

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

GREAT BARRIER REEF MARINE PARK AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for
the Arts, Sport, the Environment, Tourism and Territories,
Senator the Hon Graham Richardson).

GREAT BARRIER REEF MARINE PARK

AMENDMENT BILL 1988

OUTLINE

The object of the Great Barrier Reef Marine Park Act 1975 is to make provision for the establishment, control, care and development of a marine park in the Great Barrier Reef Region. The operation of the Act over the past 13 years has identified the need for amendments to improve management of the Great Barrier Reef Marine Park.

The Bill gives effect to these needs by providing for appropriate penalties for breaches of the Act and additional remedies to improve the policing, management and protection of the Great Barrier Reef Marine Park. The Bill provides for increased penalties through the transfer into the Act of provisions contained in the Regulations. Powers granted to inspectors have been expanded to allow for more effective management of the Marine Park. The Bill also clarifies the use of injunctive remedies by the Authority and persons whose interests have been affected by activities which are in breach of the Act. It provides a mechanism whereby damage to the environment can be rectified and those responsible held accountable for the costs of such actions. There are also a number of amendments to bring the Act up to date with current drafting practice including the implementation of recommendations flowing from the Bowen Committee. In particular the Bill provides for the Great Barrier Reef Marine Park Authority to provide assistance to organisations overseas on matters in which it has expertise.

The Bill deletes reference to special zones. This amendment is consistent with Recommendation 13 of the House of Representatives Standing Committee on Environment and Conservation, November 1985 Report, entitled "Protection of the Great Barrier Reef".

FINANCIAL IMPACT STATEMENT

The amendments to the Great Barrier Reef Marine Park Act 1975 provided by the Bill will improve the effectiveness of the management of the Marine Park. The amendments will not result in an increase in the cost burden on the Commonwealth.

NOTES ON CLAUSES

CLAUSE 1 - SHORT TITLE

This clause provides for the Act to be cited as the Great Barrier Reef Marine Park Amendment Act 1988 and for the "Principal Act" to mean the Great Barrier Reef Marine Park Act 1975

CLAUSE 2 - COMMENCEMENT

Subclause 2(1) provides that, subject to clause 2, the Act will come into operation on the day it receives Royal Assent.

Subclause 2(2) provides that clause 14, subclause 29(e) and clause 32 will commence on a date to be fixed by proclamation.

CLAUSE 3 - INTERPRETATION

This clause amends subsection 3(1) of the Principal Act by inserting definitions of "environmental management", "farming facility", "landing area", "mitigate" and "unzoned area" into the Principal Act.

CLAUSE 4 - OPERATION OF ACT

This clause amends subsection 4(1) of the Principal Act by inserting references to the Crown in right of the States, the Northern Territory and Norfolk Island. This clause also inserts proposed subsection 4(1A) into the Principal Act. Proposed subsection 4(1A) provides that nothing in the Principal Act renders the Crown in right of the Commonwealth, of a State, of the Northern Territory or of Norfolk Island liable to be prosecuted for an offence.

CLAUSE 5 - FUNCTIONS OF THE AUTHORITY

Paragraph 5(a) is a technical amendment to allow for the insertion of a new paragraph 4(1)(da) into the Principal Act.

Paragraph 5(b) inserts proposed paragraph 4(1)(da) into the Principal Act to permit the Great Barrier Reef Marine Park Authority to assist other institutions and persons in relation to environmental management.

Paragraph 5(c) omits reference to section 60 of the Principal Act from subsection 7(3) of the Principal Act and substitutes reference to section 63M of the Audit Act 1901.

Paragraph 5(d) amends subsection 7(3) of the Principal Act to ensure that Annual Reports are prepared in accordance with the requirements of section 63M of the Audit Act 1901.

CLAUSE 6 - PROVISION OF ASSISTANCE TO OTHER INSTITUTIONS AND PERSONS

This clause amends the Principal Act by inserting a proposed new section 7A which gives details of the manner in which the Great Barrier Reef Marine Park Authority ("the Authority") may assist other institutions and persons in relation to environmental management.

Proposed subsection 7A(1) empowers the Authority to assist, on request, another institution or person in respect of environmental management. Proposed subsection 7A(2) allows the Authority to act alone or in co-operation with other institutions or persons when providing any of the assistance referred to in proposed subsection 7A(3).

Proposed subsection 7A(3) outlines some of the types of assistance that the Authority can provide but is not intended to provide an exhaustive list.

Proposed subsection 7A(4) provides that the Authority must seek the Minister's approval in writing prior to providing assistance.

Proposed subsection 7A(5) provides that the Minister shall not give an approval under proposed subsection 7A(4) unless the Minister is satisfied that the provision of any assistance is not likely to affect adversely the performance of other functions of the Authority.

Proposed subsection 7A(6) provides that the Ministerial approval obtained under proposed subsection 7A(4) may be subject to conditions or restrictions, including the charging of fees for assistance provided by the Authority.

Proposed subsection 7A(7) provides that this section should not be read so as to limit the operation of the provisions of the Principal Act in respect of conferring functions on the Authority by regulations.

CLAUSE 7 - REMUNERATION AND ALLOWANCES OF MEMBERS OF AUTHORITY

This clause amends subsection 12(3) of the Principal Act to conform with present drafting practice of citing Acts of Parliament by the year in which they were passed by the Parliament.

CLAUSE 8 - TERMINATION OF APPOINTMENT OF MEMBERS OF AUTHORITY

This clause amends section 16 of the Principal Act in line with recommendations of the Bowen Committee.

Paragraph 8(a) omits paragraph 16(2)(e) of the Principal Act and inserts proposed new paragraph 16(2)(e). New paragraph 16(2)(e) provides that one of the grounds upon which the Governor-General

shall terminate the appointment of a member of the Authority is if a member fails, without reasonable excuse, to comply with the member's obligations under proposed new section 16A (Disclosure of interests of members).

Paragraph 8(b) omits subsections 16(3) and 16(4) of the Principal Act. Proposed new section 16A contains details of the matters covered by subsections 16(3) and 16(4).

CLAUSE 9 - DISCLOSURE OF INTERESTS OF MEMBERS

This clause inserts new section 16A into the Principal Act to implement the recommendations of the Bowen Committee.

Proposed subsection 16A(1) provides that a member of the Authority who has any direct or indirect pecuniary interest in any matter being considered or about to be considered by the Authority must disclose the nature of that interest at a meeting of the Authority as soon as possible after any conflict of interest or potential conflict of interest comes to the attention of the member.

Proposed subsection 16A(2) requires that any disclosure under proposed subsection 16A(1) shall be recorded in the minutes of the meeting. A member who has made a disclosure is disqualified from involvement in any deliberations or decisions relating to the subject matter of the disclosure, unless the Minister otherwise determines.

Proposed subsection 16A(3) provides that the Chairman of the Authority must inform the Minister in writing of all direct or indirect pecuniary interests the Chairman may have in any business or in any body corporate carrying on a business.

Proposed subsection 16A(4) extends the requirements of section 16A to a person who is acting in the position of Chairman or who is acting as a part-time member of the Authority.

CLAUSE 10 - REMUNERATION AND ALLOWANCES OF MEMBERS OF COMMITTEE

Clause 10 amends subsection 24(3) of the Principal Act to conform with the current drafting practice of citing Acts of Parliament by the year in which they were passed by the Parliament.

CLAUSE 11 - TERMINATION OF APPOINTMENT OF MEMBERS OF COMMITTEE

This clause amends section 27 of the Principal Act in line with the recommendations of the Bowen Committee.

Paragraph 11(a) amends subsections 27(3A) and 27(4) of the Principal Act by omitting reference to subsection 27(5) and by inserting a power that the Authority or the Minister may terminate the appointment of a member of the Committee if the member, without reasonable excuse, fails to comply with the member's obligations under new section 27A.

Paragraph 11(b) omits subsection 27(5). Proposed new section 27A deals in more detail with the same subject matter.

CLAUSE 12 - DISCLOSURE OF INTEREST OF MEMBERS

This clause inserts a new section 27A to implement the recommendations of the Bowen Committee.

Proposed subsection 27A(1) requires that a member of the Great Barrier Reef Consultative Committee ("the Committee") who has a direct or an indirect pecuniary interest in any matter being considered or about to be considered by the Committee must disclose the nature of that interest at a meeting of the Committee.

Proposed subsection 27A(2) requires that any disclosure under proposed subsection 27A(1) shall be recorded in the minutes of a meeting of the Committee. A member of the Committee who makes such a disclosure is disqualified from involvement in any deliberations or decisions concerning the subject matter of the disclosure unless the Minister otherwise determines.

CLAUSE 13 - ZONING PLANS

This clause amends section 32 of the Principal Act to clarify the ambiguity between old and recent zoning plans concerning the responsible agency and the Authority. It is intended that for both "old" and "new" zoning plans that the "responsible agency" is the Authority.

CLAUSE 14 - ZONES TO BE USED ONLY FOR PERMITTED PURPOSES

This clause inserts new section 38A-38K into the Principal Act. Proposed sections 38A-38K are essentially the same offence provisions as those contained in regulations 13-19B of the Great Barrier Reef Marine Park Regulations. The Great Barrier Reef Marine Park Regulations will be redrafted to reflect the "transfer" of certain offence provisions from the regulations to the Principal Act.

New section 38A provides that it is an offence to enter or to use a zone for purposes other than purposes permitted under the zoning plan relating to that zone. If an offender is a natural person, the penalty is \$10,000, if the offender is a body corporate the penalty is \$50,000.

Permission requirements to be observed - zoned area

New subsection 38B(1) provides details of the requirements that must be observed by a person who has permission to enter or use a zone. If a person breaches new subsection 38B(1) the penalty is \$10,000 for a natural person, \$50,000 for a body corporate.

New subsection 38B(2) provides that new subsection 38B(1) is not applicable during the period of 120 days following the introduction of a new or amended zoning plan; nor to a person who has applied during that period for permission of a kind referred to in new subsection 38B(1) where that person is engaged in such conduct.

Contravening conditions of permission or authority - zoned area

New section 38C provides that a person must comply with the conditions applicable to any permission or authority granted under new section 38B. The penalty for breach of a condition is \$10,000 for a natural person, \$50,000 for a body corporate.

Notification requirements to be observed - zoned areas

New section 38D provides that where, under a zoning plan, a zone can duly be entered or used for a particular purpose after the responsible agency or the Authority has been notified, it is an offence to enter or use the zone other than for the purpose specified to the Authority. If the offender is a natural person, the penalty is \$10,000, if the offender is a body corporate the penalty is \$50,000.

Contravening directions - zoned areas

New section 38E makes it an offence to contravene a direction given to a person by the Authority provided that the direction is declared by the Regulations to be a direction to which this section applies, the direction relates to the person's use of, or entry to, a zone, the direction is reasonably necessary for the protection or preservation of the Great Barrier Reef Marine Park or property or things in the Park and provided that the direction does not require a person to remove certain property that is in the Park.

If natural person contravenes a direction the penalty is \$10,000, if the offender is a body corporate the penalty is \$50,000.

Certain activities prohibited in the unzoned area

New section 38F prohibits certain activities in unzoned areas of the Great Barrier Reef Marine Park unless the carrying on of the activity is authorised by a permission granted for this purpose under the regulations or is authorised in accordance with a condition of such a permission. If an offender is a natural person, the penalty is \$10,000, if the offender is a body corporate, the penalty is \$50,000. The section prohibits a number of activities which are considered to have significant environmental implications.

New subsection 38F(2) provides that the reference in new subsection 38F(1) to the operating of a vessel includes a reference to the conduct of operations in or upon a vessel, the use of the vessel as a base for carrying on other activities and the carrying out of maintenance of the vessel.

Contravening conditions of permission or authority - unzoned area
 New section 38G provides that where a permission or authority referred to in new section 38F is subject to conditions, it is an offence to breach those conditions. If the offender is a natural person, the penalty is \$10,000, if the offender is a body corporate, the penalty is \$50,000.

Removal of property

New section 38H provides that it is an offence for a person to contravene an order under the regulations if it is an order that is declared by the regulations to be an order to which this section applies and the order requires the person to remove certain property that is in the Park. If the offender is a natural person, the penalty is \$10,000, if the offender is a body corporate, the penalty is \$50,000.

Offence relating to the discharge of waste

New subsection 38J(1) provides that it is an offence to discharge waste in the Park unless the discharge is authorised by a permission granted to the person under the regulations specifically for the purposes of this section.

New subsection 38J(2) provides that where conditions apply to a permission granted under new subsection 38J(1), a person shall comply with those conditions.

New subsection 38J(3) provides that new section 38J does not apply to the discharge of waste in a zone where the relevant zoning plan makes provision for the zone to be used or entered for that purpose.

New subsection 38J(4) provides that new section 38J does not apply to certain categories of waste.

New subsection 38J(5) provides that an offence against the new subsections 38J(1) or 38J(2), is punishable on conviction by a fine of up to \$50,000 where the offender is a natural person, and by a fine of up to \$250,000 where the offender is a body corporate.

New subsection 38J(6) defines for the purposes of the section the meaning of the words "discharge" and "reef".

Offences involving the use of vessels or aircraft

New subsection 38K(1) provides that where by use of an aircraft or a vessel an offence is committed against any of sections 38A to 38J (inclusive), and the person in charge of the aircraft or vessel knew, or had reasonable grounds to suspect, that the vessel or aircraft would be used in committing the offence and did not take reasonable steps to prevent the use of the vessel or aircraft in committing the offence, that person is guilty of an offence.

New subsection 38K(2) provides that for the purposes of new subsection 38K(1), a person in charge of a vessel or aircraft means a person who is master of, or in charge of, a vessel or aircraft, at the time the offence against new sections 38A to 38K was committed.

New subsection 38K(3) provides that where, by use of a vessel or an aircraft, an offence is committed against any of new sections 38A-38K, and the owner of the vessel or aircraft knew, or had reasonable grounds to suspect that the vessel or aircraft would be used in committing the offence and did not take reasonable steps to prevent the use of the vessel or aircraft in committing the offence, that the person is also guilty of an offence

New subsection 38K(4) provides that for the purposes of new subsection 38K(3), an owner of the vessel or aircraft includes a part-owner or co-owner.

New subsection 38K(5) provides that the penalty for an offence against new section 38K is a fine not exceeding \$10,000 for a natural person and a fine not exceeding \$50,000 for a body corporate.

Prosecution of offences

New subsection 38M(1) provides that an offence against any of new sections 38A-38K (inclusive) is an indictable offence.

New subsection 38M(2) provides that notwithstanding new subsection 38M(1), a court of summary jurisdiction may hear and determine proceedings in relation to an offence provided the court is satisfied that it is proper to do so and the defendant and prosecutor consent.

New subsection 38M(3) provides that where a person is convicted in accordance with new subsection 38M(2) the maximum penalty the court may impose is a fine not exceeding \$2,000 if the offender is a natural person, and a fine not exceeding \$10,000 if the offender is a body corporate.

Injunctions

New section 38N is created to authorise the granting of an injunction to restrain conduct made unlawful under section 38 to 38K

New subsection 38N(1) provides that the Authority or any person whose interests have been or would be affected may apply to the Supreme Court of a State or Territory for an injunction against activities or proposed activities which would contravene sections 38 to 38K.

New subsection 38N(2) extends the injunction power to situations where a person is refusing, failing or proposing to refuse or

fail to do anything that is required by Sections 38 to 38K to be done.

New subsection 38N(3) empowers the court to issue an interim injunction.

New subsection 38N(4) empowers the court to recind or vary an injunction.

New subsection 38N(5) broadens the circumstances in which the court may grant an injunction to restrain a person, to situations where that person does not intend to engage in the activity covered by the injunction, has not previously engaged in such activity and/or there is no immediate danger from the activity.

New subsection 38N(6) broadens the circumstances in which the court may grant an injunction to parallel the previous section in the case of a mandatory injunction.

New subsection 38N(7) extends the application of sections 38 to 38K to include offences.

New subsection 38N(7) provides for offences under sections 38A to 38K to be indictable offences, but triable in a court of summary jurisdiction if the parties and the court agree. When tried in a court of summary jurisdiction the offences carry lesser penalties.

CLAUSE 15 - STAFF OF AUTHORITY

Clause 15 amends of the Principal Act to conform with present drafting practice of citing acts of Parliament by the year in which they were passed by the Authority.

CLAUSE 16 ARRESTS WITHOUT WARRANT

Clause 16 amends subsection 46(1) of the Principal Act to remove a restriction on an inspector's power of arrest without warrant so that an inspector may arrest a person suspected of committing an offence even if the person is not in the Park at the time the arrest is made.

CLAUSE 17 - SEARCHES OF ARRESTED PERSONS

Clause 17 inserts a new section 46A into the Principal Act.

New subsection 46A(1) provides that after having lawfully taken a person into custody an inspector may search the person, the person's clothing and any property under the immediate control of the person if the inspector believes on reasonable grounds that it is necessary to do so:

- (a) to ascertain whether the person has a weapon concealed which could either cause death or injury or which could assist the person to escape from custody; and

- (b) to ensure that any evidence relating to the offence is not lost, concealed or destroyed.

New subsection 46A(2) provides that searches of a person or a persons's clothing conducted by an inspector must be conducted by an inspector of the same sex as the person to be searched. If an inspector of the same sex is not available, the search may b conducted by any other person on the request of an inspector, provided that the person is of the same sex as the person to be searched.

New subsection 46A(3) provides that any search shall be conducted using the minimum necessary force and conducted so as to minimise the indignity caused.

New subsection 46A(4) provides that an inspector may seize any weapon or thing referred to in paragraph (1)(a) found during the search, and anything the inspector has reasonable grounds for believing was involved in the committing of an offence as evidence of an offence or intended offence against the Principal Act.

New subsection 46A(5) permits an inspector to retain a weapon or object seized under new subsection 4 for up to 60 days or, if a prosecution is instituted, until termination of the prosecution.

New subsection 46A(6) provides that the search and seizure procedures of this section do not affect those of any other section of this Act or any other legislation.

CLAUSE 18 - CONFISCATION AND FORFEITURE

This clause amends section 47 of the Principal Act by inserting references to "aircraft" in subsections (1)-(5) and (9) to clarify that aircraft are also subject to confiscation and seizure. This clause also inserts a new subsection 4A to make explicit that subsections (3) and (4) do not apply to the new section 46A.

CLAUSE 19 - GENERAL POWERS OF INSPECTORS

This clause amends section 48 of the Principal Act to provide that powers of inspectors may be exercised outside the Marine Park in relation to offences against the Principal Act where a reasonable belief exists that such an offence has been, will be, or is being, committed. This amendment is intended to ensure that the Marine Park can be effectively protected and that offences can be thoroughly investigated notwithstanding that the offender has left the Park.

Subsection 48(a) removes the limitation on the inspector's powers to the area within the Marine Park.

Subsections 48(b) and (c) amend subsections (1) and (3) to now include "aircraft".

Subsections 48(d), (e) and (f) increase the powers of the inspector to search for any object or thing that constitutes evidence of an offence committed or intended to be committed against the Principal Act.

Subsections 48(g) and (h) extend the operation of subsection 2 to include activities that require the permission of the authority and to produce evidence of that permission if required.

Subsection 48(j) now includes "aircraft" in subsection 3 to clarify that an inspector may not detain, propose to detain or search an aircraft or vessel unless the inspector can produce identification.

CLAUSE 20 - LIMITATION ON EXERCISE OF POWERS - LOCATION

This clause amends the Principal Act by inserting a proposed new section 48A which limits the operation of the amendments made to subsections 46(1), 48(1) and (2) of the Principal Act in relation to powers of inspectors outside the boundaries of the Marine Park. Section 48A provides that inspector's powers of arrest, search and the taking of statements, can only be exercised outside the Marine Park where an inspector, other than a police officer, reasonably believes that it is not practicable to have a police officer available to exercise that power (paragraph 48A(2)(d)), or where one or more inspectors has pursued the person, aircraft or vessel from inside the Marine Park to a place outside the Marine Park (paragraph 48A(2)(e)) and the pursuit is not substantially interrupted or terminated prior to the exercise of the inspector's powers (paragraph 48A(2)(f)).

Subsection 48A(3) provides that for the purposes of paragraph (e) of subsection (2), pursuit will not be considered to be terminated or substantially interrupted for the reason that visual contact of the person, aircraft or vessel is lost.

Subsection 48A(4) provides that loss of visual contact also refers to loss of radar contact or contact by other sensing devices.

CLAUSE 21 - ASSAULTING ETC INSPECTOR

This clause amends section 49 of the Principal Act to bring the section into line with the provisions dealing with indictable offences, and present drafting practices.

Subsection 21(2) provides that an offence against subsection (1) is an indictable offence.

Subsection 21(3) provides that notwithstanding that it is an indictable offence for a person to assault or threaten an

inspector in the performance of his duties, a court of summary jurisdiction may hear the matter if the court and the parties consent.

Subsection 21(4) provides for a reduced penalty of a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both, for a person convicted in accordance with subsection (3) of an offence against subsection (1).

CLAUSE 22 - REPEAL OF SECTION 50

This clause repeals section 50 of the Principal Act dealing with personation as the matter is covered by the Crimes Act 1914.

CLAUSE 23 - INVESTMENT OF MONEY

This clause inserts a new section 53A into the Principal Act to allow the Authority to invest money derived from its operations, such as the Wonderland Aquarium, in an approved bank, in Commonwealth securities, or any other manner approved by the Treasurer.

CLAUSE 24 - APPLICATION OF DIVISION 3 OF PART XI OF THE AUDIT ACT 1901

Section 55 of the Principal Act is repealed and replaced by a new section 55 which incorporates the relevant provisions of the Audit Act 1901 in relation to the operation of bank accounts held by public authorities. In particular, this section also is to apply to money to be paid to, or received from, Queensland under sections 54A and 54B of the Principal Act.

CLAUSE 25 - REPEAL OF SECTIONS 57, 58 AND 60

This clause repeals sections 57, 58 and 60 of the Principal Act as the matters dealt with in these sections are covered by the Audit Act 1901.

CLAUSE 26 - RESTORATION OF ENVIRONMENT, LIABILITY FOR COSTS OF RESTORATION AND ENFORCEMENT OF PAYMENT

This clause inserts new sections 61A, 61B, and 61C to provide for restoration of damage to the environment, recovery costs associated with restoration of the environment and making orders to recover such costs.

Restoration of the environment

New subsection 61A (1) provides that the Minister may take such steps as the Minister considers appropriate to repair, mitigate or prevent damage from an act or omission the Minister reasonably believes constitutes an offence under the Principal Act.

New Subsection 61A(2) provides that where the Minister reasonably believes an offence has been committed against an order pursuant to section 38H to remove property from the Marine Park, the Minister may take steps to remove that property or repair, mitigate, or prevent any damage arising from that removal.

New subsection 61A(3) permits the Minister to delegate in writing his or her powers to restore the environment to the Chairman of the Authority or to the Authority itself.

New subsection 61A(4) provides that the Minister can direct the Authority or the Chairman of the Authority in the exercise of a delegated power.

New subsection 61A(5) requires the Authority to include in the annual report details of any directions given by the Minister under subsection (4).

New subsection 61A(6) restricts the authorisation of this section to action taken inside the Marine Park unless an act or other matter affects the Marine Park.

New subsection 61A(7) preserves Commonwealth and Authority powers under all other sections of the Principal Act and any other law.

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

Clause 26 inserts a new section 61B which provides for the recovery of costs involved where an offender has been convicted of an offence against the Principal Act and for which action has been taken under section 61A to rectify damage to the environment.

New subsection 61B(1) provides that a person convicted of an offence against the Principal Act is liable to pay an amount equal to that of the expenses and liabilities incurred by the Commonwealth or the Authority in rectifying damage caused by the offence.

New subsection 61B(2) provides for the joint and separate liability of persons convicted under the Principal Act for costs referred in subsection (1).

New subsection 61B(3) limits an offender's liability to reasonable expenses incurred in rectifying damage resulting from an offence.

New subsection 61B(4) provides that the liability to repay costs of an action under section 61B is a debt due to the Commonwealth or the Authority and can be the subject of court action.

New subsection 61B(5) permits a court to order an amount payable by a person convicted of an offence against the Principal Act. The purpose of this amendment is to avoid the need to take

separate legal action to recover the costs of action taken under section 61A.

New subsection 61B(6) provides that taking action under subsections (4) or (5) of this section does not prevent further action under those subsections to recover additional costs if such additional costs are incurred in the reparation, mitigation or prevention of damage resulting from an offence. This amendment makes it clear that an order to pay costs in respect of an offence does not prevent subsequent action to recover additional costs should such costs be incurred in rectifying the effects of the original act or omission.

New subsections 61B(7) and (8) establish that, for the purposes of this section, certain acts or omissions which constitute only "ancillary" offences, nevertheless also make the offender liable for the recovery of costs.

New subsection 61B(9) defines, for the purposes of this section, "rectifying an act or omission constituting an offence" against the Principal Act as meaning:

- (a) in relation to an offence against section 38H (orders to remove a structure etc), the taking of steps to remove, repair, remedy, mitigate or prevent damage likely to arise from that removal, and
- (b) in all other instances, the taking of steps to repair, remedy, mitigate or prevent damage likely to arise from an act or omission.

New subsection 61B(10) specifies that a person convicted of an offence under this section includes conviction of the person under section 19B of the Crimes Act 1914.

Enforcement of orders for payment

Clause 26 also inserts a new section 61C which provides that an order made to pay costs under section 61B(5) is enforceable as a final judgement of the court.

New subsection 61C(1) provides that an order made pursuant to subsection 61B(5) is enforceable where the court has civil jurisdiction to impose that amount.

New subsection 61C(2) provides that where an order under section 61B(5) has been made to pay an amount and the court does not have civil jurisdiction or civil jurisdiction to cover the full amount, the court may issue a certificate to the Minister or Authority for the purposes of the subsequent provisions of the section.

New subsection 61C(3) permits the registering of the certificate referred to in subsection (2) in a court with the appropriate civil jurisdiction for the required amount.

New subsection 61C(4) provides that once the certificate has been registered it is enforceable as a final judgement of the court.

New subsection 61C(5) provides that in addition to the amount specified in the certificate, the cost of the registration of the certificate and any other costs under this section are payable under the certificate.

CLAUSE 27 - JURISDICTION OF COURTS

This clause amends section 63 of the Principal Act to conform with present drafting practice of citing Acts of Parliament by the year in which they were passed by the Parliament.

CLAUSE 28 - CONDUCT OF DIRECTORS, SERVANTS AND AGENTS

This clause repeals section 64 of the Principal Act and substitutes a new section 64.

New subsection 64(1) provides that where it is necessary to establish the state of mind of a body corporate in relation to conduct engaged in, or deemed by subsection (2) to have been engaged in, it is adequate to show that a director, servant or agent of the body corporate had that state of mind at the time of engaging in conduct within the scope of his or her actual or apparent authority.

New subsection 64(2) provides that the conduct engaged in on behalf of a body corporate will be deemed to have been engaged in by the body corporate.

New subsection 64(3) provides that where it is necessary to determine the state of mind of a natural person, the state of mind of an agent or servant engaged in conduct which is within their apparent or actual authority, will be deemed to be conduct engaged in by the natural person.

New subsection 64(4) provides that conduct engaged in on behalf of a natural person by an agent or servant acting within apparent or actual authority will be deemed to be conduct engaged in by the natural person.

New subsection 64(5) defines the meaning of the term "state of mind" to include a reference to the knowledge, intention, opinion, belief or purpose of the person and the reasons for that intention, opinion, belief or purpose.

New subsection 64(6) defines "director of a body corporate" to include a constituent member of a body corporate incorporated for a public purpose under a law of the Commonwealth, State or Territory

New subsection 64(7) provides that for the purposes of the section an act includes an omission.

CLAUSE 29 - REGULATIONS

This clause amends section 66 of the Principal Act to accommodate the transfer of certain provisions from the regulations to the Principal Act and to make minor consequential amendments to the regulation making power in the Principal Act. This amendment also omits paragraph (b) of subsection (11) as the imposition of daily penalties is no longer necessary in view of the new powers to repair or protect the environment and recover the costs of any damage to the Marine Park.

CLAUSE 30 - AMENDMENTS RELATING TO SPECIAL ZONES

This clause amends the Principal Act as set out in the attached Schedule and omits references to special zones to be managed in accordance with the National Parks Act which are no longer considered necessary. This amendment is consistent with Recommendation 13 of the House of Representatives Standing Committee on Environment and Conservation September 1981 report entitled "Environment Protection: Adequacy of Legislative and Administrative Arrangements".

CLAUSE 31 - TRANSITIONAL

This clause provides transitional arrangements for transferring from the Principal Act to Part XI of the Audit Act 1901, the authority for the Great Barrier Reef Marine Park Authority to operate bank accounts, keep records of accounts of meetings, audit and prepare annual reports.

CLAUSE 32 - TRANSITIONAL - REGULATIONS RELATING TO TRANSFERRED OFFENCES

This clause provides for transitional arrangements in relation to the granting or giving of permissions, directions or orders given under regulations made for the purposes of sections 38B, 38E, 38F, 38H or 38J of the Principal Act.

