

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

GREAT BARRIER REEF MARINE PARK AMENDMENT BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for  
the Arts, Sport, the Environment,  
Tourism and Territories,  
the Hon Roslyn Kelly MP)





## GREAT BARRIER REEF MARINE PARK AMENDMENT BILL 1991

### OUTLINE

This Bill amends the *Great Barrier Reef Marine Park Act 1975* (the Principal Act). It is supported by the November 1990 declaration of the International Maritime Organization (IMO) that the northern-most part of the Great Barrier Reef is a "Particularly Sensitive Area" - the first such listed area in the world. The IMO further passed a resolution recognizing the close relationship between safety of navigation and the prevention of pollution from ships, and recommended that governments adhere to Australia's proposed system of pilotage.

This Bill inserts into the Principal Act a new Part VII A which provides for a system of compulsory pilotage in the areas of the Great Barrier Reef designated Particularly Sensitive Areas by the IMO. The designated areas are outlined in new Schedule 2 to the Principal Act.

Failure to take a pilot in these areas will be an offence. It will also be an offence for vessels to enter an Australian port without having used a pilot in the designated areas. This will apply if the vessel seeks port access as part of the same voyage in which the offence was committed, or on any previous voyage during which the offence was committed but port access was not sought, providing that the vessel or master returns to Australia within a three year period.

### FINANCIAL IMPLICATIONS

This Bill does not place additional costs on the Commonwealth.

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NOTES ON CLAUSES

Clause 1: Short title etc.

This clause provides that the Bill may be cited as the *Great Barrier Reef Marine Park Amendment Act 1991* and provides that the Principal Act is the *Great Barrier Reef Marine Park Act 1975*.

Clause 2: Commencement

This clause provides that the Bill will commence on a day to be fixed by proclamation. If the Act does not commence within six months from the day on which it receives Royal Assent, it will commence on the first day after the end of that period.

Clause 3: Interpretation

This clause inserts new definitions relating to compulsory pilotage into section 3 of the Principal Act. It also amends various subsections to describe the overall length of regulated vessels to be included under the compulsory pilotage provisions.

Clause 4: Functions of Authority

This clause amends paragraph 7(1)(d) of the Principal Act to make it clear that the functions of inspectors appointed by the Authority may be exercised beyond the Marine Park in relation to compulsory pilotage.

Clause 5: Officers and employees of Queensland and government authorities

This clause amends section 42 of the Principal Act, to make it clear that the Australian Maritime Safety Authority is an authority of the Commonwealth for the purposes of this section and section 43.

Clause 6: Repeal of section 43 and substitution of new section

This clause provides a revised definition as to who may be appointed as an inspector, and provides that the instrument of appointment may specify the powers that the person so appointed may exercise as an inspector.

Clause 7: Arrest without Warrant

This clause amends section 46 of the Principal Act so that the power to arrest without a warrant does not extend to new Part VII A.

Clause 8: Confiscation and forfeiture

This clause amends section 47 of the Principal Act so that the power of confiscation and forfeiture does not extend to an offence against new Part VII A.

Clause 9: General powers of inspectors

This clause amends section 48 of the Principal Act to ensure that an offence against new Part VII A will not result in a vessel being detained.

Clause 10: Insertion of new Part VII A

Clause 10 inserts a new Part VII A titled "Compulsory Pilotage Area". This new Part comprises new sections 59A to 59M in the Principal Act, which set out the purpose and details of the regime of compulsory pilotage as follows:

Section 59A: Purpose of Part VII A

This section describes the purpose of the new Part, which is to impose a scheme of compulsory pilotage on regulated vessels within the compulsory pilotage area of the Great Barrier Reef Region.

Section 59B: Offence to navigate without a pilot

This section details the offence of navigating without a pilot in the compulsory pilotage area, and designates a penalty of \$50,000 each for the master and owner of a ship which does so.

Section 59C: Offence to enter an Australian port after navigating without a pilot: master and owner liable

This section details the offence of entering an Australian port after navigating without a pilot in the compulsory pilotage area, and designates a penalty of \$50,000 each for the master and owner of a ship which does so.

Section 59D: Offence to enter an Australian port after navigating without a pilot: owner liable

This section details the offence of entering an Australian port after navigating without a pilot in the compulsory pilotage area. Entry to an Australian port may occur as part of the same voyage during which the offence was committed, or on a later voyage. In the case where the ship enters an Australian port under the command of a master other than the master who committed the offence, then only the owner shall be liable to the designated penalty of \$50,000.

Section 59E: Pilots to issue certificate

This section establishes a requirement that a pilot must issue a certificate to the master of a ship for which the pilot has performed pilotage duties and lists the information that the certificate must include.

Section 59F: Exemption from requirement to navigate with a pilot

This section provides that an application for exemption from compulsory pilotage must be sought in writing, contain the prescribed information and be made in a form approved by the Minister. The Minister may grant an exemption if s/he determines that use of a pilot would not improve the environmental protection of the Great Barrier Reef Region or if the vessel is to remain stationary within the compulsory pilotage area and the presence of a pilot would therefore not enhance navigational safety.

Section 59G: Review by the Administrative Appeals Tribunal

This section ensures that decisions of the Minister with respect to Clause 59F are subject to review under the provisions of the *Administrative Appeals Tribunal Act 1975*.

Section 59H: Defence in proceedings for offences

This section provides that if a vessel navigates in the compulsory pilotage area because of stress of weather or other unavoidable cause, then this shall be a defence in proceedings for the master and owner. If the owner can prove that navigation in the compulsory pilotage area took place without his/her knowledge, then this shall be a defence in proceedings for the owner.

Section 59I: Prosecution of offences

This section provides that a court of summary jurisdiction may hear and determine offences if the court is satisfied that it is proper to do so and if both the defendant and prosecutor consent. If a person is convicted as a result of summary proceedings, a penalty of \$10,000 may be imposed.

Section 59J: Time for commencing prosecutions

This section provides that prosecution action for an offence against sections 59B, 59C or 59D must be commenced within three years of the commission of the offence.

Section 59K: Service of summons or process

This section details the person(s) and body or bodies corporate on whom a summons or process may be served.

Section 59L: Powers of inspectors - compulsory pilotage area

This section details the powers that an inspector will have with regard to compulsory pilotage for the purpose of new Part VII A.

Section 59M: Limitation on exercise of powers - location

This section ensures that a power conferred on an inspector under sub-sections 59L (1) and (2) may be exercised in a port in the compulsory pilotage area and outside the compulsory pilotage area when a person or ship is being pursued from within the compulsory pilotage area.

Clause 11: Regulations

This clause amends section 66 of the Principal Act to insert a new paragraph (2)(ua) after paragraph (2)(u) to allow for the making of Regulations providing for the issue of certificates of exemption by the Minister under section 59F and the conditions subject to which they are to be issued.

Clause 12: Transitional Arrangements for Inspectors

This clause ensures that appointments of inspectors made under section 43 are preserved.

Clause 13: Schedule 1

The clause provides for the current Schedule of the Principal Act to become Schedule 1.

Clause 14: Addition of Schedule 2

The clause provides for the addition of Schedule 2 which identifies the compulsory pilotage area for the purpose of the Act.