



Great Barrier Reef Marine Park Amendment Act 2001

No. 48, 2001

***An Act to amend the *Great Barrier Reef Marine
Park Act 1975*, and for related purposes***

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No. 48, 2001

An Act to amend the *Great Barrier Reef Marine Park Act 1975*, and for related purposes

[Assented to 21 June 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Great Barrier Reef Marine Park Amendment Act 2001*.

2 Commencement

This Act commences on the 28th day after the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Application provision—interpretation of geographic co-ordinates

The amendment made by item 3 of Schedule 1 applies to the following instruments (regardless of whether they were made before or after the commencement of this section):

- (a) regulations made under the *Great Barrier Reef Marine Park Act 1975*;
- (b) a Proclamation made under that Act;
- (c) a plan of management;
- (d) a zoning plan;
- (e) any other instrument made under that Act.

5 Application—offences

If this Act commences before the commencement of section 1 of the *Environment and Heritage Legislation Amendment (Application of Criminal Code) Act 2001*, then Chapter 2 of the *Criminal Code* applies to offences against subsections 38A(2) and 38J(1) and (1B) and sections 38CA, 38CB, 38CC, 38M, 38MA, 38MB and 38MC of the *Great Barrier Reef Marine Park Act 1975*.

Note: From the commencement of section 1 of the *Environment and Heritage Legislation Amendment (Application of Criminal Code) Act 2001*, Chapter 2 of the *Criminal Code* will apply to all offences against the *Great Barrier Reef Marine Park Act 1975*.

Schedule 1—Amendments

Great Barrier Reef Marine Park Act 1975

1 Subsection 3(1) (definition of *compulsory pilotage area*)

Repeal the definition, substitute:

compulsory pilotage area means any part of the Great Barrier Reef Region that is prescribed by the regulations.

2 Subsection 3(1) (definition of *inner route*)

Repeal the definition.

3 After section 3A

Insert:

3B Interpretation of geographic co-ordinates

(1) Where it is necessary for the purposes of this Act to determine the position on the surface of the Earth of a point, line or area that is specified by reference to one or more geographic co-ordinates, then that position must be determined, unless the contrary intention appears, by reference to the Australian Geodetic Datum as defined in *Gazette* No. 84 of 6 October 1966.

(2) In this section:

geographic co-ordinate includes:

- (a) a meridian of longitude by itself; and
- (b) a parallel of latitude by itself.

this Act includes the following:

- (a) the regulations;
- (b) a Proclamation made under this Act;
- (c) a plan of management;
- (d) a zoning plan;
- (e) any other instrument made under this Act.

4 At the end of section 38A

Add:

- (2) A person is guilty of an offence if the person uses or enters a zone for a purpose other than a purpose that is permitted under the zoning plan that relates to the zone.

Penalty: 60 penalty units.

- (3) An offence under subsection (2) is an offence of strict liability.

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

5 After section 38C

Insert:

38CA Zones to be used only for permitted fishing

- (1) A person is guilty of an offence if:
- (a) the person intentionally or negligently uses or enters a zone for the purpose of fishing; and
 - (b) that fishing is not permitted under the zoning plan that relates to the zone.

Penalty: 2,000 penalty units.

- (2) In this section:

boat means launch, vessel or floating craft of any description.

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

fishing means any of the following:

- (a) searching for, or taking, fish;
- (b) attempting to search for, or take, fish;
- (c) engaging in any other activities that can reasonably be expected to result in the locating, or taking, of fish;
- (d) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
- (e) any operations at sea directly in support of, or in preparation for, any activity described in this definition;

- (f) aircraft use relating to any activity described in this definition except flights in emergencies involving the health or safety of crew members or the safety of a boat;
- (g) the processing, carrying or transshipping of fish that have been taken.

processing, in relation to fish, includes the work of cutting up, dismembering, cleaning, sorting, packing or freezing.

take, in relation to fish, means catch, capture, take or harvest.

38CB Permission requirements to be observed for fishing—zoned area

- (1) A person is guilty of an offence if:
 - (a) under a zoning plan, a zone may be used or entered for the purpose of fishing only with the permission of:
 - (i) the responsible agency within the meaning of the plan; or
 - (ii) the Authority; and
 - (b) the person intentionally or negligently uses or enters that zone for the purpose of such fishing; and
 - (c) the use or entry is not authorised by a permission granted or transferred to the person under the regulations, being a permission of a kind declared by the regulations to be a permission to which this section applies; and
 - (d) the use or entry is not authorised by an authority given to the person in accordance with a condition to which such a permission is subject.

Penalty: 2,000 penalty units.

- (2) Strict liability applies to paragraph (1)(a).

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

- (3) In this section:

fishing has the same meaning as in section 38CA.

38CC Contravening conditions of permit or authority in relation to fishing—zoned area

- (1) A person is guilty of an offence if:
- (a) a permission or authority referred to in section 38CB is subject to a condition; and
 - (b) the condition applies to the person; and
 - (c) the person engages in conduct; and
 - (d) the conduct contravenes the condition.

Penalty: 2,000 penalty units.

- (2) The fault element for paragraph (1)(d) is negligence.

Note: Section 5.5 of the *Criminal Code* defines *negligence*.

- (3) In this section:

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

6 Subsection 38J(1)

Repeal the subsection, substitute:

- (1) A person is guilty of an offence if:
- (a) the person intentionally or negligently discharges waste in the Marine Park; and
 - (b) the discharge is not authorised by a permission that:
 - (i) is granted or transferred to the person under the regulations; and
 - (ii) is of a kind declared by the regulations to be a permission to which this section applies.

Penalty: 2,000 penalty units.

- (1A) Subsection (1) does not apply if the discharge is sewage.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (1B) A person is guilty of an offence if:

- (a) the person discharges waste in the Marine Park; and
- (b) the discharge is not authorised by a permission that:

- (i) is granted or transferred to the person under the regulations; and
- (ii) is of a kind declared by the regulations to be a permission to which this section applies.

Penalty: 500 penalty units.

(1C) An offence under subsection (1B) is an offence of strict liability.

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

(1D) Subsection (1B) does not apply if the discharge is sewage.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1D) (see subsection 13.3(3) of the *Criminal Code*).

7 Paragraphs 38J(5)(c) and (d)

Repeal the paragraphs.

8 Subsection 38J(6)

Repeal the subsection.

8A After subsection 38L(3)

Insert:

- (3A) The regulations may prescribe measures for the management of the discharge of sewage from vessels in the Marine Park and may create offences, not inconsistent with this Act, relating to the discharge of sewage from vessels.
- (3B) Regulations made for the purposes of subsection (3A) may provide a maximum penalty for an offence against the regulations not exceeding the maximum penalty for an offence against subsection (1), but nothing in this subsection enables the regulations to provide penalties of imprisonment.

9 After section 38L

Insert:

38M Zones to be used only by permitted ships

Operators

- (1) A person is guilty of an offence if:

- (a) the person operates a ship; and
- (b) the ship is in a zone that it is not permitted to be in under the zoning plan that relates to the zone and the person is negligent as to that fact.

Penalty: 2,000 penalty units.

Owners and operators

- (2) If:
 - (a) a ship is operated in a zone; and
 - (b) under the zoning plan that relates to the zone, that ship is not permitted in the zone;the operator and the owner of the ship are each guilty of an offence punishable on conviction by a fine of not more than 500 penalty units.

- (3) An offence under subsection (2) is an offence of strict liability.

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

Interpretation

- (4) In this section:
ship has the same meaning as in the zoning plan concerned.

38MA Permission requirements to be observed for ships—zoned area

Operators

- (1) A person is guilty of an offence if:
 - (a) under a zoning plan, a ship is permitted to be in a zone only with the permission of:
 - (i) the responsible agency within the meaning of the plan; or
 - (ii) the Authority; and
 - (b) the person operates such a ship; and
 - (c) the ship is in that zone and the person is negligent as to that fact; and
 - (d) the ship being in that zone is not authorised by a permission granted or transferred to the person under the regulations,

being a permission of a kind declared by the regulations to be a permission to which this section applies; and

- (e) the ship being in that zone is not authorised by an authority given to the person in accordance with a condition to which such a permission is subject.

Penalty: 2,000 penalty units.

- (2) Strict liability applies to paragraph (1)(a).

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

Owners and operators

- (3) If:

- (a) under a zoning plan, a ship is permitted to be in a zone only with the permission of:
 - (i) the responsible agency within the meaning of the plan; or
 - (ii) the Authority; and
- (b) such a ship is operated in that zone; and
- (c) the ship being in that zone is not authorised by a permission granted or transferred to any person under the regulations, being a permission of a kind declared by the regulations to be a permission to which this section applies; and
- (d) the ship being in that zone is not authorised by an authority given to any person in accordance with a condition to which such a permission is subject;

the operator and the owner of the ship are each guilty of an offence punishable on conviction by a fine of not more than 500 penalty units.

- (4) An offence under subsection (3) is an offence of strict liability.

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

Interpretation

- (5) In this section:

ship has the same meaning as in the zoning plan concerned.

38MB Contravening conditions of permit or authority in relation to ships—zoned area

- (1) A person is guilty of an offence if:
 - (a) a permission or authority referred to in section 38MA is subject to a condition; and
 - (b) the condition applies to the person; and
 - (c) the person engages in conduct; and
 - (d) the conduct contravenes the condition.

Penalty: 2,000 penalty units.

- (2) The fault element for paragraph (1)(d) is negligence.

Note: Section 5.5 of the *Criminal Code* defines *negligence*.

- (3) In this section:

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

38MC Vessels causing damage in the Marine Park

Operators

- (1) A person is guilty of an offence if:
 - (a) the person operates a vessel; and
 - (b) the vessel is in the Marine Park and the person is negligent as to that fact; and
 - (c) that operation results in, or is likely to result in, damage to the Marine Park and the person is negligent as to that fact.

Penalty: 2,000 penalty units.

Owners and operators

- (2) If a vessel is operated in the Marine Park and that operation results in, or is likely to result in, damage to the Marine Park, the operator and the owner of the vessel are each guilty of an offence punishable on conviction by a fine of not more than 500 penalty units.

(3) An offence under subsection (2) is an offence of strict liability.

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

10 Subsections 38N(1) and (2)

Omit “38L”, substitute “38MC”.

11 Subsection 38N(7)

Omit “38L”, substitute “38MC”.

12 After subsection 66(3)

Insert:

(4) A regulation is taken not to be inconsistent with a zoning plan merely because it:

- (a) further regulates an activity that is allowed or permitted by the zoning plan; or
- (b) prohibits an activity that is otherwise allowed or permitted by the zoning plan.

(4A) Nothing in subsection (4) allows a regulation to allow or permit an activity that is otherwise prohibited by the zoning plan concerned.

13 Schedule 2

Repeal the Schedule.

*[Minister’s second reading speech made in—
Senate on 5 April 2001
House of Representatives on 7 June 2001]*

(31/01)

