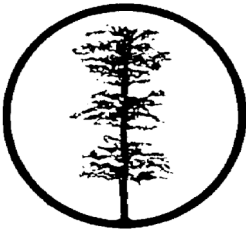
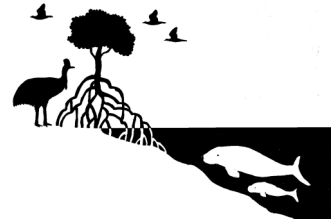


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8 September 2008

The Secretary
Senate Standing Committee on the Environment, Communications and the Arts
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia
By email: eca.sen@aph.gov.au

Dear Secretary,

**Inquiry into the
*Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008 (Cth)***

The Environmental Defenders Office-Queensland (“EDO-Qld”) and the Environmental Defenders Office of Northern Queensland Inc. (“EDO-NQ”) welcome the opportunity to make submissions to the Senate Standing Committee for the Environment, Communications and the Arts in relation to the inquiry into the *Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008 (Cth)* (“the Bill”).

Both EDO-Qld and EDO-NQ are community legal centres specialising in public interest environmental law, and are part of the Australian Network of Environmental Defenders Offices (“ANEDO”), with other member offices from all capital cities throughout Australia. You can learn more about ANEDO at www.edo.org.au, EDO-Qld at www.edo.org.au/edoqld and EDO-NQ at www.edo.org.au/edong.

EDO-Qld and EDO-NQ use the law (and help the community use the law) to protect and conserve the unique and invaluable Australian environment. We lodge these submissions with appreciation for the opportunity to be involved in the Senate Standing Committee’s inquiry, and to achieve the reforms required to the *Great Barrier Reef Marine Park Act 1975 (Cth)* (“GBRMP Act”) and other relevant legislation to achieve those outcomes in relation to the World Heritage Great Barrier Reef.

Our submissions in relation to the Bill are **enclosed**.

Whilst we welcome and support these proposed amendments, we would like to see further measures enacted to ensure that the Great Barrier Reef Marine Park Authority (“GBRMPA”) and the Commonwealth have at their disposal the legislative mechanisms required in order to be able to best adapt for, and mitigate, the inevitable impacts of certain climate change. Further amendment of the GBRMP Act and the EPBC Act to achieve those objects are justified by a number of factors including that:

- ? The GBR Region and the World Heritage values it possesses are global treasures which Australia is obliged to protect and conserve to its full capacity and ability;
- ? The GBR Region houses ecosystems and processes which are vital to the future health and biodiversity of the global environment;
- ? The GBR Region plays a major part in the tourism economies of Queensland and Australia, and indeed the economies throughout the GBR Region and its coastline; and
- ? The future health of those economies depends to a very large degree upon the future health and sustainable use of the GBR Region.

The very real threat which climate change poses to the GBR Region demands that decision-makers are adequately and appropriately furnished with the means to be able to effect needed changes to the management and use of the GBRMP.

Should you have any queries about any part of this submission please do not hesitate to contact us.

Yours faithfully

Environmental Defenders Office (Qld) Inc. and
Environmental Defender’s Office of Northern Queensland (Inc.)

A handwritten signature in blue ink, appearing to be 'Adam Millar', written over a light blue circular stamp.

Larissa Waters
Acting Principal Solicitor
EDO Qld

Adam Millar
Principal Solicitor
EDO NQ
*(signed on behalf of Larissa Waters
with her approval in her absence)*

**Submissions on the inquiry into the
*Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008 (Cth)***

Overview

We fully support the purpose of the Bill, namely to:

- ? establish a modern framework for administration of the *Great Barrier Reef Marine Park Act 1975* (“GBRMP Act”) and management of the Great Barrier Reef Marine Park (“Marine Park”) that is aligned, integrated and not duplicative with the *Environment Protection and Biodiversity Conservation Act 1999* (“EPBC Act”) and other legislation;
- ? put in place robust and streamlined environmental impact assessment and permitting processes;
- ? enhance capability for investigation and evidence collection;
- ? provide a wider range of enforcement options allowing for a more tailored and targeted approach to enforcement;
- ? enhance deterrence and encourage responsible use of the Marine Park; and
- ? establish new emergency management powers.

In general, we submit that the proposed amendments achieve this purpose by:

- ? including the concept of “intergenerational equity” into the definition of “ecologically sustainable use”;
- ? increasing the effective involvement of the Great Barrier Reef Marine Park Authority (“GBRMPA”) in relation to the assessment of activities which may impact upon the GBRMP;
- ? increasing the powers of the GBRMPA and its officers in relation to enforcement of the GBRMP Act, and the investigation and prosecution of offences under it;
- ? aligning the assessment and regulatory provisions of the GBRMP Act and the EPBC Act;
- ? creating new offences;
- ? reframing offences to, amongst other things, rectify problems previously encountered with discharging burdens of proof on prosecution which have hampered better environmental outcomes;
- ? increasing and expanding liability for offences;
- ? increasing penalties for the commission of offences;
- ? in relation to offences, deeming users of the GBRMP to be aware of its boundaries and zones, and the effect of them;
- ? strengthening the intention that commercial mining and petroleum and gas recovery is prohibited absolutely in the Great Barrier Reef Region.

Our more detailed comments in relation to specific provisions of the Bill appear below.

Preliminary Provisions

We support these proposed amendments without comment.

Schedule 1 – Objects and Application

We support the proposed amendments to the Objects and Application of the GBRMP Act, in particular the inclusion of the concept of “intergenerational equity” into the definition of “ecologically sustainable use”.

Our only comments in relation to these proposed amendments are as follows:

- ? proposed section 3AB(e) of the GBRMP Act appears ambiguous, and it is unclear what is being referred to. We recommend amendments to clarify what is intended;
- ? we submit that the proposed section 7(3) of the GBRMP Act should be amended to convert the power of the Authority to prepare and publish the plans and policies referred to an obligation, by replacing the word “may” in the head of the section to “must”;
- ? in relation to explanatory memorandum 18 (in relation to item 25 – application of *Legislative Instruments Act 2003* (Cth) (“LI Act”)): the GBRMP Act must ensure that any fishing activities conducted under Queensland approvals do not have significant adverse impacts upon matters of national environmental significance (“matters of NES”) (i.e. whilst Queensland is jurisdictionally responsible for the regulation of fisheries in Queensland, it must also be obligated to ensure that those fishing activities do not have adverse negative impacts upon matters of NES).

Schedule 2 – Matters Relating to the Great Barrier Reef Marine Park Authority

EDO-Qld and EDO-NQ support the proposed amendments in Schedule 2 of the Bill, and make the following submissions to further improve these positive proposals.

Given the extremely large area covered by the GBRMP and therefore the large number of different and distinct Aboriginal and Torres Strait Islander groups and cultures within the jurisdiction of the GBRMP we submit that the Traditional Owner (“TO”) representative on the GBRMPA Board be supported to consult with relevant and appropriate representatives of those groups and cultures to ensure that the TO representative may be better informed in relation to relevant matters. This may be done with the assistance of Land Councils and appropriately qualified and informed anthropologists, if required.

We support proposed section 18 (Decisions without meetings) if it is used in a manner which facilitates the operations, deliberations and decisions of the Authority, and does not compromise those matters. As a consequence of this proposed amendment, we submit that consideration should be given, if it has not already been given, to setting a minimum number of ‘face to face’ meetings of the Authority within each 12 month period. In our submission, these amendments coupled together would allow meetings of the Authority to be run more efficiently (existing proposal),

whilst assisting the Authority to maintain the necessary minimum of familiarity, intimacy and cohesion that is enjoyed, and indeed required, by effective and well run management structures.

Schedule 3 – Proclaiming the Marine Park, Zoning Plans and Plans of Management

We largely support these proposed amendments, and provide the following submissions:

- ? We fully support the increase in and enhancement of stakeholder and community engagement and involvement in the management of the GBR by introducing a requirement for the GBRMPA to publicly consult of any proposal *to either* proclaim an area as part of the GBRMP, or remove an area from the GBRMP. However, we submit that a power should be retained in favour of GRBMPA to proclaim an area as part of the GBRMPA without having to publicly consult in relation to it if such a course of action is required in emergency circumstances to ensure the protection and conservation of the GBRMP and its World Heritage values;
- ? We agree with the intention of updating the matters that must be considered in developing zoning plans and plans of management; and
- ? We also agree with updating the objects which apply to the development of zoning plans to recognise the following as *additional* objects:
 - o protection of the ecosystem of the Great Barrier Reef, its biodiversity and World Heritage values;
 - o protection of areas that are of high conservation value;
 - o managing competing usage demands on the Marine Park;
 - o ensuring use of the Marine Park is ecologically sustainable; and
 - o providing for ecologically sustainable traditional use of the Great Barrier Reef.

Our comment in relation to this proposed amendment is that the object of “managing competing usage demands on the Marine Park” must always be done in a manner which supports, and does not compromise, “ecologically sustainable use” and the inherent concept of ‘intergenerational equity’. In other words, “managing competing usage demands” should always be resolved in favour of the sustainability of the Marine Park, in the short, medium and long term. Appropriate amendments should be made to both the Bill and the Explanatory Memoranda to reflect this intention.

Schedule 4 – Environmental Impact Assessments

We fully support the proposed amendments in Schedule 4.

We particularly support and applaud:

- ? the establishment of the GBRMP as a matter of NES under the EPBC Act;
- ? the consequent application of the environmental impact assessment and approval requirements of the EPBC Act where:
 - o an action in the GBRMP has, will have or is likely to have, a significant impact on the environment; and

- an action outside the GBRMP which has, will have or is likely to have, a significant impact on the environment in the GBRMP;
- ? the establishment of a single, integrated environmental impact assessment process under the EPBC Act to be used for the purposes of both ‘approval requirements’ under the EPBC Act and ‘permission requirements’ under the GBRMP Act as necessary ancillary amendments to reflect the changed referral and approval processes involved in relation to relevant actions, and to attempt to make those processes as efficiently managed as possible, all with the intention of ensuring ecologically sustainable uses and outcomes for the GBRMP. The overall focus and aim of any amendments in the Bill should be to improve the ‘real’ protection of the Marine Park. Therefore, the suggested further amendments in relation to Items 42-44 of the Explanatory should not be discounted by any perceived inconvenience which a proponent may be required to endure, if to do so will clearly deliver better and more sustainable environmental outcomes. In support of this proposal, we submit that the number of proponents who would be so inconvenienced would be minimal.

Our only comments in relation to these proposed amendments are as follows:

- ? *in relation to Items 13 & 14 of the Explanatory Memoranda (Consequential amendments to section 74)¹ and comments from the Australian Heritage Council:* we submit that the discretionary power of the Minister to invite comments from the Australian Heritage Council should be converted to a positive requirement in cases where the Minister believes that the GBRMP matter of NES could be a “controlling provision” because of the impacts of the action on heritage values within the GBRMP (in relation to that aspect of the referred action only);
- ? *in relation to Item 25 of the Explanatory Memoranda (Consequential amendment to subsection 158A(1))²:* we submit that the effect of a “listing event” should only be limited where the “listing event” would otherwise result in the scope and nature of any assessment and approval process being of a lesser standard than that being undertaken at the relevant time; if the “listing event” increases the scope and nature of that assessment and approval process, or its standard, then the “listing event” should be allowed to have that effect.
- ? *in relation to Items 42-44 of the Explanatory Memoranda (Application of new environmental impact assessment and approval arrangements)³:* whilst we agree that new environmental impact assessment and approval arrangements should not necessarily introduce legal requirements retrospectively, we submit that:
 - new environmental impact assessment and approval arrangements should apply to those referrals in respect of which a decision has not made (as at the time of the commencement of the provision) on the level of assessment at the time that the new arrangements come into operation; and
 - for actions that are in the process of being assessed at the time the legislative changes commence, proponents should only be able to elect to have the new process and requirements apply in circumstances where to do so would not allow or cause an assessment and approval process of a lesser standard to apply (i.e. the proponent may choose a higher level of assessment and approval, but not a lesser).

¹ Paragraphs 85 and 86 of the Explanatory Memoranda (pages 19 & 20 of 73)

² Paragraph 91 of the Explanatory Memoranda (page 21 of 73)

³ Paragraphs 103 to 105 of the Explanatory Memoranda (page 23 of 73)

Schedule 5 – Investigation and Enforcement

We support the proposed amendments to create a single investigations regime for the purposes of both GBRMP Act and EPBC Act and to cure existing complexities in having two slightly different yet separate regimes, including:

- ? increasing the powers of GBRMPA officers for the purpose of investigating compliance with the EPBC Act as well as the GBRMP Act.
- ? Creating a range of new mechanisms for enforcing the GBRMP Act:
 - o Enforceable Directions;
 - o Civil Penalty Regime
 - o Enforceable Undertakings;
 - o Infringement Notices (however, in relation to Infringement Notices we submit that due care must be taken when formulating regulations to ensure that they only prescribe the most minor offences as those in respect of which a specified penalty may be paid (infringement notice be issued) as an alternative to prosecution.⁴ ~~Sound administrative guidelines should also be developed to ensure that infringement notices are utilised in the appropriate circumstances so that the deterrent nature of the penalty is not diminished;~~
Sound administrative guidelines should be developed in relation to each of these new enforcement and compliance mechanisms (Enforceable Directions, Civil Penalty Regime, Enforceable Undertakings and Infringement Notices) to ensure that these new mechanisms are utilised in the appropriate circumstances in order that the deterrent nature of the penalty is not diminished
- ? Provisions designed to encourage compliance with the GBRMP Act and responsible use of the GBRMP, including creating:
 - o creating the power to require publication of offences;
 - o creating liability in executive officers in certain circumstances;
 - o creating liability in permission and licence holders;
 - o creating power for the Courts to make remediation orders (to prevent, repair or mitigate environmental damage resulting from their conduct);
 - o requiring all users of the GBRMP to observe and comply with an environmental duty;
 - o creating the power in the Minister to issue directions to exclude or restrict the use of the GBRMP by a person in certain circumstances (although in relation to this proposed amendment we submit that the threshold should be lowered to allow the Minister to issue such directions in circumstances where the Minister is reasonably satisfied that the relevant person will cause environmental damage to the GBRMP (and therefore a matter of NES) if the Minister did not issue a direction excluding or restricting the use of the GBRMP by that person).

⁴ The specified penalties (infringement notices) for offences against sections 38BA(3) and 38EA(4) “must not exceed an amount equal to one-fifth of the maximum fine that a court could impose on the person for that offence.” The maximum penalty for each of section 38BA(3) and 38EA(4) are 60 penalty units, therefore the maximum penalty on an infringement notice can not exceed 12 penalty units.

In addition to the above, we submit that, given the GBRMPA and its officers are being given more responsibility and power in relation to the management of the GBRMP, the assessment of proposed activities in the GBRMP and the enforcement of and compliance with the GBRMP Act, it reasonably follows that the resources of the GBRMPA and its officers and staff need to be suitably expanded so that these amendments can be used to their full potential, and to best ensure that Australia's precious GBRMP and GBR World Heritage Area are protected and conserved for all Australians, and indeed the global community.

Schedule 6 – Offences and Civil Penalties

We support the creation of new offences and civil penalties in the proposed amendments in Schedule 6.

Our submissions in relation to those proposed amendments are as follows:

- ? *In relation to the definitions of “aggravated contravention” and “aggravated offence”:*
The ‘commercial’ element should be removed from these offences. It seems unnecessary for the prosecution to positively establish that the relevant purpose was commercial in order to establish the “aggravated” nature of it. We submit that preferably, this element be removed from the offence, or alternatively the onus in relation to this element should be reversed (i.e. the defendant must prove that it was not a commercial operation).
- ? *In relation to proposed section 38BD:*
 - o We submit that this proposed section should be amended to remove the requirement in subsection 38BD(1)(e) that the vessel needs to be “authorised” to use the method or apparatus in question somewhere other than where the alleged offence was committed. The offence should exist whether or not authorisation existed for use in a different location.
 - o As an alternative, we submit that a second, more serious offence (with consequently more serious penalties) be created where no authorisation exists at all for the vessel to use the method or apparatus in question.
- ? *In relation to proposed section 38HA:* We support the extension of the limitation period in which to commence prosecutions for offences under the GBRMP Act from 12 months to two years. We submit that measures need to be put in place to monitor the effect and impact that such an amendment has upon the successful investigation and prosecution of offences under the GBRMP Act, and that the Commonwealth should be prepared to further extend that limitation period if to do so would further increase successful investigation and prosecution of those offences.

The purpose of the proposed extension of any limitation period (which purpose we submit should be to ensure better investigation of alleged and suspected offences and better enforcement of the GBRMP Act, as amended by the Bill) should be supported by an increase in resources for the GBRMPA and its officers to ensure that:

- ? All alleged and suspected offences (as in existence after the Bill's proposed amendments come into force) are fully and properly investigated; and
- ? All such alleged and suspected offences which are deemed to have reasonable prospects of success are indeed fully and properly prosecuted.

Note: we do not suggest that investigations of alleged or suspected offences are not fully or properly undertaken.