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# Environment Protection and Biodiversity Conservation Amendment (Great Barrier Reef) Bill 2013

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## **Senate Standing Committee on Environment and Communications**

**15 April 2013**

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## Executive Summary

The Law Council supports the amendments proposed by the Environment Protection and Biodiversity Conservation Amendment (Great Barrier Reef) Bill 2013.

The Law Council believes that the amendments are an appropriate and proportionate response to the concerns the World Heritage Committee expressed in 2011 about the conservation of the outstanding universal values of the Great Barrier Reef Marine World Heritage Area (GBRWHA). The amendments are also an appropriate and proportionate response to the recommendations made by the UNESCO World Heritage Centre and the International Union for the Conservation of Nature (IUCN) in their 2012 reactive monitoring mission report.

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## Purpose

1. The Law Council of Australia writes in support of the amendments proposed by the Environment Protection and Biodiversity Conservation Amendment (Great Barrier Reef) Bill 2013 (the Bill).
2. This submission was prepared for the Law Council by the Australian Environment and Planning Law Committee in the Law Council's Legal Practice Section. The membership of the AEPLC comprises lawyers with expertise and experience in environmental law.
3. The Law Council believes that the amendments are an appropriate and proportionate response to the concerns the World Heritage Committee expressed in 2011 about the conservation of the outstanding universal values of the Great Barrier Reef Marine World Heritage Area (GBRWHA).<sup>1</sup> The amendments are also an appropriate and proportionate response to the recommendations made by the UNESCO World Heritage Centre and the International Union for the Conservation of Nature (IUCN) in their 2012 reactive monitoring mission report.<sup>2</sup>

## Background

4. The *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* is the principal piece of federal legislation directed at protecting matters of national environmental significance. Significantly, the legislation provides the central mechanism by which the Australian Government meets its international obligations to protect the outstanding universal values of World Heritage listed properties within Australia.
5. The GBRWHA was added to the World Heritage List in 1981 in recognition of its outstanding natural values. These values include:
  - representing the major stages of the earth's evolutionary history;
  - representing significant ongoing geological processes, biological evolution and human interaction with the natural environment;
  - containing unique, rare or superlative natural phenomena, formations or features or areas of exceptional natural beauty; and
  - maintaining habitats where populations of rare or endangered species of plants and animals still survive.
6. In March 2012, a joint World Heritage Centre/IUCN reactive monitoring mission visited the GBRWHA to assess the conservation status of the listed property after the World Heritage Committee had raised concerns about the expansion of coal and liquefied natural gas projects in the region. The mission noted the "rapidly increasing pace of proposals for coastal development in recent years"<sup>3</sup> and that the "unprecedented scale

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<sup>1</sup> UNESCO, World Heritage Committee, 'Decision 35 COM 7B.10', *Decisions Adopted by the World Heritage Committee at its 35<sup>th</sup> Session (UNESCO, 2011)*, UN Doc WHC-11/35.COM/20, Paris, 7 July 2011 <<http://whc.unesco.org/en/decisions/4418>>, 55–56.

<sup>2</sup> UNESCO World Heritage Centre – IUCN, *Mission Report: Reactive Monitoring Mission to Great Barrier Reef (Australia) 6th to 14th March 2012* (Fanny Douvere UNESCO World Heritage Centre and Tim Badman IUCN), <<http://whc.unesco.org/en/list/154/documents/>>.

<sup>3</sup> Ibid 43.

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of development affecting the property ... poses serious concerns over the long-term conservation of the property.”<sup>4</sup>

7. The World Heritage Committee had previously urged the Australian Government to undertake a comprehensive strategic assessment of the entire GBRWHA, to enable a long-term plan for sustainable development to be completed to protect the area's outstanding universal values over the long term. In 2011 the Committee had also requested an invitation to conduct a monitoring mission, to contribute to the strategic assessment process, and that Australia submit a report to the World Heritage Centre by 1 February 2012 on the course of action it proposed to take in response to the Committee's decision.<sup>5</sup>
8. The 2012 Mission Report recommended that Australia submit the strategic assessment for consideration by the World Heritage Committee at its 39<sup>th</sup> session in 2015.<sup>6</sup>
9. The 2012 Mission Report reiterated the importance of this strategic assessment, and of resolving concerns regarding existing impacts on water quality, traditional use, adequacy of offsets, monitoring and enforcement. It stated:

*Highly precautionary decision making consistent with the recommendations of the mission is required until the Strategic Assessment is completed, and its findings have been considered fully by the World Heritage Committee at its 39<sup>th</sup> session in 2015. The mission considers that the development of new ports or other types of large infrastructure, ahead of addressing demand through strategic planning and management within the existing port facilities would create a significant and largely irreversible negative impact on the OUV of the property. The mission considers further that an extension of the footprint of development outside of currently industrialized areas would clearly present a significant threat to the OUV and integrity of the property. Such decisions would entirely pre-empt the Strategic Assessment the State Party has committed to put in place, and thus undermine its effectiveness.*<sup>7</sup>

10. The Mission Report made a number of recommendations in light of its identified concerns. Relevantly, these include:

*R2: Not permit any new port development or associated infrastructure outside of the existing and long established major port areas within and adjoining the property. ... This measure should take immediate effect and requires full application until the Strategic Assessment and the resulting long-term plan for the sustainable development of the property has been completed, and has been considered by the World Heritage Committee.*

*R7: Ensure that any determination made for applications under the EPBC Act...includes for each application:*

*a) A thorough assessment, supported by a detailed statement of reasons, and appropriate independent review input, on how the proposal will ensure*

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<sup>4</sup> Ibid 27.

<sup>5</sup> UNESCO, World Heritage Committee, 'Decision 35 COM 7B.10', *Decisions Adopted by the World Heritage Committee at its 35<sup>th</sup> Session (UNESCO, 2011)*, UN Doc WHC-11/35.COM/20, Paris, 7 July 2011 <<http://whc.unesco.org/en/decisions/4418>>, 55–56.

<sup>6</sup> UNESCO World Heritage Centre – IUCN, above n 1, 5–9, 36–37, 49, 53, 60–65.

<sup>7</sup> Ibid 5.

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*conservation of each of the components that make up the OUV of the property, and avoid impacts upon it;*

*b) A thorough consideration of the combined, cumulative and possible consequential impacts of development, infrastructure and associated activities on the OUV as material considerations in determining all applications, benchmarked on the date of inscription of the property in 1981;*

*c) Detailed assessment of alternative options for all aspects of a development proposal, including supporting infrastructure and activities. This assessment should consider in detail the environmental, social and economic costs and benefits and lead to a clear indication of the net benefit of the development to the values and integrity of the property.*

*R8: Adopt the highest level of precaution in decision-making regarding development proposals with potential to impact the property, and to Prevent any approval of major projects that may compromise the outcomes of the Strategic Assessment, until the Strategic Assessment is completed and its resulting plan for the long-term sustainable development for the property has been considered by the World Heritage Committee. During this period, the State Party is requested to ensure no developments are permitted which create individual, cumulative or combined impacts on the OUV of the Great Barrier Reef World Heritage area and its long-term conservation.<sup>8</sup>*

## **Key issues**

11. The Law Council considers that the amendments proposed by the Bill directly address the recommendations made in the 2012 Mission Report by the Reactive Monitoring Mission to the Great Barrier Reef. In particular, if enacted:

- Section 24D would prohibit new development outside existing port areas, consistent with Recommendation 2. Section 24D(b) explicitly prevents expansion of developments in areas identified in the Mission Report as being of particular concern (including northern Curtis Island).
- Section 24E would constrain the Minister's capacity to approve development in existing port areas where the action would "impact individually or cumulatively" on the world heritage values of the GBRWHA. This is consistent with Recommendation 8.
- Adopting the moratorium proposed by s 24F on all further development likely to impact on the world heritage values of the GBRWHA until the strategic assessment is endorsed by the World Heritage Committee would also be consistent with Recommendation 8, invoking the highest level of precaution available and preventing development that may compromise the long term conservation goals for the World Heritage area.
- The requirement in s 24G to demonstrate a net benefit for any action that impacts on the world heritage values of the area is consistent with Recommendation 7, ensuring that applications under the EPBC Act provide a "clear indication of the net benefit of the development to the values and integrity of the property."

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<sup>8</sup> Ibid 6–8.

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12. The Australian Government must fulfil its international commitments to protect the outstanding universal values of Great Barrier Reef World Heritage Area, and avoid the property being added to the List of World Heritage in Danger.
  13. The Law Council considers that implementation of the amendments proposed in the *Environment Protection and Biodiversity Conservation Amendment (Great Barrier Reef) Bill 2013* would facilitate this outcome.

Yours sincerely

**Martyn Hagan**  
**Acting Secretary-General**

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## **Attachment A: Profile of the Law Council of Australia**

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The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Independent Bar
- The Large Law Firm Group (LLFG)
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of approximately 60,000 lawyers across Australia.

The Law Council is governed by a board of 17 Directors – one from each of the Constituent Bodies and six elected Executives. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive, led by the President who serves a 12 month term. The Council's six Executive are nominated and elected by the board of Directors. Members of the 2013 Executive are:

- Mr Joe Catanzariti, President
- Mr Michael Colbran QC, President-Elect
- Mr Duncan McConnel, Treasurer
- Ms Fiona McLeod SC, Executive Member
- Mr Justin Dowd, Executive Member
- Ms Leanne Topfer, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.