence (refer to item 29).

23. The offences which may be dealt with under this section range from commercial shell collecting to undertaking major reclamation and dredging works in the Marine Park. Illegal activities, especially where commercially oriented, can reap significant financial rewards for the offender and cause impacts which may be very difficult, if not impossible to rectify. A penalty of 200 penalty units is usually more than the income which can be generated by one single unlawful act. Is essential that the penalty is greater than the reward to have deterrence effect, otherwise it may merely become a cost of business. That the effects on the Marine Park of an unlawful activity may be irreversible, adds to the importance of ensuring a penalty carries an effective deterrence value. A significant penalty will also indicate to the Courts the serious concern held by the Parliament and the community to protect the Marine Park effectively, with such measures in the Principal Act as amended by this Bill.

#### Item 12 - Contravening conditions of permission or authority - zoned area

24. This item amends section 38C of the Principal Act by including a mental fault element of intentionally or negligently, converting the penalty to penalty unit format and increasing the maximum penalty to 200 penalty units for a natural person.

25. The mental fault element has been set at "intentionally" or "negligently". The use of the lower level of culpability of "negligently", is to encourage a greater assumption of responsibility by persons undertaking activities in the Marine Park.

26. Permission conditions are designed to limit or mitigate environmental impacts identified in the assessment process. The undertaking of these activities contrary to the conditions imposed may cause extensive damage to the Marine Park which may be irreversible. The mental state has therefore been set at a level whereby the standard of care exhibited by the offender is judged by what a reasonable person would have exercised in the circumstances. "Intentionally" is included to ensure that those undertaking the act intentionally do not avoid sanctions. Due to the size of the Marine Park, unlawful activities may go undetected for some time before enforcement action is taken.

27. Penalties have not been considered by Parliament since 1988, when penalties on indictment were increased to \$10,000 although the maximum summary penalty was reduced from \$5,000 to \$2,000. Significant increases in use, demand and competition for resources in the Marine Park have occurred since 1988. It is proposed in this Amendment Bill to change this provision into a summary offence (refer to item 29).

28. The offences under this section range from taking out more passengers on a tourist vessel than is allowed, to breaching conditions relating to mitigation of environmental impacts under a permit to undertake construction works in the Marine Park. Illegal activities, especially where commercially oriented, can reap significant financial rewards for the offender while compromising ecosystem integrity.

A penalty of 200 penalty units is usually more than the income which can be generated by one single unlawful act. Is essential that the penalty is greater than the reward to have deterrence effect, otherwise it may merely become a cost of business. That the effects on the Marine Park of an unlawful activity may be irreversible, adds to the importance of ensuring a penalty carries an effective deterrence value. A significant penalty will also indicate to the Courts the serious concern held by the Parliament and the community to protect the Marine Park effectively, with such measures in the Principal Act as amended by this Bill.

#### Item 13 - Notification requirements to be observed - zoned area

29. This item amends subsection 38D of the Principal Act by including a mental fault element of intentionally or negligently.

30. The mental fault element has been set at "intentionally" or "negligently". The use of the lower level of culpability of "negligently", is to encourage a greater assumption of responsibility by persons undertaking activities in the Marine Park.



31. Notification is required before a range of activities in the Marine Park, such as the removal of a wrecked vessel. The undertaking of these activities may cause extensive damage to the Marine Park, or impact upon the use and enjoyment of the Marine Park by others. The mental state has therefore been set at a level whereby the standard of care exhibited by the offender is judged by what a reasonable person would have exercised in the circumstances. "Intentionally" is included to ensure that those undertaking the act intentionally do not avoid sanctions. Due to the size of the Marine Park, unlawful activities may go undetected for some time before action is taken with consequences which may include destruction of sensitive habitats.

#### Item 14 - Notification requirements to be observed - zoned area

32. This item amends subsection 38D of the Principal Act by converting the penalty to penalty unit format and increasing the maximum penalty to 200 penalty units for a natural person.

33. Penalties have not been considered by Parliament since 1988, when penalties on indictment were increased to \$10,000 although the maximum summary penalty was reduced from \$5,000 to \$2,000. Significant increases in use, demand and competition for resources in the Marine Park have occurred since 1988. It is proposed in this Amendment Bill to change this provision into a summary offence (refer to item 29).

34. The offences which may be dealt with under this section range from failure to notify of the removal of a wreck, to the conduct of maintenance work on navigational facilities. Failure to notify the Authority may result in the Authority being unable to issue directions aimed at reducing the impact of those activities on the Marine Park. Removal of wrecks without care may cause serious damage to coral and other ecological communities, and may give rise to oil and other discharges. As it may not be possible to rehabilitate the Marine Park after an unlawful activity, it is essential that offenders are deterred from undertaking the unlawful activity. A penalty of 200 penalty units should be sufficient to deter offenders. A significant penalty will also indicate to the Courts the serious concern held by the Parliament and the community to protect the Marine Park effectively, with such measures in respect of as the Principal Act as amended by this Bill.

#### Item 15 - Contravening directions - zoned area

35. This item amends section 38E of the Principal Act by including a mental fault element of "intentionally" or "negligently".

36. Failure to follow the contravening directions may cause extensive damage to the Marine Park or impact upon the use and enjoyment of the Marine Park by others. The mental state of "negligently" has therefore been set at a level whereby the standard of care exhibited by the offender is judged by what a reasonable person would have exercised in the circumstances. "Intentionally" is included to ensure that those undertaking the act intentionally do not avoid sanctions.

#### Item 16 - Contravening directions - zoned area

37. This item amends section 38E of the Principal Act by converting the penalty to penalty unit format and increasing the maximum penalty to 200 penalty units for a natural person.

38. Penalties have not been considered by Parliament since 1988, when penalties on indictment were increased to \$10,000 although the maximum summary penalty was reduced from \$5,000 to \$2,000. Significant increases in use, demand and competition for resources in the Marine Park have occurred since 1988. It is proposed in this Amendment Bill to change this provision into a summary offence (refer to item 29).

39. Directions issued under this Section provide for the conservation and protection of the Marine Park or property or things in the Marine Park. Failure to follow a direction may result in serious damage to the Marine Park or property or things in the Park. For example, a serious oil spill may result from a failure to comply with a direction to remove oil from a wrecked vessel before an attempt is made to remove it from a reef.

40. As it may not be possible to rehabilitate the Marine Park after the unlawful activity, it is essential that offenders are deterred by a significant penalty. A penalty of 200 penalty units is regarded as appropriate. A significant penalty will also indicate to the Courts the serious concern held by the Parliament and the community to protect the Marine Park effectively, in respect of the contravention of this provision of the Principal Act as amended by this Bill.

Item 17 - Certain activities prohibited in the unzoned area

41. This item amends subsection 38F(1) of the Principal Act by including a mental fault element of "intentionally".

42. All the acts prohibited in an unzoned area require the permission of the Authority before they can be undertaken, and are intentional. The conduct of these activities may seriously and permanently impact upon areas which have not yet been zoned. Due to the size of the Marine Park, unlawful activities may go undetected for some time before action is taken.

Item 18 - Certain activities prohibited in the unzoned area

43. This item amends subsection 38F(1) of the Principal Act by converting the penalty to penalty unit format and increasing the maximum penalty to 200 penalty units for a natural person.

44. Penalties have not been considered by Parliament since 1988, when penalties on indictment were increased to \$10,000 although the maximum summary penalty was reduced from \$5,000 to \$2,000. Significant increases in use, demand and competition for resources in the Marine Park have occurred since 1988. It is proposed in this Amendment Bill to change this provision into a summary offence (refer to item 29).

45. The range of offences under this provision include building structures in the Marine Park to undertaking reclamation works in the Marine Park. All of these activities may have serious impacts upon the Marine Park. An assessment of the environmental impacts of the activity must be undertaken prior to the Authority making a decision as to whether to grant permission for the activity to ensure that it is ecologically sustainable. Where serious impacts may arise, an assessment is made if prudent and feasible alternatives exist to

undertaking the activity in the Marine Park. If not, safeguards are put in place to minimise identified impacts.

46. The undertaking of these activities without the necessary assessment and safeguards may cause extensive damage to the Marine Park. As it may not be possible to rehabilitate the Marine Park after an unlawful activity, it is essential that offenders are deterred from undertaking the unlawful activity. A penalty of 200 penalty units should be sufficient to deter offenders. A significant penalty will also indicate to the Courts the serious concern which the Parliament and the community hold in respect of the contravention of this provision of the Principal Act as amended by this Bill.

#### Item 19 - Contravening conditions of permission or authority - unzoned area

47. This item amends the subsection 38G of the Principal Act so as to ensure that this offence provision is clearer and includes a mental fault element of "intentionally" or "negligently", converting the penalty to penalty unit format and increasing the maximum penalty to 200 penalty units for a natural person.

The use of the lower level of culpability of "negligently", is to encourage a greater assumption of responsibility by persons undertaking activities under a permission in the Marine Park in an area not yet zoned.

48. Permission conditions are designed to limit or mitigate environmental impacts identified in the assessment process. The undertaking of these activities contrary to such conditions may cause extensive damage to the Marine Park which may be irreversible. The mental state has therefore been set at a level whereby the standard of care exhibited by the offender is judged by what a reasonable person would have exercised in the circumstances. "Intentionally" is included to ensure that those undertaking the act intentionally do not avoid sanctions. Due to the size of the Marine Park, unlawful activities may go undetected for some time before action is taken.

49. Penalties have not been considered by the Parliament for this provision since 1988. Significant increases in use, demand and competition for resources have occurred since that amendment. Whilst the penalties on indictment were increased to \$10,000 in 1988, the maximum summary penalty dropped from \$5,000 to \$2,000. It is proposed in this Amendment Bill to change this provision into a summary offence (refer item 29).

50. Offences which may be dealt with under this section include breaching conditions relating to mitigation of environmental impacts under a permit to undertake construction works in the Marine Park. As it may not be possible to rehabilitate the Marine Park after an unlawful activity, it is essential that offenders are deterred from undertaking the unlawful activity. A penalty of 200 penalty units should be sufficient to deter offenders. A significant penalty will also indicate to the Courts the serious concern which the Parliament and the community hold in respect of the contravention of this provision of the Principal Act as amended by this Bill.

#### Item 20 - Removal of property

51. This item amends section 38H of the Principal Act by including a mental fault element of "intentionally" or "negligently".

52. The lower level of culpability, that of "negligently", is to encourage a greater assumption of responsibility by persons the subject of an order made under the regulations of the Principal Act (in respect of removal of structures, mariculture facilities, vessels or aircraft or other as listed in subsection 38H(b) of the Principal Act from the Marine Park). Failure to comply with an order may lead to extensive damage to an area of the Marine Park. For example, damage may result from the break-up of the structure the subject of the order. Such damage may be difficult if not impossible to rectify. The mental state has therefore been set at a level whereby the standard of care exhibited by the offender is judged by what a reasonable person would have exercised in the circumstances. "Intentionally" is included to ensure that those undertaking the act intentionally do not avoid sanctions.

#### Item 21 - Removal of property

53. This item amends section 38H of the Principal Act by converting the penalty to penalty unit format and increasing the maximum penalty to 200 penalty units for a natural person.

54. Penalties have not been considered by the Parliament for this provision since 1988. Significant increases in use, demand and competition for resources have occurred since that amendment. Whilst the penalties on indictment were increased to \$10,000 in 1988, the maximum summary penalty dropped from \$5,000 to \$2,000. It is proposed in this Amendment Bill to change this provision into a summary offence (refer item 29).

55. The offence under this provision of the Principal Act is failure to comply with an order to remove certain structures etc. from the Marine Park when required to do so. For example, a person may intend to abandon a structure originally brought into the Marine Park under a permit. An order may be necessary to get the structure removed before the next cyclone season. Failure to comply with the order may lead to significant environmental damage, if the structure breaks apart in heavy seas.

56. As it may be very difficult to rehabilitate the Marine Park after such an incident, it is essential that the responsible people are deterred from failing to comply with an order to which section 38H of the Principal Act applies. A penalty of 200 penalty units should be sufficient to deter offenders. A significant penalty will also indicate to the Courts the serious concern which the Parliament and the community hold in respect of the contravention of this provision of the Principal Act as amended by this Bill.

#### Item 22 - Offences relating to the discharge of waste

57. This item amends subsection 38I(1) of the Principal Act so as to ensure that this offence provision is clearer and includes a mental fault element of "intentionally" or "negligently", to convert the penalty to penalty unit format and to increase the maximum penalty to 200 penalty units for a natural person.

58. This item also amends subsection 38I(2) of the Principal Act by including a mental fault element of "intentionally" or "negligently", inserting the penalty provision (in penalty unit format) within the subsection and increasing the maximum penalty to 200 penalty units for a natural person.

59. The lower level of culpability, that of "negligently" in these provisions is to encourage a greater assumption of responsibility by persons contemplating the discharge of waste in the Marine Park (where subsection 38J(1) applies) and to discourage permit holders from breaching the conditions of a waste discharge permit (where subsection 38J(2) applies). Unregulated waste discharge in the Marine Park can cause serious damage to the Park. Permission conditions for discharge permits in respect of sewage and research only, are designed to limit or mitigate environmental impacts identified in the assessment process. Undertaking these activities contrary to the conditions set may cause extensive damage to the Marine Park which may be difficult if not impossible to rectify.

60. The mental state has therefore been set in those provisions at a level whereby the standard of care exhibited by the offender is judged by what a reasonable person would have exercised in the circumstances. "Intentionally" is included to ensure that those undertaking the act intentionally do not avoid sanctions. Due to the size of the Marine Park, unlawful activities may go undetected for some time before action is taken.

61. Penalties have not been considered by the Parliament for this provision since 1988. Significant increases in use, demand and competition for resources have occurred since that amendment. Whilst the penalties on indictment were increased to \$10,000 in 1988, the maximum summary penalty dropped from \$5,000 to \$2,000. It is proposed in this Amendment Bill to change this provision into a summary offence (refer item 29).

62. The offences which may be dealt with under this section include oil spills and the breach of conditions relating to mitigation of environmental impacts under a permit to discharge sewage in the Marine Park. As it may not be possible to rehabilitate the Marine Park after an unlawful activity, it is essential that offenders are deterred from undertaking the unlawful activity. A penalty of 200 penalty units should be sufficient to deter offenders. A significant penalty will also indicate to the Courts the serious concern which the Parliament and the community hold in respect of the contravention of this provision of the Principal Act as amended by this Bill.

#### Item 23 - Offences relating to the discharge of waste

63. This item substitutes new provisions which amend and clarify the waste discharge exemption conditions contained in subsection 38J(4) of the Principal Act. This amendment introduces consistency with the MARPOL Convention as far as is appropriate, while at the same time enhancing the protection of the Marine Park by removing the reference to the ambiguous exception relating to "biodegradable waste" contained therein.

64. Proposed subsection 38J(4)(a) exempts from the prohibition on the discharge of waste from a vessel or aircraft, sewage discharge where the vessel or aircraft does not have sewage holding tanks; or if the vessel or aircraft has such tanks, allows the discharge providing the vessel or aircraft is more than 500 metres seawards from the seaward edge of the nearest reef at the time of discharge.

65. An exemption from the prohibition on the discharge of waste, the discharge of fresh fish and fish parts caught in the Marine Park during fishing

operations (including trawling and the cleaning or filleting of fish) is provided under proposed paragraph 38I(4)(b).

66. Proposed paragraph 38I(5)(a) exempts from the prohibition on the discharge of waste from vessels, aircraft or platforms a discharge undertaken for the purpose of securing the safety of the vessel, aircraft or platform, or for the purpose of saving life at sea.

67. Proposed paragraph 38I(5)(b) provides that the prohibition on the discharge of waste from vessels, aircraft or platforms does not apply if the discharge was for the purpose of combating specific pollution incidents and was authorised by a prescribed officer. "Prescribed officer" is defined in the proposed subsection 38I(7).

68. Proposed paragraph 38I(5)(c) provides that the prohibition on the discharge of waste from vessels, aircraft or platforms does not apply in circumstances where the discharge was the result of non-intentional damage to the vessel, aircraft or platform or its equipment and reasonable precautions were taken after the damage occurred or upon the discovery of the discharge to prevent or minimise the discharge.

69. Proposed paragraph 38I(5)(d) provides that the prohibition on the discharge of waste from vessels, aircraft or platforms does not apply to waste consisting of fishing net or material used to repair fishing net where the waste was accidentally lost at sea and all reasonable precautions were taken to prevent that loss.

70. Proposed subsection 38I(6) defines what is meant by intentional damage for the purposes of the proposed paragraph 38I(5)(c).

71. Proposed subsection 38I(7) defines certain words used in the section proposed to be amended. Defence force vessels and aircraft are exempted by definition from the operation of the section. "Waste" is defined in accordance with the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* but also includes other wastes which may be prescribed by the regulations of the Principal Act to be waste for the purposes of the section.

#### Item 24 - Offences involving the use of vessels or aircraft

72. This item amends paragraph 38K(1)(a) of the Principal Act by omitting reference to section 38J of that Act because a new offence has been created under proposed section 38(L) involving a higher penalty for more serious impacts on the Marine Park.

#### Items 25-27 - Offences involving the use of vessels or aircraft

##### General Notes:

73. These provisions have the combined effect of simplifying section 38K of the Principal Act and extending its area of application to cover operators (such as tourist operators) who may pursuant to an agreement with the master of the vessel, the person in charge of an aircraft, the owner, co-owner or an owner of any part or share in the vessel or aircraft determine the activities for which the vessel or aircraft is used.

#### Item 25 - Offences involving the use of vessels or aircraft

74. This item amends paragraph 38K(1)(b) of the Principal Act by removing the reference to "the person in charge of the vessel or aircraft" and replacing with "a responsible person in relation to the vessel or aircraft". This simplifies the operation of section 38K, while expanding the operation of the section to cover operators of vessels or aircraft under the proposed subsection 38K(2).

Item 26 - Offences involving the use of vessels or aircraft

75. This item amends subsection 38K(1) of the Principal Act by imposing the penalty within the subsection and increasing the penalty to 200 penalty units for a natural person, consistent with comparable penalty provisions in these amendments.

Item 27 - Offences involving the use of vessels or aircraft

76. This item omits subsections 38K(2) to (5) inclusive of the Principal Act and replaces them with a proposed subsection 38K(2) which defines "responsible person" for the purpose of subsection 38K(1) of the Principal Act as amended by this Act. This amended definition widens the scope of persons against whom prosecution action may be taken, as discussed in the General Notes to items 25-27 above.

Item 28 - Offences involving the discharge of waste from a vessel, aircraft or platform

77. This item amends the Principal Act by inserting a proposed section 38L which has similar effect to the provisions involving the use of vessels or aircraft (section 38K of the Principal Act). These provisions relate specifically to waste discharge and introduces a higher maximum penalty for responsible persons in relations to discharges from the vessel, aircraft or platform.

78. Proposed subsection 38L(1) provides that where an offence has been committed against section 38J of the Principal Act as amended by this Act and the responsible person had knowledge or reasonable grounds to suspect that the vessel, aircraft or platform would be used in committing the offence and he or she did not take reasonable steps to prevent that use then that person is guilty of an indictable offence. The penalty of a maximum of 2000 penalty units is consistent with other marine pollution legislation. This level is to provide an effective deterrent against possible contravention of the legislation. This could include a major oil spill which leading to disastrous and potentially irreversible consequences for the Marine Park and users of the Marine Park. It also indicates to the courts the very serious regard that Parliament and the community have in respect of the commission of such offences which could lead to enormous environmental, economic and social impacts.

79. Proposed subsection 38L(2) indicates that while the offence is an indictable one, the court has the discretion to hear the matter summarily, where the defendant and the prosecutor agree. This is likely to be the case where the alleged commission of the offence has led to less serious pollution damage.

80. Proposed subsection 38L(3) imposes a maximum penalty of one-tenth of the penalty units that would have been imposed had the offence been tried on indictment, consistent with the less serious fact situation of such offences.

81. Proposed subsection 38L(4) defines a “responsible person” for the purposes of the section, which has a scope of persons against whom a prosecution action may lie, consistent with that applying to proposed section 38K.

#### Item 29 - Prosecution of Offences

82. Offences against sections 38A to 38K of the Principal Act are currently indictable offences. The proposed amendment omits these references, and the offences become summary offences by virtue of Section 4H of the *Crimes Act 1914*.

83. These offences have been heard summarily because many of the matters detected and prosecuted have not been serious enough to warrant the expense and delays in placing the matters before a judge and jury. Overall, it is considered appropriate that the offences be summary rather than indictable offences for reasons of cost and efficiency.

#### Item 30 - Injunctions

84. This item amends subsections 38N(1), (2) and (7) of the Principal Act to add the proposed section 38L to the list of offences for which an injunction can be sought.

#### Item 31 - Proposed Part VB - Plans of Management

85. Item 31 adds Part VB to the Principal Act, which provides where necessary, for the preparation of statutory management plans for parts of the Marine Park and species and ecosystems within the Marine Park. At present the Great Barrier Reef Marine Park Authority has the power to prepare zoning plans for parts of the Marine Park pursuant to section 32 of the Principal Act. Those zoning plans are regional in nature and cover very large areas ranging from 35,000 to 149,000 square kilometres in size. Management plans are necessary for effective planning and management at relatively local levels.

#### Proposed section 39V - Interpretation

86. Proposed section 39V gives the interpretation of certain phrases used in the proposed Part VB.

87. Proposed subsection 39V(1) is a non-exhaustive definition of the phrase “community group having a special interest” in an area of the Marine Park and includes persons having some form of native title to the area or its resources, or some other special identification with the area or its resources. The latter phrase includes community groups which contain persons with a historical connection to an area or its resources, which applies to indigenous and non-indigenous persons.

88. Proposed subsection 39V(2) specifies the meaning of “public notice” in relation to the Part. To give public notice a notice must be placed in the Gazette and a newspaper circulating generally in Queensland. The Authority has the discretion under paragraph 39V(2)(c) to use other than the prescribed means to give notification of a proposal to prepare a plan of management, or other public notices where the Authority considers that effective public



participation requires the targeting of particular community groups or persons in the management planning process.

Proposed section 39W - Preparation of plans of management

89. Proposed subsection 39W(1) provides that the Authority may prepare written management plans in accordance with the provisions of Part VB.

90. Proposed subsection 39W(2) is inserted to ensure that processes applying under the Principal Act (including zoning plans prepared under that Act) allowing for the preparation and implementation of plans which might amount to management plans under this proposed Part, may still be used additional to those in Part VB.

For example, it is more effective and efficient for the preparation of simple site plans for individual reefs and cays to be informal, and implemented directly through the regulations.

Proposed section 39X - Types of plans of management

91. Proposed section 39X provides that management plans may be prepared for an area or areas of the Marine Park, species and ecological communities within the Marine Park or within an area or areas of the Marine Park. This is intended to allow the Authority flexibility in scope where a particular management planning need arises.

For example, there may be particular pressure to prepare a management plan for a species in part of its range within the Marine Park.

Proposed section 39Y - Objects of plans of management

92. Proposed section 39Y lists the objects of the plans of management. Not all the objectives, will be equally important or relevant to the preparation of a particular plan of management.

93. For example, the Authority may prepare a plan of management for a location in the Marine Park due to particular vulnerability of endangered species and it may not be appropriate for the Authority to allow recreational use of the area, due to the particular vulnerability of that species.

94. Proposed paragraph 39Y(a) indicates that it is an object of plans of management as prepared under this proposed Part to ensure as far as possible that where nature conservation values, cultural and heritage values or scientific values in a particular part of the Marine Park are, or may be, threatened that proposals are developed to reduce or eliminate those threats.

95. Proposed paragraph 39Y(b) indicates that it is an object of plans of management as prepared under this proposed Part to ensure as far as possible that vulnerable or endangered species and ecological communities (or ones which may become so) are properly managed to enable their recovery and protection and conservation.

96. Proposed paragraph 39Y(c) indicates that it is an object of plans of management as prepared under this proposed Part to ensure as far as possible that activities within areas of the Marine Park are managed on the basis of ecologically sustainable use.

97. Proposed paragraph 39Y(d) indicates that it is an object of plans of management as prepared under this proposed Part to provide a basis for

managing uses of areas of the Marine Park where those uses may conflict with other uses of the area or with the values of the area.

98. Proposed paragraph 39Y(e) indicates that it is an object of plans of management as prepared under this proposed Part to provide for the management of certain areas of the Marine Park by the Authority in conjunction with groups having a special interest in those areas. This may include co-management of special areas with persons who have some form of native title over the area or its resources or with a community group who has a special attachment to the area. The latter may amount to a historical affiliation with the area.

99. Proposed paragraph 39Y(f) indicates that it is an object of plans of management as prepared under this proposed Part to enable people using the Marine Park to participate in a range of recreational activities within the Marine Park. The concept of a range of recreational activities includes a range of recreational experiences such as wilderness activities where the feeling or experience of wilderness may be maintained in some areas of the Marine Park.

Proposed section 39Z - Arrangements with community groups that have special interests in areas of the Marine Park

100. Proposed subsection 39Z(1) allows the Authority to enter into an agreement or arrangement with a group of people who are representatives of a community group with a special interest in an area of the Marine Park for the purposes of Part VB.

101. Proposed subsection 39Z(2) indicates that the agreement or arrangement may concern the development and/or the implementation of a management plan and include, where the Authority considers it appropriate, provision for the area to be jointly managed by the community group and the Authority.

Proposed section 39ZA - Notice of proposal to prepare plan of management

102. Proposed subsection 39ZA(1) provides that the Authority must give notice that it intends to prepare a plan, requires that the area of the plan or the species or ecological community, the subject of the plan to be specified and invite interested persons to make representations (to the address and within the time specified) in respect of matters to be included in the plan.

103. Proposed subsection 39ZA(2) provides that persons may make written representations in relation to the proposed plan within the time specified in the notice.

104. Proposed subsection 39ZA(3) requires the Authority to take into account any submissions made in accordance with proposed subsection (2).

105. Proposed subsection 39ZA(4) allows the Authority after publication of the notice the flexibility to change the area of the plan or the species or ecological community without giving further notice. This provision provides the Authority with flexibility to for example to reduce the size of the area covered by the management plan after taking into account public comments. It also allows the Authority to include a closely

related species to the one first notified where better management of the group of species may be achieved. Public comments are sought a second time after preparing the management plan.

Proposed section 397B - Moratorium on grant of new permits while plan of management is being prepared

106. This proposed section allows the Authority the discretion to place a moratorium on the grant of new permits relating to the area, species or ecological community for which the plan is being prepared. The moratorium may last up to a year after the date of the direction or to the date when the plan comes into force; whichever occurs first. Any existing permits may continue on in force (past their expiry date) so long as the requirements of regulation 19D of the Principal Act are met and the permit for any other reasons does not cease to have effect.

The provision allows the plan to be prepared with usage patterns in that area of the Marine Park held constant by the moratorium, with advantage of enhanced certainty in the planning process.

Proposed section 39ZC - Preparation of plan of management

107. Proposed subsection 39ZC(1) allows the Authority to prepare the plan of management once it has taken into account all the submissions made in respect of the proposed plan.

108. Proposed subsection 39ZC(2) provides that the plan of management must not be inconsistent with any provision of the Act or zoning plan in respect of the area, species or ecological community to which the plan relates.

109. Proposed subsections 39ZC(3) and (4) clarifies the meaning of "inconsistent" in subsection (2) for the purposes of the Part.

A plan of management cannot allow anything which is prohibited by a provision of a zoning plan. However, the inverse does not apply: a plan of management is not taken to be inconsistent with a zoning plan because it is more restrictive than the zoning plan (in that it prohibits the doing of something that is not prohibited by the zoning plan).

110. Proposed subsection 39ZC(5) provides that if the plan of management contains enforcement provisions which prohibit or regulate behaviour, those provisions must be included in a separate part of the plan. This is to enable persons commenting on the plan to easily identify the enforcement provisions.

111. Proposed subsection 39ZC(6) provides that the plan of management may prohibit the doing of an act, notwithstanding that act is permitted or authorised (apart from that plan of management enforcement provisions) by the Act. This provision allows the Authority in appropriate circumstances, to further manage access to an area with particular needs. For example where environmental damage has become evident in an area of the Marine Park, access to a previously accessible area may be restricted to allow for rehabilitation of the area.

112. Proposed subsection 39ZC(7) allows for existing activities to continue to operate even though those activities will become non-conforming uses once the enforcement provisions come into force. This enables the Authority to

allow for management of areas of the Marine Park which will regulate use for conservation purposes without, as far as possible, affecting existing activities in that area.

Proposed section 39ZD - notice of preparation of plan of management

113. Proposed subsections 39ZD(1) and (2) require the Authority once it has prepared the plan of management to undertake a further phase of public participation. It is required to do this by giving public notice of the preparation of the plan, setting out the subject matter of the plan, inviting interested persons to make written submissions in respect of the plan and stating the address from which copies of the plan may be obtained and to which submissions may be sent within the time specified in the notice (at least one month after the date of the notice).

114. Proposed subsection 39ZD(3) requires that the Authority to take into account any submissions made in accordance with the section and either amend or confirm the plan.

115. Proposed subsection 39ZD(4) requires the Authority to give public notice that a plan has been altered, advising where it has altered the plan, where copies of the altered plan may be obtained. If the plan has not been altered, the Authority must give public notice that the plan has been confirmed.

Proposed section 39ZE - When plan of management comes into force

116. Proposed subsection 39ZE(1) provides that a plan of management other than the enforcement provisions come into force on the day on which the notice referred to subsection 39ZD(4) is published in the Gazette.

117. Proposed subsection 39ZE(2) provides that the enforcement provisions come into force on the day on which the regulations made under proposed paragraph 66(2)(ba) declare that those regulations take effect.

Proposed section 39ZF - Amendment of plan of management

118. Proposed subsection 39ZF(1) provides that a plan of management may be amended in accordance with the section. The following subsections are consequential to this.

119. Proposed subsection 39ZF(2) provides that proposed sections 39ZC to 39ZE apply to the amendment in the same way as they apply in relation to the preparation of the plan of management.

120. Proposed subsection 39ZF(3) provides that in applying those sections, section 39ZC has effect after first omitting the phrase "After taking into account all submissions made to it in accordance with section 39ZA" and references in those sections to a plan of management are taken to be references to an amendment of the plan of management.

Proposed section 39ZG - Revocation of plan of management

121. Proposed subsection 39ZG(1) provides that the Authority may by writing revoke a plan of management.

121. Proposed subsections 39ZG(2) and (3) provide that the Authority may give public notice stating that the plan of management is revoked. Revocation of the plan takes effect from the date when the notice is published in the Gazette.

122. Proposed subsection 39ZG(4) provides that where the regulations giving effect to the enforcement provisions of a plan of management are repealed (or otherwise cease to have effect) the plan of management is revoked in its entirety.

123. Proposed subsection 39ZG(5) indicates that the revocation provisions of this section apply in a like manner to amended plans of management.

#### Proposed section 39ZH - Transitional

124. Proposed subsection 39ZH(1) allows plans relating to management of the Marine Park that were in preparation before the commencement of this proposed Part, to become plans to which this Part relates. This provides that sections 39ZA relating to the first phase of public participation, notice of proposal and 39ZB and relating to the moratorium on new permits do not apply to these partly completed plans. However, the rest of the provisions, 39ZC (other than subsection 39C(1)) relating to preparation of the plan to 39ZF implementing the plan do apply. This means for plans already in preparation, repetition the first phase of public participation is not necessary.

125. Proposed subsection 39ZH(2) applies to plans relating to management of the Marine Park that were prepared before the commencement of this proposed Part in the same way as subsection 39ZH(1) applies to plans in preparation at that time.

126. Proposed subsection 39ZH(3) makes it clear that the transitional arrangements under subsections 39ZH(1) and (2) apply only to management plans for the Marine Park arising under this Part. Proposed subsection 39W(2) will apply to management plans arising under another provision of the Act or under a zoning plan initiated prior to commencement of this amendments.

127. For example, the provisions enable the Authority to implement directly by regulations without reference to this Part, simple plans already prepared or under preparation, (refer proposed subsection 39W(2)).

128. Proposed subsections 39ZH(4) and (5) allow the Authority to prepare a plan without ongoing changes in use patterns occurring during the planning process.

129. Specifically, they allow the Authority to direct, either in the public notice given under subsection 39ZD(1) (which has effect due to the operation of subsections 39ZH(1) or (2)) or in a separate notice, that no permits be granted in respect of the subject matter of the plan for a period commencing on the date when the notice is published in the Gazette and ending 12 months later. If the plan of management comes into force on a date prior to the end of the 12 month period, then the direction ends on that date. Existing permits which would expire during the period will remain in force for the period if the requirements of regulation 19D of the Principal Act are met and the permit for any other reasons does not cease to have effect.

### Item 32 - Appointment of Inspectors

130. This item amends paragraph 43(a) of the Principal Act by allowing the Authority to appoint any person as an inspector. This allows the Authority to appoint community rangers from Aboriginal communities in northern Queensland as inspectors under the Act. It is part of the process of empowerment of Aboriginal communities living adjacent to the Marine Park.

### Item 33 - Identity cards

131. This item amends subsection 45(2) in line with modern drafting practice and converts the penalty to penalty units.

### Item 34 - Power of an inspector to give directions

132. This item adds a proposed section 45A to the Principal Act. It provides that an inspector may give reasonable directions to any person within the Marine Park for the purpose of ensuring that there is compliance with the Act. A penalty of up to 10 penalty units may be imposed where a person who without reasonable excuse, refuses or fails to comply with the direction given by the inspector.

133. Proposed subsection 45A(1) limits the purpose of any directions given to those which ensure (as far as possible) that there is compliance with the Act. For example it may also be necessary to direct a small tender vessel back to the primary vessel for the purposes of conducting an investigation. The power is limited in application to persons within the Marine Park.

134. Proposed subsection 45A(2) provides that a direction may be given orally or in writing or by any other appropriate means of communication. In many cases inspectors may be in aircraft or in vessels which makes direct face to face contact initially difficult. Communications by radio, even though in sight of the person to whom the instructions are to be given is not uncommon. Other means of communicating may include flag or light signals.

135. Proposed subsection 45A(3) requires an inspector to identify herself or himself when giving a direction and requires the inspector to produce his or her identity card to the person to whom a direction is given at the first practicable opportunity.

136. Proposed subsection 45A(4) makes it an offence for a person, without reasonable excuse, to refuse or fail to comply with a direction given by an inspector.

### Item 35 - Arrest without warrant

137. This item amends subsection 46(1) of the Principal Act by clarifying the reasons for which a person may be arrested for an offence under the Principal Act. This amendment brings the arrest provisions in the Act in line with other Commonwealth arrest provisions.

138. Proposed subsection 46(1) allows an inspector to arrest a person when the inspector believes on reasonable grounds that the person has committed or is committing an offence against the Principal Act where proceedings by way of summons would not be appropriate. Circumstances where this arises are to ensure the appearance of the person before the court in respect of that offence, prevent a repetition or a continuation of the offence, or the

commission of another offence against the Principal Act. Arrest may also be necessary to prevent the concealment, loss or destruction of evidence relating to the offence, or prevent harassment or interference with a witness, or prevent the fabrication of evidence or may be necessary to preserve the safety or welfare of the person arrested.

139. Proposed subsection 46(1A) provides that if prior to charges being laid, the inspector ceases to believe the person being held committed the offence, or that it is not necessary to hold the person in custody to achieve any of the purposes stated in proposed paragraph 46(1)(b), the person must be released.

#### Item 36 - Arrest without a warrant

140. This item amends subsection 46(3) of the Principal Act to take into account the operation of the proposed subsection 46(1A).

#### Item 37 - Search of arrested persons

141. This item repeals section 46A of the Principal Act and replaces it with proposed sections 46A to 46D. The provisions outline the reasons for, and methods by which, an arrested person may be searched. These search provisions are consistent with those under the *Crimes (Search Warrants and Powers of Arrest) Amendment Act 1994*.

#### Proposed section 46A - Power to conduct a frisk search of an arrested person

142. Proposed section 46A allows an inspector who has arrested a person, or who is present at that arrest, and who believes on reasonable grounds that is prudent to do so, to conduct a frisk search of the arrested person for any items which are seizable and to seize those items if they are found. A "frisk search" is defined as one which is conducted by quickly running hands over the outer clothing of a person and examining anything worn or carried by the person that is conveniently and voluntarily removed by the person being searched. The search must be conducted at or soon after the time of arrest.

#### Proposed section 46B - Power to conduct an ordinary search

143. Proposed section 46B provides that an inspector who has arrested a person for an offence against the Principal Act, or who was present at the arrest, may conduct an ordinary search of the person where he or she suspects on reasonable grounds that the person is carrying any seizable items or any evidential material in relation to an offence against the Principal Act. It is a requirement that the search be conducted at the time of the arrest or soon after the time of arrest. It is proposed that any seizable items or "evidential material" may be seized by the inspector. An "ordinary search" is defined as a search of a person or articles in the persons possession that may include requiring the removal of the arrested persons overcoat, coat or jacket and any gloves, shoes and hat and may include an examination of those items.

#### Proposed section 46C - Conduct of ordinary and frisk searches

144. Proposed subsection 46C(1) provides that a frisk search or an ordinary search must, if practicable, be conducted by a person of the same sex as the person being searched.

145. Proposed subsection 46C(2) requires that an inspector who conducts a search must not use any more force nor subject the person to any greater indignity than is reasonably necessary in order to conduct the search.

Proposed section 46D - Retention of things that are seized

146. Proposed subsection 46D(1) provides that an inspector must release any items seized during a search of an arrested person when the reason for its seizure no longer exists or if it is decided that the relevant item is not to be used in evidence. Exceptions to this are if the items are forfeited or forfeitable to the Commonwealth, there is a dispute as to ownership or if there is a contrary order of a Court.

Item 38 - Proposed sections 47A and 47B

Proposed section 47A - Release subject to a condition

147. This item amends the Principal Act by adding a new section 47A which makes it an offence for a person, without reasonable excuse, to fail to comply with any conditions upon which an item seized under a provision of the Principal Act is released to the person under a provision of the Act. The penalty for failure to comply with a condition of release is imprisonment for 12 months.

148. A significant penalty is regarded as appropriate for failure to comply with a condition to deter offenders from taking advantage of the release of the vessel, aircraft or article. A vessel, aircraft or article used in the commission of an offence may be forfeited to the Commonwealth or be required in evidence. Maintaining surveillance on a vessel, aircraft or article prior to a Court hearing is expensive and a drain on limited Marine Park management resources. Conditions of release may include position reporting requirements, and a prohibition on the sale or disposal of the vessel aircraft or article until the prosecution is terminated.

Proposed section 47B - Notice requiring vessel, aircraft or article etc to be delivered to inspector or other person

149. This item amends the Principal Act by inserting a proposed section 47B enabling an inspector to give written notice to a person requiring the delivering of any vessel, aircraft, article, animal or plant to the inspector or another person, at a place and within a period stated in the notice and provides for a penalty of up to 12 months imprisonment for failing to comply with the notice without reasonable excuse.

150. Seizures at sea of vessels, aircraft, articles, animals or plants may be dangerous. At present, where the amount of unlawfully taken marine product is greater than the capacity of the freezer space of the patrol vessel used by an inspector, the marine product is not seized. The alleged offender may then profit from the unlawfully taken marine product through sale. Seizure of vessels at sea may also be hazardous and results in interrupted patrol schedules and problems with transportation of the crew of the seized vessel. "Deliver up" powers such as those in the following provisions are a standard tool of most maritime enforcement legislation, providing a safe and effective method of enforcement. A reasonable period of time is allowed to deliver the vessel, aircraft, article, animal or plant and the place to which it may be delivered would be negotiated with the person who is being required to deliver the item. Facilities exist at most popular sites along the Queensland coast to accept delivered vessels. Apart from being safer, the "deliver up" power also provides a less disruptive and less intrusive method of seizing those items.



151. Proposed subsection 47B(2) provides that a person must not, without reasonable excuse, refuse or fail to comply with the requirement made under subsection 47A(1). The penalty imposed is a maximum of 12 months imprisonment. The penalty is set at a high level to deter persons from ignoring a requirement to deliver the items as specified in the notice. Failure to comply with the requirement would result in expenditure of time and resources to locate the alleged offender. It may also result in the item being disposed of, or sold.

152. Proposed subsection 47B(3) provides that in respect of items delivered pursuant to a notice, the provision relating to confiscating or forfeiture (section 47) will apply to those items as if it had been seized under that section.

#### Item 39 - General powers of inspectors

153. This item amends paragraph 48(2)(b) of the Principal Act. Proposed paragraph 48(2)(b) modifies the present power of an inspector to order a person from the Marine Park in circumstances where the inspector finds the person committing, or who the inspector reasonably believes has committed an offence against the Principal Act. As the Marine Park is so extensive, the amendment allows for an inspector to order removal from an immediate area. The nature of an offence may not warrant removal of a person from the entire Marine Park.

#### Item 40 - General powers of inspectors

154. This item amends subsection 48(5) of the Principal Act by substituting a new subsection which changes the mental element for failure to comply with a requirement of an inspector from "without reasonable excuse" to "intentionally or negligently". The penalty remains the same but changes to penalty units.

#### Item 41

##### Proposed section 48AA - Power of inspector to copy, or take extracts from, documents

155. This item inserts 2 new sections relating to inspector powers. Proposed section 48AA provides that an inspector or a person helping an inspector may make a copy of or take an extract from a document found during a search. There must be a belief the document may have been used, or otherwise involved in the commission of an offence against the Principal Act or which may provide evidence of an offence against the Principal Act. In most cases this will involve making a copy or taking an extract of maps and charts or writings on maps and charts, used by a or for a person the inspector reasonably believes to have committed an offence against the Principal Act. There is no requirement for the inspector to seize the document in order to make the copy or take the extract. In the case of maps, this will enable retention of the map or chart for safety purposes, but allow the collection of evidence.

##### Proposed section 48AB - power of inspector to seize weapons

156. Proposed section 48AB allows an inspector to diffuse potentially hazardous situations aboard vessels in remote areas, by the seizure of

weapons or thing which it is reasonably believed could be used to cause harm to a person. The inspector may return the weapon or thing seized when the situation has stabilised or when any prosecution action is terminated.

The provision may operate where an inspector stops or detains a vessel or aircraft under section 48, and the inspector or a person helping an inspector finds a weapon or other thing capable of inflicting death or bodily injury, and the inspector believes on reasonable grounds that the weapon or other thing may be used to cause the death of or inflict injury to someone nearby, then the inspector may seize that weapon or thing and retain it.

The inspector may retain the weapon or thing seized for a period of up to 60 days, or until a prosecution for an offence against the Principal Act (commenced within that period), in which the weapon or thing may have been used or involved or for which the weapon or thing may provide evidence, is terminated.

#### Item 42 - Limitation on exercise of powers - location

157. This item amends subsection 48A(2) of the Principal Act. This proposed subsection provides that an inspector's powers under subsections 46(1), 48(1) and 48(2) may be exercised outside the Marine Park where the inspector is a member of a police force or where the inspector believes on reasonable grounds that it is not reasonably practicable for an inspector who is a police officer to exercise those powers. The additional requirement of the necessity of hot pursuit has been deleted. This limitation on the exercise of powers is inappropriate because it is based on hot pursuits, which are uncommon in the Marine Park.

158. An inspector who is not a police officer (of whom there are nearly 250), may be required to patrol in remote areas of the far north of the Marine Park, or conduct investigations at short notice because of information supplied by the public or the Coastwatch surveillance program. These inspectors may need to undertake inquiries and exercise her or his powers under the Principal Act to determine if an offence has been committed, identify the alleged offender(s), and obtain available evidence. Under the proposed subsection, where an inspector is unable to obtain the assistance of a police officer who is an inspector, she or he will be able to continue the investigation and exercise any necessary statutory powers.

#### Item 43 - Assaulting etc inspector

159. This item amends the Principal Act by omitting section 49, which dealt with assaults. The *Crimes Act 1914* provides sufficient protection for inspectors. This is a matter concerning assaults which is properly dealt with under the *Crimes Act* and there is no need for duplication.

#### Item 44 - Offence to navigate without a pilot

160. This item amends section 59B of the Principal Act to clarify the offence provision and change the penalty to penalty unit format.

#### Item 45 - Offence to enter an Australian port after navigating without a pilot: master and owner liable

161. This item amends section 59C of the Principal Act to clarify the offence provision and change the penalty to penalty unit format.

Item 46 - Offence to enter an Australian port after navigating without a pilot: owner liable

162. This item amends section 59D of the Principal Act to clarify the offence provision and change the penalty to penalty unit format.

Item 47 - Exemption from requirement to navigate with a pilot

163. This item amends section 59F of the Principal Act by inserting 2 new subsections. Subsection 59F(6) allows the Minister to delegate his or her powers under section 59F to grant an exemption to navigate with a pilot.

164. Proposed subsection 59F(7) provides that the Minister may delegate that power to specified persons. This provision is included to allow for greater administrative efficiency in the grant of exemptions under this section.

Item 48 - Prosecution of offences

165. This item amends paragraph 59I(3)(a) of the Principal Act by changing the penalty to penalty unit format.

Item 49 - Prosecution of offences

166. This item amends paragraph 59I(3)(b) of the Principal Act by changing the penalty to penalty unit format.

Item 50 - Powers of inspector - compulsory pilotage area

167. This item amends paragraph 59L(7) of the Principal Act by changing the penalty to penalty unit format.

Item 51 - Liability for expenses incurred by the Commonwealth or the Authority resulting from contravention of this Act

168. This item consequentially amends paragraph 61B(7)(b) of the Principal Act to incorporate reference to the proposed offence provision section 38L (which relates to discharges of waste).

Item 52 - Regulations

169. Item 52 amends subsection 66(2) of the Principal Act by adding a proposed paragraph 66(2)(ba) to the list of matters for which regulations may be made. This paragraph will allow for the giving effect to the enforcement provisions of a plan of management (or an amended one) prepared pursuant to the proposed Part VB.

Item 53 - Regulations

170. Item 53 replaces paragraph 66(2)(n) of the Principal Act to broaden the types of offences under the regulations for which infringement notices may be given. This is to ensure that minor offences under the Act do not have to be proceeded with by way of summons. This will be less traumatic for the offender and will improve the efficiency of the enforcement process by saving administrative and court costs.

Item 54 - Regulations

171. This item amends subsection 66(11) of the Principal Act by changing the maximum penalty which may be imposed by the regulations to penalty unit format.

Item 55 - Saving and transitional provisions

172. Item 55 is a saving and transitional provision related to the proposed amendment in subsection 10(1) whereby it is proposed that the composition of the Authority is changed. This provision ensures that members appointed prior to the commencement date of the provision remain appointed for the duration of their appointment after that date.

## **SCHEDULE 2 - Other amendments to the Great Barrier Reef Marine Park Act 1975**

### **NOTES ON ITEMS**

#### **Item 1 - Replacement of the word "Chairman" with "Chairperson"**

173. This item amends the Principal Act in the places identified by omitting the word "Chairman" and replacing it with the word "Chairperson".

#### **Item 2 - Replacement of "he" with "he or she"**

174. This item amends the Principal Act in the places identified by omitting "he" and replacing it with "he or she".

#### **Item 3 - Replacement of "his" with "his or her"**

175. This item amends the Principal Act in the places identified by omitting "his" and replacing it with "his or her".

#### **Item 4 - Replacement of "him" with "him or her"**

176. This item amends the Principal Act in the places identified by omitting "him" and replacing it with "him or her".

## **SCHEDULE 3 - Amendment to other Acts**

### *Australian Heritage Commission Act 1975.*

#### **Item 1**

177. Paragraph 10(1)(aa) is inserted to add to the powers of the Commission the ability to use credit cards for administrative convenience in day to day operations. This amendment allows for use of credit cards notwithstanding a provision in the Act that the Commission shall not "borrow" moneys from any person.

### *Australian Sports Commission Act 1989*

#### **Item 2**

178. The Australian Sports Commission currently has 12 members. The Secretary to the Department is to be added in the amendments to section 13 as an *ex-officio* member of the Commission. This item inserts a definition of "appointed member" in Section 3, to distinguish between the Secretary of the Department and other members appointed by the Minister from the private and sporting sectors.

#### **Item 3**

179. This item clarifies the Commission's powers as co-existing and not exclusive of each other, by inserting the word "and" after each of the 11 powers in Subsection 8(1).

#### **Item 4**

180. Paragraph 8(1)(ma) is inserted to add to the powers of the Commission the ability to use a credit card for administrative convenience in day to day operations. This amendment allows for use of a credit card notwithstanding a provision in the Act that the Commission shall not "borrow" moneys except from the Commonwealth.

#### **Item 5**

181. This item clarifies membership in that the Chairperson is additional to the Deputy Chairperson, and the other members. The item inserts the word "and" at the end of paragraph 13(1)(a).

#### **Item 6**

182. This item adds the Secretary to the Department as a member of the Commission by inserting subsection 13(1)(ba). This provision is to allow the Secretary to attend meetings and provide the Minister with policy advice after a number of functions are transferred from the Department to the Commission.

#### **Item 7**

183. This item inserts words in Subsection 13(2) to distinguish between members of the Commission which need to be appointed directly by the

Minister and the membership of the Secretary to the Department. The Secretary is the only member who will not need to be appointed by the Minister.

Item 8

184. Paragraph 13(7)(a) of the Act states that vacancies in the office of Chairperson or Deputy Chairperson is not to affect exercise of the powers or performance of functions of the Commission. This item adds the Secretary of the Department to this list.

Item 9

185. This item amends subsection 15(3) to ensure that the provisions enabling resignation of members of the Commission does not apply to the office of the Secretary. The Secretary will not be able to resign his/her membership of the Commission.

Items 10 and 11

186. These items amend subsections 17(1) and (2) to ensure that the provisions regarding remuneration and allowances of members of the Commission do not apply to the Secretary to the Department as an *ex officio* member.

Items 12 and 13

187. These items amend subsections 19(1) and (2) to ensure that the provisions regarding grounds for termination of appointment of members of the Commission for do not apply to the Secretary to the Department as an *ex officio* member.

Item 14

188. This item amends subsection 20(3) to clarify that where there is a vacancy in the office of a member, other than the Chairperson, Deputy Chairperson or Secretary to the Department, the Minister may appoint persons to act as a member during that vacancy. This Act does not deal with the Minister's powers to appoint a person to act in a vacancy in the office of Secretary to the Department, because this is dealt with in the *Public Service Act 1922*.

Item 15

189. This item amends paragraph 21(7)(a) to raise the quorum of members for meetings of the Commission from 4 to 5 consistent with the addition of the Secretary of the Department of the Environment, Sport and Territories as a member of the Commission. The Secretary is to have voting rights at Commission meetings.

Item 16

190. This item repeals Part IX of the Act which is obsolete. Part IX dealt with the transition, on 1 May 1989, from the previous Australian Sports Commission and Australian Institute of Sport to the then new Australian Sports Commission. There are no outstanding liabilities, legal proceedings or funds from 1989. The other provisions in this Part deal with annual report requirements for the year ending 30 June 1989.

## *Australian Sports Drug Agency Act 1990*

### Item 17

191. Subsection 10(1)(ba) is inserted to add to the powers of the Agency the ability to use credit cards for administrative convenience in day to day operations. This amendment allows for use of credit cards notwithstanding a provision in the Act that the Agency shall not borrow moneys except from the Commonwealth.

## *National Parks and Wildlife Conservation Act 1975*

### Item 18

192. This item clarifies the Director's powers as co-existing and not exclusive of each other, by inserting the word "and" after each of the 4 powers in paragraphs (a),(b), (c) and (d) of Subsection 17(1).

### Item 19

192. Paragraph 17(1)(da) is inserted to add to the powers of the Director of National Parks and Wildlife the ability to use a credit card for administrative convenience in day to day operations. This amendment allows for use of a credit card notwithstanding a provision in the Act that the Director shall not "borrow" money in the performance of his or her functions.

### Item 20

193. This item repeals Section 46, which specifies the categories of monies to be paid into the Australian National Parks and Wildlife Fund established under section 45 of the Act.

### Item 21

194. This clause inserts a new section 46 having the same effect as section 46 of the principal Act but reworded and with the addition of one new provision.

195. The new provision concerns fees collected for permits, authorities and applications under section 79 of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*. It is specified in this new provision which is Paragraph 46(2)(c), that amounts equal to those fees are to be paid into the Australian National Parks and Wildlife Fund from the Consolidated Revenue Fund. This provision implements Recommendation 10:1(2) of the Review of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* published in 1992, which stated that fees collected under that Act should be retained by the Australian National Parks and Wildlife Service.

196. The rewording of section 46 distinguishes between monies that are paid into the Australian National Parks and Wildlife Fund directly and indirectly. Those monies identified in paragraphs 46(1)(a),(b),(e),(f),(g) and (h) of the principal Act are paid into the Fund directly. Under the rewording they are grouped together in the new subsection 46(1).

197. Those monies identified in paragraphs 46(1)(c) and (d) of the principal Act together with the fees collected for permits, authorities and applications under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, are

provided to the Australian National Parks and Wildlife Fund via the Consolidated Revenue Fund. Under the rewording, they are grouped together in the new subsection 46(2).

198. The new subsection 46(3) specifies that the Consolidated Revenue Fund is appropriated for the purposes of transferring those amounts paid to the Fund under subsection 46(2).

### *Norfolk Island Act 1979*

#### Items 22 to 30

199. References in the *Norfolk Island Act 1979* to "President" and "Deputy President" of the Legislative Assembly are replaced with "Speaker" and "Deputy Speaker", and in the plural. These amendments were requested by the Legislative Assembly of Norfolk Island.

