



Environment, Sport and Territories Legislation Amendment Act 1995

No. 25 of 1995

**An Act to amend legislation administered by the
Department of the Environment, Sport and Territories, and
for related purposes**

[Assented to 6 April 1995]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Environment, Sport and Territories Legislation Amendment Act 1995*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Amendments of the *Great Barrier Reef Marine Park Act 1975*

3.(1) The *Great Barrier Reef Marine Park Act 1975* is amended in accordance with the applicable items in Schedule 1, and the other items in that Schedule have effect according to their terms.

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(2) The *Great Barrier Reef Marine Park Act 1975* is also amended in accordance with Schedule 2.

Amendments of other Acts

4. The Acts referred to in Schedule 3 are amended in accordance with the applicable items in that Schedule.

SCHEDULE 1

Subsection 3(1)

**AMENDMENTS OF THE GREAT BARRIER REEF MARINE PARK
ACT 1975**

1. Subsection 3(1):

Insert:

“ **‘amendment’**, in relation to a plan of management, means an amendment of such a plan that is prepared under section 39ZG;

‘ecological community’ has the same meaning as in the *Endangered Species Protection Act 1992*;

‘enforcement provision’, in relation to a plan of management or an amendment of a plan of management, has the meaning given by subsection 39ZD(5) or by that subsection as it has effect because of subsection 39ZG(2), as the case may be;

‘evidential material’ means a thing relevant to an indictable offence or a thing relevant to a summary offence, including such a thing in electronic form;

‘frisk search’ means:

(a) a search of a person conducted by quickly running the hands over the person’s outer clothing; and

(b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person;

‘oil’ has the same meaning as in Part II of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*;

‘oil tanker’ means a vessel fitted with cargo spaces that are constructed and used to carry oil in bulk of a total capacity of at least 200 cubic metres;

‘ordinary search’ means a search of a person or of articles in a person’s possession that may include:

(a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and

(b) an examination of those items;

‘plan of management’ means a plan of management for the Marine Park that is prepared under section 39ZD;

‘seizable item’ means anything that would present a danger to a person or could be used to help a person to escape from lawful custody;

‘species’ has the same meaning as in the *Endangered Species Protection Act 1992*.”

2. Subsection 3(1) (definition of “Chairman”):

Omit, substitute:

“ **‘Chairperson’** means the Chairperson of the Authority;”

SCHEDULE 1—continued

3. Subsections 3(7) and (8):

Omit, substitute:

“(7) Subject to subsection (8), the **overall length** of a vessel is 110% of the length as shown on the vessel’s load-line certification.

“(8) If the overall length of a vessel cannot be worked out under subsection (7), the length is taken to be the distance between:

- (a) a vertical line passing through a point that is the foremost part of the stern; and
- (b) a vertical line passing through a point that is the aftermost part of the stern.”.

4. After paragraph 7(1)(c):

Insert:

“(caa) to make plans of management for the Marine Park in accordance with Part VB;”.

5. Subsection 10(1):

Omit, substitute:

“(1) The Authority consists of the following members:

- (a) a Chairperson;
- (b) a member appointed to represent the interests of the Aboriginal communities adjacent to the Marine Park;
- (c) 2 other members.”.

6. Subsection 38(4):

Omit, substitute:

“(4) A person must not intentionally or negligently:

- (a) contravene subsection (2); or
- (b) having obtained the Authority’s approval under subsection (3) for the carrying on of operations for the recovery of minerals, carry on any such operations except in accordance with the approval.

Penalty: 500 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.”.

7. Subsection 38(7):

Omit “not exceeding \$10,000”, substitute “of not more than 100 penalty units”.

SCHEDULE 1—continued

8. Section 38A:

Repeal, substitute:

Zones to be used only for permitted purposes

“38A. A person must not intentionally or negligently use or enter a zone for a purpose other than a purpose that is permitted under the zoning plan that relates to the zone.

Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.”.

9. Subsection 38B(1):

Omit “a person shall not”, substitute “a person must not intentionally or negligently”.

10. Paragraph 38B(1)(c):

After “granted” insert “or transferred”.

11. Subsection 38B(1):

Omit the penalty, substitute:

“Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.”.

12. Section 38C:

Repeal, substitute:

Contravening conditions of permission or authority—zoned area

“38C. If a permission or authority referred to in section 38B is subject to a condition, a person to whom the condition applies must not intentionally or negligently contravene the condition.

Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.”.

13. Section 38D:

Omit “a person shall not”, substitute “a person must not intentionally or negligently”.

SCHEDULE 1—continued

14. Section 38D:

Omit the penalty, substitute:

“Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.”.

15. Section 38E:

Omit “A person shall not”, substitute “A person must not intentionally or negligently”.

16. Section 38E:

Omit the penalty, substitute:

“Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.”.

17. Subsection 38F(1):

Omit “A person shall not”, substitute “A person must not intentionally”.

18. Subsection 38F(1):

Omit the penalty, substitute:

“Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.”.

19. Section 38G:

Repeal, substitute:

Contravening condition of permission or authority—unzoned area

“38G. If a permission or authority referred to in section 38F is subject to a condition, a person to whom the condition applies must not intentionally or negligently contravene the condition.

Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.”.

20. Section 38H:

Omit “A person shall not”, substitute “A person must not intentionally or negligently”.

SCHEDULE 1—continued

21. Section 38H:

Omit the penalty, substitute:

“Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.”.

22. Subsections 38J(1) and (2):

Omit, substitute:

“(1) A person must not intentionally or negligently discharge waste in the Marine Park unless:

- (a) the discharge is for the purpose of scientific research or is sewage; and
- (b) the discharge is 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: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

“(2) If a permission referred to in subsection (1) is subject to a condition, a person to whom the condition applies must not intentionally or negligently contravene the condition.

Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.”.

23. Subsections 38J(4), (5) and (6):

Omit, substitute:

“(4) This section does not apply to the discharge from a vessel or aircraft of:

- (a) sewage, if:
 - (i) the vessel or aircraft, as the case may be, does not contain a storage tank of a kind designed for storage of sewage; or
 - (ii) the vessel or aircraft, as the case may be, contains a storage tank of a kind designed for the storage of sewage and the vessel or aircraft is more than 500 metres seawards from the seaward edge of the nearest reef; or

SCHEDULE 1—continued

(b) fresh fish, or parts of fresh fish, if the fish were caught within the Marine Park.

“(5) This section does not apply to the discharge of waste from a vessel, aircraft or platform if:

- (a) the discharge was for the purpose of securing the safety of the vessel, aircraft or platform, as the case may be, or for the purpose of saving life at sea; or
- (b) the discharge:
 - (i) was for the purpose of combating specific incidents of pollution in order to minimise the damage from pollution; and
 - (ii) was approved by a prescribed officer; or
- (c) in respect of waste that escaped from the vessel, aircraft or platform as a result of damage (other than intentional damage) to the vessel, aircraft or platform, as the case may be, or to its equipment—all reasonable precautions were taken after the occurrence of the damage or the discovery of the discharge for the purpose of preventing or minimising the escape of waste; or
- (d) in respect of waste consisting of fishing net, or material used in the repair of a fishing net, that was accidentally lost at sea—all reasonable precautions were taken to prevent the loss.

“(6) For the purposes of paragraph (5)(c), damage to a vessel, aircraft or platform, or to its equipment, is taken to be intentional damage if, and only if, the damage arose in circumstances in which the person in charge, or the owner or a co-owner, of the vessel, aircraft or platform:

- (a) acted with intent to cause damage; or
- (b) acted recklessly and with knowledge that damage would probably result.

“(7) In this section:

‘aircraft’ does not include an aircraft belonging to an arm of the Defence Force or of the defence force of a foreign country;

‘discharge’ means release, however the release is caused, and includes any escape, disposal, depositing, spilling, leaking, pumping, emitting or emptying;

‘prescribed officer’ has the same meaning as in subsection 3(2) of the *Protection of the Sea (Prevention of Pollution of Ships) Act 1983* but includes a person declared by the regulations to be a prescribed officer for the purposes of this section;

SCHEDULE 1—continued

‘reef’ includes bommie fields, reef slopes, moats and ramparts;

‘vessel’ does not include a vessel belonging to an arm of the Defence Force or of the defence force of a foreign country;

‘waste’ means:

- (a) oil within the meaning of Part II of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*; and
- (b) oil mixtures if the oil content of the discharge is greater than 15 parts in 1,000,000 parts; and
- (c) noxious liquid substances within the meaning of Part III of that Act; and
- (d) packaged harmful substances within the meaning of Part IIIA of that Act; and
- (e) sewage within the meaning of Part IIIB of that Act; and
- (f) garbage within the meaning of Part IIIC of that Act; and
- (g) any other matter that is declared by the regulations to be waste for the purposes of this section.”.

24. Paragraph 38K(1)(a):

Omit “38J”, substitute “38H”.

25. Paragraph 38K(1)(b):

Omit “the person in charge of the vessel or aircraft”, substitute “a responsible person in relation to the vessel or aircraft”.

26. Subsection 38K(1):

Add at the end “punishable on conviction by a fine of not more than 200 penalty units”.

27. Subsections 38K(2) to (5):

Omit, substitute:

“(2) In subsection (1):

‘responsible person’, in relation to a vessel or aircraft, means:

- (a) a person who, at the time the offence was committed, was the master of the vessel or was in charge of the aircraft; or
- (b) a person who, at the time the offence was committed, was the owner, a co-owner, or an owner of any part of or share in, the vessel or aircraft; or

SCHEDULE 1—continued

- (c) a person (the ‘operator’) who, at the time the offence was committed, was a party to an agreement with a person referred to in paragraph (a) or (b) under which the operator, or the operator and the other party to the agreement, may determine the activities for which the vessel or aircraft is used.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.”.

28. After section 38K:

Insert:

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

“38L.(1) If:

- (a) by use of a vessel, aircraft or platform, an offence is committed against section 38J; and
- (b) a responsible person in relation to the vessel, aircraft or platform:
- (i) knew, or had reasonable grounds to suspect, that the vessel, aircraft or platform would be used in committing the offence; and
 - (ii) did not take reasonable steps to prevent the use of the vessel, aircraft or platform in committing the offence;

the responsible person is guilty of an indictable offence punishable on conviction by a fine of not more than 2,000 penalty units.

“(2) Even though an offence against subsection (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of the offence if:

- (a) the court is satisfied that it is proper to do so; and
- (b) the defendant and the prosecutor consent.

“(3) If, under subsection (2), a court of summary jurisdiction convicts a person of an offence against subsection (1), the maximum fine that the court may impose is one-tenth of the maximum fine that could have been imposed had the offence been tried on indictment.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

“(4) In this section:

‘responsible person’, in relation to a vessel, aircraft or platform, means:

- (a) a person who, at the time the offence was committed, was the master of the vessel or was in charge of the aircraft or platform; or

SCHEDULE 1—continued

- (b) a person who, at the time the offence was committed, was the owner, a co-owner, or an owner of any part of or share in, the vessel, aircraft or platform; or
- (c) a person (the ‘operator’) who, at the time the offence was committed, was a party to an agreement with a person referred to in paragraph (a) or (b) under which the operator, or the operator and the other party to the agreement, may determine the activities for which the vessel, aircraft or platform is used.”.

29. Section 38M:

Repeal.

30. Subsections 38N(1), (2) and (7):

Omit “38K”, substitute “38L”.

31. After Part VA:

Insert:

“PART VB—PLANS OF MANAGEMENT

Interpretation

“39V.(1) A reference in this Part to a **community group having a special interest** in an area of the Marine Park includes a reference to the people in the group who have some form of native title to the area or its resources or have some other special identification with the area or its resources.

“(2) A reference in this Part to **public notice** is a reference to notice published:

- (a) in the *Gazette*; and
- (b) in a newspaper circulating generally in Queensland; and
- (c) in such other manner (if any) as the Authority considers appropriate.

Preparation of plans of management

“39W.(1) The Authority may, in writing, prepare plans of management for the Marine Park in accordance with this Part.

“(2) This Part does not prevent the Authority from preparing and implementing a plan of management for an area of the Marine Park under a provision of this Act other than this Part or under a provision of a zoning plan and this Part does not apply in relation to such a plan of management.

SCHEDULE 1—continued

Types of plans of management

“39X. The Authority may prepare plans of management for the following:

- (a) one or more areas of the Marine Park;
- (b) one or more species within the Marine Park or within an area or areas of the Marine Park;
- (c) one or more ecological communities within the Marine Park or within an area or areas of the Marine Park.

Objects of plans of management

“39Y. The objects of plans of management are as follows:

- (a) to ensure, for particular areas of the Marine Park in which the Authority considers that nature conservation values, cultural and heritage values, or scientific values, are, or may be, threatened, that appropriate proposals are developed to reduce or eliminate the threats;
- (b) to ensure that species and ecological communities that are, or may become, vulnerable or endangered are managed to enable their recovery and continued protection and conservation;
- (c) to ensure that activities within areas of the Marine Park are managed on the basis of ecologically sustainable use;
- (d) to provide a basis for managing the uses of a particular area of the Marine Park that may conflict with other uses of the area or with the values of the area;
- (e) to provide for the management of areas of the Marine Park in conjunction with community groups in circumstances where those groups have a special interest in the areas concerned;
- (f) to enable people using the Marine Park to participate in a range of recreational activities.

The Authority to be informed by the precautionary principle in preparing management plans and protecting world heritage values

“39Z.(1) The Authority in preparing management plans must have regard to:

- (a) the protection of world heritage values of the Marine Park; and
- (b) the precautionary principle.

“(2) In subsection (1):

SCHEDULE 1—continued

‘the precautionary principle’ has the same meaning as in section 3.5.1 of the Intergovernmental Agreement on the Environment, a copy of which is set out in the Schedule to the *National Environment Protection Council Act 1994*.

Arrangements with community groups that have special interests in areas of the Marine Park

“39ZA.(1) The Authority may enter into an agreement or arrangement for the purposes of this Part with a group of people who are representative of a community group that has a special interest in an area of the Marine Park.

“(2) The agreement or arrangement may relate to the development and/or the implementation of a plan of management for, or for a species or ecological community within, the area concerned and may, if the Authority considers it appropriate, provide that, if such a plan of management is prepared, the community group is to manage the area, or the species or ecological community within the area, jointly with the Authority in accordance with the plan.

Notice of proposal to prepare plan of management

“39ZB.(1) Before preparing a plan of management, the Authority must, by public notice:

- (a) state that it proposes to prepare the plan; and
- (b) set out the area, species or ecological community to which the plan is to relate; and
- (c) invite interested persons to make written submissions in relation to matters to be included in the plan by a date (not earlier than one month after the date of publication of the notice in the *Gazette*) stated in the notice; and
- (d) state an address to which submissions may be sent.

“(2) A person may, not later than the date stated in the notice, make written submissions to the Authority in connection with the proposed plan of management.

“(3) The Authority must take into account any submissions made to it in accordance with subsection (2).

“(4) After the publication of the notice, the Authority may decide that the proposed plan of management is to cover an area, species or ecological community not mentioned in the notice but, if it does so, it is not required to give a further public notice in relation to the proposed plan.

SCHEDULE 1—continued

Moratorium on grant of new permits while plan of management is being prepared

“39ZC.(1) The Authority may, in a public notice given under subsection 39ZB(1) in relation to a proposed plan of management, or in a separate public notice, direct that no relevant permissions (within the meaning of the regulations) of a kind referred to in the notice containing the direction are to be granted under the regulations in relation to the area, species or ecological community to which the proposed plan is to relate during the period beginning on the date of publication in the *Gazette* of the notice containing the direction and ending:

- (a) at the end of 12 months after that date; or
- (b) on the day on which the plan of management comes into force;

whichever first occurs.

“(2) A direction given under subsection (1) has effect according to its terms.

Preparation of plan of management

“39ZD.(1) After taking into account all submissions made to it in accordance with section 39ZB, the Authority may prepare the plan of management.

“(2) The plan of management must not be inconsistent with any provision of this Act or any provision of a zoning plan in force for the area, species or ecological community to which the plan of management relates.

“(3) Without limiting the generality of subsection (2), a reference in that subsection to a plan of management being inconsistent with a provision of a zoning plan includes a reference to a plan of management permitting the doing of anything that is prohibited by the provision.

“(4) A plan of management is taken not to be inconsistent with a zoning plan merely because it prohibits the doing of something that is not prohibited by the zoning plan.

“(5) If the plan of management contains provisions (the ‘**enforcement provisions**’) prohibiting or regulating the doing of something, or requiring the doing of something, those provisions are to be included in a separate part of the plan.

“(6) The enforcement provisions may prohibit the doing of an act even though the doing of the act would, apart from the enforcement provisions, be permitted or authorised by or under this Act.

SCHEDULE 1—continued

“(7) The enforcement provisions may exclude from their operation acts or omissions of a kind that were lawfully engaged in before the enforcement provisions come into force.

Notice of preparation of plan of management

“39ZE.(1) When the Authority has prepared a plan of management, the Authority must cause public notice to be given:

- (a) stating the plan has been prepared; and
- (b) setting out the area, species or ecological community to which the plan relates; and
- (c) inviting interested persons to make written submissions to the Authority in connection with the plan by a date (not earlier than one month after the date of publication of the notice in the *Gazette*) stated in the notice; and
- (d) stating:
 - (i) an address from which copies of the plan may be obtained; and
 - (ii) an address to which submissions may be sent.

“(2) A person may, not later than the date stated in the notice, make written submissions to the Authority in connection with the plan of management.

“(3) The Authority must take into account any submissions so made and:

- (a) if it thinks fit, alter the plan of management accordingly; or
- (b) otherwise, confirm the plan of management.

“(4) The Authority must cause public notice to be given:

- (a) if it has altered the plan of management as mentioned in paragraph (3)(a):
 - (i) stating that the plan of management has been altered; and
 - (ii) stating an address at which copies of the plan of management as altered may be inspected or from which copies of the plan of management as altered may be obtained; or
- (b) otherwise, stating that the plan of management has been confirmed.

When plan of management comes into force

“39ZF.(1) A plan of management (other than the enforcement provisions of the plan) comes into force on the day on which the notice referred to in subsection 39ZE(4) is published in the *Gazette*.

“(2) The enforcement provisions of a plan of management come into force on the day as from which regulations made under paragraph 66(2)(ba) declare that those provisions take effect.

SCHEDULE 1—continued

Amendment of plan of management

“39ZG.(1) The Authority may, in writing, prepare an amendment of a plan of management for the Marine Park in accordance with this section.

“(2) Sections 39ZD to 39ZF apply in relation to the preparation of an amendment of a plan of management in the same way as they apply in relation to the preparation of a plan of management.

“(3) For the purposes of those sections as so applying:

- (a) section 39ZD has effect as if the words ‘After taking into account all submissions made to it in accordance with section 39ZB’, were omitted; and
- (b) references in those sections to a plan of management are taken to be references to an amendment of a plan of management.

Revocation of plan of management

“39ZH.(1) The Authority may, by writing, revoke a plan of management.

“(2) The Authority may cause public notice to be given stating that the plan of management is revoked.

“(3) The revocation takes effect when the public notice is published in the *Gazette*.

“(4) If the regulations providing for giving effect to the enforcement provisions of a plan of management are repealed or otherwise cease to have effect, the plan of management is, by this subsection, revoked.

“(5) A reference in this section to a plan of management is, if the plan of management has been amended, a reference to the plan of management as amended.

Transitional

“39ZI.(1) If a plan relating to the management of the Marine Park was in the course of preparation immediately before the commencement of this Part:

- (a) the plan is taken to be a plan of management being prepared under subsection 39W(1); and
- (b) sections 39ZB and 39ZC do not apply in relation to the plan but subsections 39ZD(2) to (7) and sections 39ZE, 39ZF and 39ZG apply in relation to the plan when it has been prepared.

“(2) If a plan relating to the management of the Marine Park was prepared before the commencement of this Part:

SCHEDULE 1—continued

- (a) the plan is taken to be a plan of management duly prepared under subsection 39W(1); and
- (b) subsections 39ZD(2) to (7) and sections 39ZE, 39ZF and 39ZG apply in relation to the plan.

“(3) Subsections (1) and (2) do not apply to a plan relating to the management of an area of the Marine Park if, had this Part been in force when the Authority began to prepare the plan, this Part would not have applied to the preparation of the plan because of subsection 39W(2).

“(4) The Authority may, in a public notice given under subsection 39ZE(1) in relation to a plan of management to which that subsection applies because of subsection (1) or (2) of this section or in a separate public notice, direct that no relevant permissions (within the meaning of the regulations) of a kind referred to in the notice containing the direction are to be granted under the regulations in relation to the area, species or ecological community to which the plan relates during the period beginning on the date of publication in the *Gazette* of the notice containing the direction and ending:

- (a) at the end of 12 months after that date; or
- (b) on the day on which the plan of management comes into force;

whichever first occurs.

“(5) A direction given under subsection (4) has effect according to its terms.”.

32. Paragraph 43(a):

Omit, substitute:

“(a) appoint any person to be an inspector; and”.

33. Subsection 45(2):

Omit, substitute:

“(2) A person who ceases to be an inspector must not fail, without reasonable excuse, to return his or her identity card to the Authority as soon as practicable after ceasing to be an inspector.

Penalty: 1 penalty unit.”.

34. After section 45:

Insert:

Power of inspector to give directions

“45A.(1) For the purpose of ensuring that this Act is complied with, an inspector may, subject to this section, give reasonable directions to any person who is within the Marine Park.

SCHEDULE 1—continued

“(2) A direction may be given orally, in writing, by radio or by any other appropriate means of communication.

“(3) The inspector by whom a direction is given must identify himself or herself when giving the direction and must produce his or her identity card at the first practicable opportunity to the person to whom the direction is given.

“(4) A person must not, without reasonable excuse, refuse or fail to comply with a direction given to the person.

Penalty for a contravention of this subsection: 10 penalty units.”.

35. Subsection 46(1):

Omit, substitute:

“(1) An inspector may, without warrant, arrest a person for an offence against this Act if the inspector believes on reasonable grounds that:

- (a) the person has committed or is committing the offence; and
- (b) proceedings by summons against the person would not achieve one or more of the following purposes:
 - (i) ensuring the appearance of the person before a court in respect of the offence;
 - (ii) preventing a repetition of a continuation of the offence or the commission of another offence against this Act;
 - (iii) preventing the concealment, loss or destruction of evidence relating to the offence;
 - (iv) preventing harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence;
 - (v) preventing the fabrication of evidence in respect of the offence;
 - (vi) preserving the safety or welfare of the person.

“(1A) If:

- (a) a person has been arrested under subsection (1) for an offence against this Act; and
- (b) before the person is charged with the offence, the inspector ceases to believe on reasonable grounds:
 - (i) that the person committed the offence; or
 - (ii) that holding the person in custody is necessary to achieve a purpose referred to in paragraph (1)(b);

SCHEDULE 1—continued

the person must be released.”.

36. Subsection 46(3):

After “subsection (1)”, insert “and has not been released under subsection (1A)”.

37. Section 46A:

Repeal, substitute:

Power to conduct a frisk search of an arrested person

“46A. An inspector who arrests a person for an offence against this Act, or is present at such an arrest, may, if the inspector suspects on reasonable grounds that it is prudent to do so in order to find out whether the person is carrying any seizable items:

- (a) conduct a frisk search of the person at or soon after the time of arrest; and
- (b) seize any seizable items found as a result of the search.

Power to conduct an ordinary search

“46B. An inspector who arrests a person for an offence against this Act, or is present at such an arrest, may, if the inspector suspects on reasonable grounds that the person is carrying:

- (a) evidential material in relation to that or another offence against this Act; or
- (b) a seizable item;

conduct an ordinary search of the person at or soon after the time of arrest, and seize any such material or item found as a result of the search.

Conduct of ordinary searches and frisk searches

“46C.(1) An ordinary search or a frisk search of a person under this Part shall be conducted by:

- (a) an inspector of the same sex as the person; or
- (b) in a case where an inspector of the same sex as the person is not available to conduct this search—any other person who is of the same sex and is requested by an inspector to conduct the search.

“(2) An inspector who conducts an ordinary search or a frisk search under this section must not use more force, or subject a person to greater indignity, than is reasonable or necessary in order to conduct the search.

SCHEDULE 1—continued

Retention of things that are seized

“46D. Subject to any contrary order of a court, if an inspector seizes a thing under section 46A or 46B, the inspector must return it if the reason for its seizure no longer exists or it is decided that it is not to be used in evidence, unless the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.”.

38. After section 47:

Insert:

Release subject to a condition

“47A. If a vessel, aircraft or article that has been seized under this Act is released to a person subject to a condition, the person must not, without reasonable excuse, fail to comply with the condition.

Penalty: Imprisonment for 12 months.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.”.

Notice requiring vessel, aircraft or article etc. to be delivered to inspector or other person

“47B.(1) An inspector may:

- (a) by written notice to the master of a vessel, or the person in charge of an aircraft, that the inspector is authorised to seize under this Act, require the person to deliver the vessel or aircraft to the inspector, or to another person referred to in the notice, at a place, and within a period, stated in the notice; and
- (b) by written notice to a person found by the inspector to be in possession of any article, animal or plant that the inspector is authorised to seize under this Act, require the person to deliver the article, animal or plant to the inspector, or to another person referred to in the notice, at a place, and within a period, stated in the notice.

“(2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person under subsection (1).

Penalty: Imprisonment for 12 months.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

SCHEDULE 1—continued

“(3) When a vessel, aircraft, article, animal or plant is delivered to an inspector or another person under a requirement made under subsection (1), section 47 applies in relation to the vessel, aircraft, article, animal or plant as if it had been seized under that section.”.

39. Paragraph 48(2)(b):

Omit, substitute:

“(b) require any person in the Marine Park whom the inspector finds committing, or reasonably suspects of having committed, an offence against this Act to leave the Marine Park or the zone or location within the Marine Park where the person is found; and”.

40. Subsection 48(5):

Omit, substitute:

“(5) A person must not, without reasonable excuse, intentionally or negligently fail to comply with a requirement made of the person by an inspector under subsection (2).

Penalty: 10 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.”.

41. After section 48:

Insert:

Power of inspector to copy, or take extracts from, documents

“48AA. If, in the course of searching a vessel or aircraft under section 48, an inspector, or a person helping an inspector, finds a document that the inspector or person reasonably believes:

- (a) may have been used, or have otherwise been involved, in the commission of an offence against this Act; or
- (b) may provide evidence of the commission of an offence against this Act;

then, whether or not the inspector seizes the document, the inspector, or a person helping the inspector, may make a copy of, or take an extract from, the document.

Power of inspector to seize weapons

“48AB. If:

- (a) an inspector stops or detains a vessel or aircraft under section 48; and

SCHEDULE 1—continued

- (b) the inspector, or a person helping the inspector, finds on, or in the possession of a person who is on, the vessel or aircraft a weapon or other thing capable of being used to inflict death or bodily injury; and
- (c) the inspector believes on reasonable grounds that the weapon or other thing may be used to cause the death of, or bodily injury to, the inspector, a person helping the inspector, or anyone else who is near the inspector or such a person;

the inspector may seize the weapon or other thing and retain it:

- (d) until the end of 60 days after the seizure; or
- (e) if a prosecution is brought within that period for an offence against this Act:
 - (i) in the commission of which the weapon or other thing may have been used or otherwise been involved; or
 - (ii) of which the weapon or other thing may provide evidence;until the prosecution is terminated.”.

42. Subsection 48A(2):

Omit, substitute:

“(2) An inspector may exercise, with respect to a person, an aircraft or a vessel, at a place that is outside the Marine Park, a power conferred on the inspector under subsection 46(1) or 48(1) or (2) if:

- (a) the inspector is a member of a police force; or
- (b) the inspector believes on reasonable grounds that it is not reasonably practicable for an inspector who is a member of a police force to exercise the power.”.

43. Section 49:

Repeal.

44. Section 59B:

- (a) After “offence” insert “punishable on conviction by a fine of not more than 500 penalty units.”.
- (b) Omit “Penalty: \$50,000.”.
- (c) Add at the end:

“Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.”.

45. Section 59C:

- (a) After “offence” insert “punishable on conviction by a fine of not more than 500 penalty units.”.

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SCHEDULE 1—continued

(b) Omit “Penalty: \$50,000.”.

(c) Add at the end:

“Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.”.

46. Section 59D:

(a) After “offence” insert “punishable on conviction by a fine of not more than 500 penalty units.”.

(b) Omit “Penalty: \$50,000.”.

(c) Add at the end:

“Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.”.

47. Section 59F:

Add at the end:

“(6) The Minister may, by writing, delegate to a person referred to in subsection (7) the Minister’s power under this section to grant an exemption.

“(7) The people to whom a delegation may be given under subsection (6) are any of the following:

(a) the Authority;

(b) the Chairperson;

(c) the Executive Officer of the Authority;

(d) if an arrangement is in force under subsection 42(2) between the Authority and another authority of the Commonwealth:

(i) the other authority; or

(ii) if the other authority is constituted by, or is administered by a body consisting of, 2 or more persons—the Chairperson of the other authority or of the body, as the case may be; or

(iii) the chief executive officer of the other authority.”.

48. Paragraph 59I(3)(a):

Omit “not exceeding \$10,000”, substitute “of not more than 100 penalty units”.

49. Paragraph 59I(3)(b):

Omit “not exceeding \$50,000”, substitute “of not more than 500 penalty units”.

SCHEDULE 1—continued

50. Subsection 59L(7):

Omit “not exceeding \$1,000”, substitute “of not more than 10 penalty units”.

51. Paragraph 61B(7)(b):

After “38K”, insert “or 38L”.

52. After paragraph 66(2)(b):

Insert:

“(ba) providing for giving effect to the enforcement provisions of a plan of management or to the enforcement provisions of an amendment of a plan of management;”.

53. Paragraph 66(2)(n):

Omit, substitute:

“(n) enabling a person who is alleged to have contravened a provision of the regulations to pay to the Authority, as an alternative to prosecution, a stated penalty that is not more than one-fifth of the maximum penalty by which a contravention of that provision is otherwise punishable;”.

54. Subsection 66(11):

(a) Omit “\$5,000”, substitute “50 penalty units.”.

(b) Add at the end of the subsection:

“Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.”.

55. Saving and transitional provisions

(1) A person who was the Chairman of the Great Barrier Reef Marine Park Authority immediately before the commencement of this item continues to hold office after that commencement as the Chairperson of the Authority for the remainder of the term for which he or she was appointed.

(2) A person who was a member (other than the Chairman) of the Great Barrier Reef Marine Park Authority immediately before the commencement of this item continues to hold office after that commencement as such a member for the remainder of the term for which he or she was appointed.

SCHEDULE 2

Subsection 3(2)

**OTHER AMENDMENTS OF THE GREAT BARRIER REEF
MARINE PARK ACT 1975**

1. The following provisions are amended by omitting “Chairman” (wherever occurring) and substituting “Chairperson”:

Subsection 11(2), sections 13 and 15, paragraphs 16(2)(a) and (b), subsections 16A(3) and (4), section 17, subsections 22(9) and 24(4), section 25 and subsections 26(1) and (2), 27(2), 28(2), (4), (6) and (7), 40(2) and (3) and 61A(3) and (4).

2. The following provisions are amended by omitting “he” (wherever occurring) and substituting “he or she”:

Subsections 11(2), 12(1), 15(5), 15(6), 17(1), 17(4), 21(3), 24(1), 25(2), 27(2A), 27(3), 28(6), 32(13), 32(14), 36(2), 46(2), 47(2), 47(6), 48(2), 48(3) and 48(4).

3. The following provisions are amended by omitting “his” (wherever occurring) and substituting “his or her”:

Subsection 10(8), section 14, paragraphs 15(1)(b) and 15(3)(b), subsection 15(7), paragraphs 16(2)(a) and (d), subsections 23(2), 25(2), 26(1), 26(3) and 27(3) and paragraphs 32(11)(b), 46(2)(a) and (b), 48(3)(b) and 48(4)(b).

4. The following provisions are amended by omitting “him” (wherever occurring) and substituting “him or her”:

Section 14, subsections 15(5), 24(4), 25(2), 26(1), 26(3), 36(2) and 46(3).

SCHEDULE 3

Section 4

AMENDMENTS OF OTHER ACTS

Australian Heritage Commission Act 1975

1. After paragraph 10(1)(a):

Insert:

“(aa) despite section 37, obtain goods or services on credit from any person by the use of a credit card; and”.

Australian Sports Commission Act 1989

2. Section 3:

Insert:

“‘**appointed member**’ means a member other than the Secretary to the Department;”.

3. Paragraphs 8(1)(a), (b), (c), (d), (e), (f), (g), (h), (j), (k) and (m):

At the end of each paragraph, add “and”.

4. After paragraph 8(1)(m):

Insert:

“(ma) despite subsection 46(2), obtain goods or services on credit from any person by the use of a credit card; and”.

5. Paragraph 13(1)(a):

At the end of the paragraph, add “and”.

6. After paragraph 13(1)(b):

Insert:

“(ba) the Secretary to the Department; and”.

7. Subsection 13(2):

After “member” insert “referred to in paragraph (1)(a), (b) or (c)”.

8. Paragraph 13(7)(a):

After “Deputy Chairperson” insert “or the office of Secretary to the Department”.

9. Subsection 15(3):

Omit “A member”, substitute “An appointed member”.

10. Subsection 17(1):

(a) After “other” insert “appointed”.

(b) Omit “a member”, substitute “an appointed member”.

SCHEDULE 3—continued

11. Subsection 17(2):

Omit “A member”, substitute “An appointed member”.

12. Subsection 19(1):

Omit “a member”, substitute “an appointed member”.

13. Subsection 19(2):

Omit “If a member”, substitute “If an appointed member”.

14. Subsection 20(3):

Omit “other than the Chairperson or Deputy Chairperson”, substitute “referred to in paragraph 13(1)(c)”.

15. Paragraph 21(7)(a):

Omit “4”, substitute “5”.

16. Part IX:

Repeal.

Australian Sports Drug Agency Act 1990

17. After paragraph 10(1)(b):

Insert:

“(ba) despite subsection 61(2), obtain goods or services on credit from any person by the use of a credit card; and”.

National Parks and Wildlife Conservation Act 1975

18. Paragraphs 17(1)(a), (b), (c) and (d):

At the end of each paragraph, add “and”.

19. After paragraph 17(1)(d):

Insert:

“(da) despite section 49, obtain goods or services on credit from any person by the use of a credit card; and”.

20. Section 46:

Repeal, substitute:

Payments to Fund

“46.(1) The following amounts are to be paid into the Fund:

(a) any money appropriated by the Parliament for the purposes of this Act;

SCHEDULE 3—continued

- (b) the proceeds of the sale of any property acquired out of money standing to the credit of the Fund;
- (c) any amounts paid to the Director in respect of leases, licences, permits and other authorities granted by the Director;
- (d) any other amount paid by a person to the Director if payment of the amount into the Fund would be consistent with the purposes for which the amount was paid by the Director and the Minister for Finance considers it appropriate that the amount should be paid into the Fund;
- (e) any charges paid under subsection 17(1A);
- (f) any other money received by the Director in the performance of his or her functions.

“(2) There is to be transferred to the Fund from the Consolidated Revenue Fund amounts equal to the following amounts:

- (a) the proceeds of a sale made under section 42;
- (b) any amount paid as a fine or other penalty imposed under this Act;
- (c) any fees collected under section 79 of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*.

“(3) The Consolidated Revenue Fund is appropriated for the purposes of transferring amounts to the Fund under subsection (2).”.

Norfolk Island Act 1979

21. Subsection 4(1) (definitions of “Deputy President” and “President”):

Omit.

22. Subsection 4(1):

Insert:

“‘Deputy Speaker’ means the Deputy Speaker of the Legislative Assembly;

‘Speaker’ means the Speaker of the Legislative Assembly;”.

23. Section 24:

(a) Omit “President” (wherever occurring), substitute “Speaker”.

(b) Omit “Deputy President” (wherever occurring), substitute “Deputy Speaker”.

24. Section 36:

Omit “President” (wherever occurring), substitute “Speaker”.

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SCHEDULE 3—continued

25. Section 41:

- (a) Omit “President” (wherever occurring), substitute “Speaker”.
- (b) Omit “Deputy President” (wherever occurring), substitute “Deputy Speaker”.

26. Section 42:

- (a) Omit “President” (wherever occurring), substitute “Speaker”.
- (b) Omit “Deputy President” (wherever occurring), substitute “Deputy Speaker”.

27. Subsection 51C(1):

Omit “President’s”, substitute “Speaker’s”.

28. Subsection 51C(3):

Omit “President”, substitute “Speaker”.

29. Subsection 51D(1):

Omit “President” (wherever occurring), substitute “Speaker”.

[*Minister’s second reading speech made in—
House of Representatives on 9 February 1995
Senate on 28 February 1995*]