A PRACTICAL GUIDE TO GOVERNMENT MANAGEMENT AND REGULATION REGIMES OVER MARINE AREAS IN QUEENSLAND

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1. Acknowledgements

This 2005 revision is the culmination of a great deal of cooperation and assistance from the various agencies and organisations listed in Attachment 1. Particular assistance was also gained from the publications listed in Attachment 1. Many thanks are extended for all cooperation and assistance.
2. Introduction

There are approximately 30 native title claims in Queensland that include an offshore component. One of those claims is the comprehensive and far-reaching Torres Strait Regional Sea Claim.

This guide seeks to meet a pressing need relating to native title sea claims within Queensland. That need is a greater understanding by mediation parties of the complex web of government legislation, policy, practice and issues underlying the management and regulation of marine areas in Queensland. ‘Marine areas’ means those areas of land and water located below the high water mark in Queensland.

It is a measure of the complexity of the management and regulation of marine areas in Queensland that this guide is not comprehensive. The guide profiles only selected agencies, usually those with a significant operational presence in marine areas within Commonwealth and state Government. There are many more agencies that have a strong policy presence in marine areas that are not profiled in this guide. The intended purpose of this guide is to increase the level of knowledge of government management and regulation of marine areas and to provide clear pathways for the reader to locate further information and/or assistance.
3. How to use this guide

The guide seeks to provide a greater understanding of government management and regulation of marine areas. To accomplish this, the guide provides some underlying information and then affords pathways for further enquiry.

Chapter 4 briefly profiles two critical institutions that have a central role in the administration, conduct and the ultimate resolution of native title applications in Australia – the Federal Court of Australia and the National Native Title Tribunal.

Key introductory information is found in chapters 5 and 6. Chapter 5 provides key definitions critical to an understanding of the important zones found in marine areas. Chapter 5 also provides a basic explanation of the constitutional and legal underpinnings of marine areas and how law-making responsibilities are shared between Commonwealth, State and Local Government. International issues are also briefly considered.

Chapter 6 provides an introduction to the past recognition by Australian courts and parliaments of native title in marine areas.

Chapters 7 and 8 profile selected agencies, mainly those with a significant operational presence in marine areas within the Commonwealth and Queensland governments. A broad overview is given of the significant operations and focus of these agencies. A key feature of the guide is that each agency has its core business summarised in a few phrases at the start of each overview. The core business is shown clearly marked in ‘Small Capitals’ text. This allows for easy scanning of the listed agencies. Relevant agencies can be quickly located and explored.

Once relevant agencies are located, the profiles provide further information. Pathways for further enquiries, either by telephone or by internet, are then supplied.

Chapter 9 profiles Local Government and its role over marine areas in Queensland.

There are then 4 attachments providing additional supporting materials to the guide.
4. Jurisdiction over and administration of native title applications

4.1 Federal Court of Australia (FCA)

Native title applications are made to the Federal Court of Australia (apart from South Australia which has its own recognised State bodies). After receiving an application, the Federal Court sends a copy of the application to the National Native Title Tribunal.

The Federal Court administers the conduct of native title applications. The court also decides who can become a party to a native title application. In doing so, the court determines whether a person has a sufficient interest in land or waters the subject of the native title application.

A native title application may proceed upon a litigation path or a negotiation path. Any decision regarding the existence or otherwise of native title is made through the Federal Court. If parties have under mediation reached an agreement regarding the existence of native title, the application for a consent determination is usually heard by the court as a relatively straightforward matter. If the parties cannot come to an agreement, the court may put an application on a litigation path. The litigation path involves a number of preparatory steps, the taking of evidence and formal legal argument.

For more information contact the Federal Court of Australia:

4.2 National Native Title Tribunal (Tribunal or NNTT)

The primary focus of the National Native Title Tribunal is to assist the resolution of native title issues. For native title applications, the Tribunal does not make decisions as to whether native title exists. This is a matter for the Federal Court. The Tribunal is a Commonwealth agency established under the Native Title Act 1993. The main assistance given to the parties to a native title application is the conduct of mediation by appointed Members of the Tribunal.

When the Federal Court receives a native title application, a copy is sent to the Tribunal. The Native Title Registrar then applies a detailed registration test. If an application passes the registration test, the Tribunal carries out various notifications. The notifications may be direct by way of letter or may be by way of general public notification through advertising in State and local newspapers and other publications. Any person or body wishing to become a party to a native title application must file notice with the Federal Court, which then decides whether they are to be accepted as a party. The Tribunal provides assistance to applicants and all other parties to a native title application. Please refer to Attachment 3 for map of native title claims in coastal and sea areas of Queensland as at 31 March 2004.
5. The marine environment

5.1 Overview
It is not an easy exercise to summarise the legal regime governing marine areas in Queensland. The legal regime involves power sharing between levels of government. It is based around complex International law. It is difficult to be definitive as it is a flexible system. For each rule, there are exceptions. Accordingly, the information in this Chapter must be considered to be very broad and general. Specific advice should be obtained about specific marine areas of interest to mediation parties.

5.2 Definitions
In terms of law, surveying and mapping, the marine environment is more complex and difficult to accurately describe than onshore land. There are many technical terms used to try and describe marine areas, particularly zones located within marine areas.

The following terms are commonly used terms in dealing with marine areas within Queensland. The terms have as their basis in international maritime law; particularly UNCLOS III (see 5.4 below).

‘Territorial Sea Baseline’ (TSB) refers to the line from which the seaward extent of Australia’s Maritime Zones are measured. The TSB is usually the low water mark (lowest astronomical tide), although particular rules for drawing a baseline apply for special coastline features such as bays and river mouths (straight baselines).

‘Internal Waters of Queensland’ means waters and underlying beds defined as being within the limits of Queensland. Broadly, these are waters and underlying beds located on the landward side of the TSB. Particular care must be taken to understand what ‘internal waters’ are in specific claims, as special rules may apply for native title determination purposes.

‘Queensland coastal waters’ means the waters and seabed located between the TSB and 3 nautical miles to the seaward side of the TSB. Pursuant to the legislation applying the OCS, Queensland owns the seabed (see 5.3).

‘Australian Territorial Sea’ means the waters and seabed located between the TSB and 12 nautical miles to the seaward side of the TSB. In some places such as islands in the Torres Strait, the Australian Territorial Sea is only 3 nautical miles in width. The first 3 nautical miles of the Australian Territorial Sea overlaps the Queensland coastal waters.

‘Contiguous Zone’ means the waters and seabed located between 12 nautical miles and 24 nautical miles seaward of the TSB.
‘Exclusive Economic Zone (EEZ)’ means the waters and seabed located between 12 nautical miles and (up to) 200 nautical miles seaward of the Queensland baseline.

‘Australian Fishing Zone (AFZ)’ is defined in the Fisheries Management Act 1991 (Cth) and in general its outer limit is the same as the outer limit of the EEZ. The AFZ does not include Queensland coastal waters and waters in the Torres Strait. Waters in the Torres Strait are described as ‘excepted waters’ under a Proclamation of 14 February 1992.

‘Marine areas’ as a term used within this guide means the waters and seabed located within the Queensland coastal waters and the Exclusive Economic Zone.

5.3 Commonwealth and State powers and responsibilities in marine areas

The legal status, powers and responsibilities over marine areas in Australia was unclear until resolved by a series of legal steps – legislation, legal cases and challenges, Commonwealth/State agreement and yet more legislation. The Australian Constitution (which is the basis of the power of the Commonwealth Parliament) provides that the Commonwealth Parliament had power to make laws for ‘fisheries in Australian waters beyond territorial limits’. There are also additional powers under the Constitution (eg. The External Affairs power) that may also support Commonwealth legislation.

In 1973, the Commonwealth Parliament passed the Seas and Submerged Land Act 1973 (SSL Act). The SSL Act asserted that the Commonwealth owned as property marine areas known as the ‘territorial sea’ and could also legislate within those areas. The SSL Act also claimed ownership and the right to make laws beyond the territorial sea, to the continental shelf. But probably the most contentious part of the legislation was in regard to the territorial sea – a narrow but very important belt of coastal water which typically was located within 3 nautical miles from the low water mark. It had been broadly assumed before the SSL Act that the land underlying the belt of coastal water was owned by each neighbouring State and that each State had full legislative power over that submerged land and the waters above it.

The States challenged the constitutional basis and legality of the SSL Act. The challenge was heard by the High Court. In December 1975, the High Court gave their judgment in which they found that the SSL Act was a valid law. However, this clear legal finding did not result in a political or practical resolution to Commonwealth and State relations.

In what probably is the ‘high point’ of Commonwealth-State Co-operative Federalism, the parties came to an historic agreement known as the ‘Offshore Constitutional Settlement’ (OCS). The OCS was finalised in June 1979. In essence, the Commonwealth agreed to transfer to the States areas of sea – their own ‘coastal waters’. The States would own the underlying land for that belt of coastal waters which was largely located within 3 nautical miles from low water marks. The States would also have clear legislative power over their coastal waters (although the
Commonwealth would retain the power to legislate in a State’s coastal waters). The basis for future co-operative fishing management was also agreed – where fisheries were located in a State’s coastal waters and beyond to the Australian territorial sea.

It must be noted that the assertion of ownership predated the recognition of native title by the High Court in the historic Mabo case on 3 June 1992. The position with native title in marine areas will be discussed in Chapter 6.

The Commonwealth Parliament and all State Parliaments passed similar legislation in 1980 to give effect to the OCS. Further Commonwealth legislation was passed in 1982 to complete this legislative process.

Despite the historic co-operation between the States and the Commonwealth, there still is the potential for confusion as to what law applies. Probably the area for most potential confusion is in relation to a State’s coastal waters. The Australian territorial sea overlies State coastal waters. The understanding in the OCS is that the Commonwealth would usually leave the State in full legislative control over its coastal waters. However, the Commonwealth retains the power to legislate in coastal waters. In addition, if there is any conflict between valid State legislation and valid Commonwealth legislation, the Constitution provides that the Commonwealth legislation will prevail (s. 109, Constitution). The State legislation would be invalid to the extent of the inconsistency.

5.4 International law developments

The developments in maritime law in Australia in the 1970s and 1980s did not occur in a vacuum. At the same time, there were significant international developments with respect to laws governing the seas and oceans of the world. In previous decades, the United Nations (UN) had sought to provide a forum for its member nations to agree to principles and laws governing the world’s oceans and seas.

The undercurrent was an increasing exploitation of the living and nonliving resources of the world’s seas and oceans. In particular, there was an increasing tension between coastal nations and other nations regarding rich fisheries resources. The most difficult question seemed to be finding a balance between the rights of a nation over its neighbouring waters and a long held understanding that the world’s oceans were open to all to use, particularly for trade and shipping.

The most significant international agreement governing the seas and oceans of the world is the Third United Nations Convention on the Law of the Sea 1982 (UNCLOS III). UNCLOS III brought a critical stability and certainty to the law of the sea and oceans and has been described as the ‘Constitution of the Sea’. UNCLOS III presented coastal nations with the opportunity to proclaim clearly defined zones adjacent to their coastline. The genius of the balance provided by UNCLOS III is that the closer the particular waters are to the coastal nation, the more powers the coastal nation is given. UNCLOS III is also commonly referred to as LOSC (Law of the Sea Convention).
Australia is a signatory to UNCLOS III and has proclaimed zones pursuant to the Convention. The Convention provided the framework for many subsequent International conventions, treaties and agreements that have resulted in further regulation of the seas and oceans of the world.

5.5 Government management and regulation

As discussed briefly above, Australia is permitted under International law to make laws regulating and managing waters adjacent to its coastline. Australia is both an Island and a Continent and its marine areas provide a significant source of benefit to Australian people, whether economic, cultural, social or otherwise.

The International law relating to nations and their ability to regulate and manage marine areas is not static; it is a developing area of law. Responsibilities over law making within marine areas are broadly shared between the three levels of government within Queensland. Only some very general principles are provided in this guide. Users of this guide are strongly advised to seek their own advice about the legal status of specific places and areas within the marine environment in Queensland.

The general guiding rules about the regulation and management of marine areas in Queensland are:

5.5.1 Local governments have a relatively small role given to them by the Queensland Government, limited to some management and regulatory responsibilities (usually of a planning nature) to specified marine areas located between the high water mark and the low water mark.

5.5.2 The Queensland Government has significant management and regulatory responsibilities over marine areas, with particular focus on the Internal Waters of Queensland and the Queensland coastal waters. There is significant overlap of responsibilities in marine areas between the Queensland Government and the Commonwealth Government requiring close communication and co-operation between those governments (particularly in living marine resources regulation and management, examined in the following heading). Practical examples of the co-operation between the Commonwealth and Queensland governments are the establishment and operation of agencies such as the Queensland Fisheries Joint Authority and Protected Zone Joint Authority (both profiled in this guide).

5.5.3 As a further example, the Great Barrier Reef Marine Park Authority is an authority established under Commonwealth legislation (the Great Barrier Reef Marine Park Act 1975), which has both Commonwealth and State representation. The governance arrangements under this Act facilitate Queensland's involvement in management of the Great Barrier Reef Marine Park and the furnishing of advice to the Commonwealth Minister for the Environment and Heritage via the Great Barrier Reef Consultative Committee established by the Act.
5.5.4 Broad government policy relating to the Great Barrier Reef is coordinated through the Great Barrier Reef Ministerial Council, consisting of two Commonwealth and two Queensland Ministers, and day-to-day management (for example, compliance and maintenance of island and marine facilities) is largely carried out by Queensland officers on behalf of the Authority in conjunction with management activities undertaken by the State Government.

5.5.5 The **Commonwealth Government** has the bulk of management and regulatory responsibilities over marine areas, stretching to the outward boundaries of the Exclusive Economic Zone (and beyond, in some circumstances).

5.5.6 The **Torres Strait** has its own additional layers of complexity involving International law, treaties and specific regimes of government management and regulation. This is due largely to the close physical proximity of Papua New Guinea and the significant use of the Torres Strait for international shipping.

5.6 Management of living marine resources

Because of the significant overlap of responsibilities in marine areas between the Queensland Government and the Commonwealth Government, there are four different models allowing for the management of living marine resources. The four model's possible application depends primarily upon the location of the fishery (i.e. The particular area where a particular resource species is taken). The four models are:

- **State fisheries management** is applied where a fishery is located solely off Queensland. An example is the East Coast Trawl Fishery.

- **Commonwealth fisheries management** can occur where a fishery is adjacent to more than one State and all parties agree to Commonwealth management. An example is the Northern Prawn Fishery.

- **Status quo fisheries management** occurs where there is no arrangement between a State and Commonwealth over a particular fishery.

- **Joint Authority fisheries management** can occur when the Commonwealth and one or more State agree to create a legal body to manage the fisheries and where the Commonwealth and State powers are then given to that authority. An example is the Protected Zone Management Authority, which manages various fisheries in the Torres Strait.
6. Native title law in marine areas

6.1 The Mabo No. 2 decision (High Court, 1992)
The historic Mabo No. 2 decision of the High Court on 3 June 1992 recognised that the Meriam People were entitled as against the rest of the world to the possession, occupation, use and enjoyment of parts of an island (Mer) in the Torres Strait.

This decision was the first recognition of the existence of native title in Australia. The Mabo No. 2 decision, however, was only in relation to land and did not extend to any marine areas.

6.2 Native title legislation
In response to the Mabo No. 2 decision, the Commonwealth Parliament enacted the Native Title Act 1993 (NTA).

The NTA allowed for the possible existence of native title in marine areas (largely by including provisions with respect to ‘onshore’ and ‘offshore’ places’). The majority of the laws contained within the NTA commenced on 1 January 1994. In response, Queensland passed its own legislation, which complied with the Commonwealth NTA.

The NTA established the National Native Title Tribunal (NNTT). The NNTT started to accept claims made by Aboriginal and Torres Strait Islander people for the recognition of native title. The claims made were not restricted to land, and included claims to marine areas.

The High Court decisions of Brandy in 1995, Waanyi in 1996 and the Wik decision of 23 December 1996 (and other considerations) led to the Commonwealth Parliament making very substantial changes to the NTA. These changes were based on the Commonwealth Government’s ‘10 point plan’. The changes were passed after significant parliamentary debate in 1997 and 1998. The majority of the changes to the law commenced on 30 September 1998.

Like the original NTA, the 1998 amendments to the NTA provided at various points for the possibility of the existence of native title to marine areas. However, it was the official position of the Commonwealth Government that the common law did not extend to marine areas and therefore, native title could not be recognised in marine areas. Again, Queensland passed its own legislation, which complied with the 1998 Commonwealth amendments to the NTA.
6.3 The Yarmirr decision (High Court, 2001)

The Yarmirr decision of the High Court on 11 October 2001 decided that native title could exist in marine areas out to 12 nautical miles from the TSB. That case was a native title determination application to marine areas – waters and seabeds surrounding islands to the north of Cobourg Peninsula near Arnhem Land in the Northern Territory.

The High Court found that both the common law and native title could exist and be recognised over marine areas. The native title recognised by the majority of the High Court in Yarmirr was a form of non-exclusive native title. This means that the native title rights do not include a right to veto or otherwise limit or affect the valid exercise of other rights by, say, fishing permit holders. The High Court stated that an exclusive native title right (ie. A right to control access to marine areas) could not exist alongside common law rights to fish and navigate through the sea and the international law right for ships to travel through the sea (called 'the right of innocent passage').

This meant that while the rights of the native title applicants were upheld by the High Court, those rights had to be exercised in such a way as to not interfere with the lawful activities of holders of valid authorities or permits issued by the Northern Territory. In practical terms, for fishing, this means that a native titleholder and a commercial fisher both have rights to take fish in accordance with the law.

6.4 The Ward decision (High Court, 2002)

On 8 August 2002, the High Court confirmed its view expressed in the Yarmirr matter about the non-exclusive nature of native title in marine areas in the important Ward decision. The Ward decision concerned a native title determination application for land and waters in Western Australia and the Northern Territory.

6.5 The Lardil decision (Federal Court, 2004)

The Federal Court on 23 March 2004 in a very detailed judgment in the Lardil decision explored and followed the High Court decisions in Yarmirr and Ward in finding non-exclusive title for various native title determination applicants. The Lardil decision was the first determination of native title in maritime areas within Queensland. The determination was in respect of land and waters located in the Wellesley Island region in the Far North West of Queensland.

6.6 The Gumana decision (Federal Court, 2005)

The Federal Court on 7 February 2005 recognised the Yolngu Peoples native title rights and interests in the Blue Mud Bay region in Eastern Arnhem Land, Northern Territory. The native title claimants sought recognition of non-exclusive native title

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4 Commonwealth v Yarmirr (2001-2002) 208 CLR 1 (also known as the Croker Island decision).
5 Western Australia v Ward (2002) 213 CLR 1 (also known as the Miriwoong Gajerrong decision).
7 Gawirrin Gumana v Northern Territory; Arnhem Land Aboriginal Land Trust v Northern Territory [2005] FCA 50.
over most of the sea claimed, but also claimed a right to exclusive possession over a number of sites of particular spiritual significance and to the intertidal zone.

The Federal Court found that a right to exclude others from an area of sea or from an intertidal zone was inconsistent with the common law public rights to fish and navigate. This applied even though the particular areas were comparatively small in area.

6.7 Section 211 of the NTA

Section 211 of the NTA is a significant law in relation to marine areas. It was part of the original native title legislation and was substantially changed in the 1998 amendments to the NTA.

Section 211 of the NTA provides that a native title holder can, for the purpose of satisfying their own personal, domestic or non-commercial communal needs and in exercise or enjoyment of their own native title rights and interests, carry out certain activities without holding any permit from government. The activities covered included hunting, fishing and gathering. However, this provision does not apply where a law prohibits the activity except for the purposes of research, environmental protection, public health or public safety purposes or if the law is a law that specifically confers benefits to Aboriginal or Torres Strait Islander peoples.

In relation to marine areas, section 211 of the NTA has been used by Indigenous people to assert that fishing, hunting and gathering can take place, when carried out in accordance with traditional laws and customs, without the need to hold government permits. The High Court has recognised section 211 of the amended NTA in its application to a Queensland case where a number of crocodiles had been taken for food.

Future acts in marine areas

The NTA provides a comprehensive ‘future act’ regime. A ‘future act’ is an act that if carried out ‘affects’ native title. An act affects native title if it extinguishes native title rights and interests or is wholly or partly inconsistent with its existence, enjoyment or exercise (section 227 of NTA).

Governments carry out a whole range of activities over land and waters that may be subject to native title and may therefore affect that native title. This occurred before the Mabo No. 2 decision and it occurs now. The first issue for governments after the Mabo No. 2 decision was trying to identify where native title existed. The second issue was that there was a whole range of laws, permits, grants and activities that had been issued by Commonwealth, State and Territory governments over land and waters where native title may have existed. These past activities were potentially unlawful and invalid.

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8 Note that the court found that the significant sites were likely to be protected by Northern Territory cultural heritage legislation.
9 Yanner v Eaton (1999) 201 CLR 351.
The Mabo No. 1 decision was a High Court decision from 1988 which said that dealings by government over lands subject to native title may be invalid if the native title holders were discriminated against. If governments did not afford the same rights to native title holders that they would have if the native title holders were instead freehold owners, then this was discrimination made unlawful by the *Racial Discrimination Act 1975* (Cth). So, for example, if a government agency in 1980 granted a licence over land where native title existed, that licence may be invalid. This is despite the fact that Australian courts did not recognise the existence of native title in 1980.

The original NTA validated past legislation and the past issue of permits, grants and authorities by the Commonwealth government. The NTA allowed States and Territories to pass their own legislation validating past legislation and permits, grants and authorities granted by those governments. The NTA also provided that Australian governments could lawfully and validly issue permits, grants and authorities in the future that may affect native title, provided that a government acted in accordance with the ‘future act’ regime set out in the original NTA.

The 1998 amendments to the NTA also validated past legislation and the past issue by governments of permits, grants and authorities by the Commonwealth government. This validation was in respect of possibly invalid acts carried out in the interpretation that the Mabo No. 2 decision had found that all past valid crown leases acted to extinguish native title. Again, the 1998 amendments also allowed States and Territories to pass their own legislation validating permits, grants and authorities by those governments. The 1998 amendments to the NTA also provided a very different ‘future act’ regime for governments to follow in the future. Specifically, for marine areas, the ‘future act’ process that must be complied with by governments depends on what the ‘act’ is and where the intended ‘act’ is to take place.

Attachment 2 to this guide provides more detail about the ‘future act’ regime provided for by the 1998 amendments to the NTA, with particular focus on marine areas.

The future act regime may mean that a government agency, in considering whether to issue a permit over a marine area, may be required to issue a notice giving an opportunity to comment. A notice (if given) is given to any registered native title body corporate, the responsible Representative Body and registered native title determination applicant for the relevant marine area. Some Federal Court decisions have suggested that a failure of a government agency to take these procedural steps

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10 The question of what procedural rights (if any) that a government agency affords in a marine area is a complex issue. Queensland government agencies have for many years operated pursuant to detailed native title operational procedures that condense and integrate the complex statute and common law of native title into guiding instructions for day to day processing of applications for permits, licences, etc. A Queensland government agencies’ response to each intended individual ‘act’ in a marine area (eg. an application for the possible issue of a fishing licence) depends on that agencies’ native title operational procedures.
may not invalidate the subsequent act (see Gurubana Gunggandji People and Lardil decisions\(^1\)).

Government agencies issue notices that generally describe the nature of the intended act (e.g. The issue of a fishing permit) and invite comment from a registered native title claimant within a specified period, usually 28 days. Any enquiries as to the procedures and practices (in particular, the native title operating procedures) of individual government agencies would need to be directed to individual agencies.

### 6.8 Indigenous cultural heritage

Rights and interests in Indigenous cultural heritage are obviously closely related to native title rights and interests. But Indigenous cultural heritage rights and interests are different. One important difference is that Indigenous cultural heritage may exist in places where native title has been extinguished. Commonwealth and Queensland agencies that have a responsibility for the management and protection of Indigenous cultural heritage are profiled in this guide.

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7. Commonwealth agencies

7.1 Great Barrier Reef Marine Park Authority (GBRMPA)

CORE BUSINESS: MANAGEMENT AND REGULATION OF THE GREAT BARRIER REEF MARINE PARK AND WORLD HERITAGE AREA

The Great Barrier Reef Marine Park Authority (GBRMPA) is the principal adviser to the Commonwealth Government on the care and development of the Great Barrier Reef Marine Park (GBRMP). The GBRMP extends approximately 1900 km south-east from the tip of Cape York to just north of Bundaberg. Please refer to Attachment 4 for map of GBRMP area. The Marine Park encompasses about 70 distinct biophysical regions including deep and shallow seagrass and sponge beds, mangrove ecosystems, mudflats, islands, cays and coral reefs.

The GBRMPA comprises four Members, one of whom is appointed to represent the interests of the Indigenous communities adjacent to the Marine Park; Mrs Evelyn Scott has been appointed to this position.

The GBRMPA is supported by about 180 professional staff based in Townsville and two regional enforcement coordinators based in Cairns and Mackay. Day-to-day management of the park involves collaboration between the Authority and a wide range of State and Commonwealth agencies and other stakeholders.

The GBRMP is a multiple use marine park. The GBRMPA manages the human impacts of a wide range of activities through implementing marine management tools such as regulations, zoning plans, management plans, site plans, codes of conduct and permits.

Facilitating Indigenous Interests in the GBRMP

The GBRMPA has an Indigenous Policy and Liaison Unit which facilitates Indigenous interests across a broad range of Marine Park management issues, both internally and externally. In particular, the GBRMPA has established an internal Traditional Use Working Group which has developed a range of management processes and procedures that facilitate Aboriginal and Torres Strait Islander and conservation biodiversity interests through the recent rezoning of the Marine Park.

Traditional Use of Marine Resources

The GBRMPA recognises that ‘traditional use of marine resources’ is more than just traditional hunting, fishing and collecting activities. The term traditional use of marine resources is referred to as the undertaking of activities in accordance with Aboriginal and Torres Strait Islander custom or tradition for the purposes of satisfying personal, domestic or communal needs.

Traditional use of marine resources, including traditional hunting, is only one of several human-related species mortality issues in the GBRMP, which Government agencies are addressing in collaboration with many groups, industries and the wider
community. There is a need to ensure that such use of marine resources, including hunting of green turtles and dugongs, occurs at sustainable levels.

An important objective for Traditional Owner groups reef-wide and the GBRMPA is to reduce the amount of poaching of turtle and dugongs and the amount of traditional hunting activities that are conducted without the consent of the Traditional Owners or permission from the GBRMPA.

Over the past two years, the GBRMPA has been implementing the Representative Areas Program (RAP), which has resulted in a complete rezoning of the entire Marine Park based on social, biophysical and conservation values. Implementation has included the development of a reef-wide framework for Traditional Use of Marine Resources management.

The GBRMPA recognises that under section 211 of the Native Title Act 1993 (Cth) (NTA), Traditional Owners who have native title rights and interests may not be subject to permit or Traditional Use of Marine Resources Agreements (TUMRAs) requirements. These rights and interests are formally recognised in the GBRMPA’s Revised Zoning Plan which states ‘The Zoning Plan does not affect the operation of S211 of the NTA.’

Approximately 70 Traditional Owner clan groups express rights and interests in the GBRMP, from the eastern Torres Straits to north of Bundaberg. A number have registered native title claims within the GBRMP.

In conducting its general business, the GBRMPA has been working with many of these clan groups since the late 1970s to assess their cultural and heritage values over a wide range of Marine Park management issues. These matters include commercial tourism permits, management plans, site plans, new policies for fisheries, water quality and species conservation issues.

The GBRMPA is working with Traditional Owner groups who either assert rights and interests through native title claims and associated processes or wish to enter into a TUMRA for their sea country outside of the native title claims process.

In designing a better way of doing future business with Indigenous Australians and, more specifically, Traditional Owner groups, the GBRMPA has developed a legislative management framework that is:

- reflected through policy and regulations consistent with the Great Barrier Reef Marine Park Act 1975 (Cth), Great Barrier Reef Marine Park Regulations 1983;
- complementary to processes established by the Native Title Act 1993 (Cth), especially the working processes of Native Title Representative Bodies, Native Title Applications and Indigenous Land Use Agreements;
- capable of managing a wide range of traditional use of marine resource activities in the GBRMP;
- accepted as a management tool by at least the majority of Traditional Owner groups and their representative bodies;
• a move towards cooperative management arrangements between marine management agencies and Traditional Owner groups on a wide range of sea country issues;
• a scientifically valid basis for harvesting protected marine species in line with national threatened species management recovery plans;
• is workable on the ground; and
• is legally binding for compliance.

**Traditional Use of Marine Resources Agreements (TUMRAs)**

A TUMRA is a legal document that describes how Traditional Owner groups wish to manage the traditional use of marine resources activities in their sea country. Some traditional activities do not require permits from the GBRMPA as they may be conducted under section 211 of the NTA. Other traditional activities may be conducted in accordance with TUMRAs developed by Traditional Owners and accredited by the GBRMPA or with the written permission of the GBRMPA. TUMRAs must be accredited by the GBRMPA to take effect.

An important element of the TUMRA design is that it is consistent with the NTA, especially the working processes of Native Title Representative Bodies, Native Title Claims and Indigenous Land Use Agreements (ILUA). The key objective was to come up with a management tool that was similar to existing land management mechanisms with which people have become familiar since the implementation of the NTA.

The TUMRA is similar to an ILUA as there are four main parts:
1. the actual intra-Indigenous agreement by the Traditional owner group,
2. the process used to make the agreement by the Traditional Owner group,
3. the TUMRA Accreditation Process by the Marine Park Authority Board, in accordance with the TUMRA Regulations, and
4. the TUMRA Implementation Plan.

However, unlike an ILUA, the TUMRA does not bind all Traditional Owners within a group to the agreement, although for the TUMRA to be workable, the GBRMPA would prefer that at least 50% of a Traditional Owner group has agreed to the TUMRA. Breaches of TUMRAs will amount to breaches of the GBRMP Zoning Plan.

In working with Traditional Owner groups, the GBRMPA will not make determinations or judgements of native title boundaries. However, in accrediting TUMRAs, it will seek verification from Native Title Representative Bodies on the validity of the Traditional Owner groups. Where overlapping traditional boundaries occur, efforts will concentrate on ways in which traditional use activities or particular marine species should be managed in a sustainable way by the groups, irrespective of boundaries.

It is envisaged that Traditional Owners will take the lead in preparing TUMRAs, but may seek advice or have meetings facilitated by staff of the GBRMPA or other
agencies. The GBRMPA will have the legislative ability to vary or revoke TUMRA accreditations if required. Traditional Owners may also withdraw from a TUMRA should they desire to do so.

Although the GBRMPA will focus initially on the management arrangements for the traditional hunting of dugongs and turtles, TUMRAs may, over time, be used to manage other traditional activities, such as fishing in zones that would usually further restrict such activities.

**TUMRA Program**

The success of the TUMRA program will also depend on a culturally appropriate process and the prudent use of a wide range of other marine management tools. A layer of management intent based on Traditional Owner groups’ customary, traditional and cultural heritage values will develop over time.

The GBRMPA envisages that cooperation among the 70 tribal groups will result in about 27 Traditional Use management units being developed. Traditional Owner groups from 20 of the 27 areas have expressed support for the TUMRA process through the recent RAP. Currently, 10 Traditional Owner groups have developed and implemented their own form of traditional hunting management regimes for their sea country, and some of these may evolve into accredited TUMRAs over time.

TUMRAs will benefit the conservation of a range of marine animals by better regulating their sustainable harvesting. Both GBRMPA and Traditional Owners will benefit from a process that will be consistent, transparent, and enforceable. The proposed system will be a positive step in the GBRMPA’s cooperative working relationships with Traditional Owners on sea country issues.

The TUMRA approach conforms to the vision of the ‘Shared Responsibility, Shared Future’ initiative that was recently endorsed by the Council of Australian Governments. Consistent with this approach, “…governments support communities to identify their local and regional priorities and agree outcomes that are documented in local agreements. These agreements detail the contribution of the communities and the governments to meeting and sustaining those priorities and outcome. This approach recognizes that each partner to a local agreement has an important contribution to make towards building stronger communities.’

**Public engagement**

Between March 2002 and December 2003, more than 200 meetings were held with Traditional Owners, the Aboriginal & Torres Strait Islander Commission (ATSIC) and Native Title Representative Bodies (NTRBs) to discuss the RAP, and more specifically, the sustainable traditional use of marine resources. As a result, a number of Traditional Owner groups and NTRBs have endorsed the TUMRA approach.

During a second RAP community participation phase, the GBRMPA received 336 submissions discussing Indigenous issues. These comprised 322 Indigenous submissions and 14 non-Indigenous submissions. More than 90% of these submissions
supported the concept of entering into formal management arrangements for traditional use of marine resources.

While there has been targeted Indigenous input to the development of the TUMRA process, the broader community will need to be involved as TUMRAs are implemented. This will need to occur at many levels, involving a wide range of local and national stakeholders.

Summary

The TUMRAs and proposed implementation processes are management tools that form the basis for cooperative working arrangements between marine management agencies and Traditional Owner groups (and their representatives) for a wide range of sea country issues. As these processes are implemented, they will be further developed and refined. The TUMRA approach recognises and addresses a complex array of Indigenous marine management and legislative issues in a culturally appropriate and scientifically valid manner.

Contacts at the Great Barrier Reef Marine Park Authority

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Facsimile: (07) 4772 6093
Website: http://www.gbrmpa.gov.au/
7.2 **Australian Maritime Safety Authority (AMSA)**

**CORE BUSINESS: PROMOTION OF MARITIME SAFETY, PROTECTION OF THE MARINE ENVIRONMENT AND PROVISION OF AVIATION AND MARITIME SEARCH AND RESCUE SERVICES. AMSA IS AN AGENCY IN THE TRANSPORT AND REGIONAL SERVICES PORTFOLIO.**

The Australian Maritime Safety Authority is a Commonwealth government agency whose regulatory and ship safety and environment protection services are provided on a cost recovery basis through levies on the commercial shipping industry and fees. It also receives Community Service Obligation (CSO) funding specifically relating to search and rescue and boating safety education.

AMSA commenced operation on 1 January 1991 under the *Australian Maritime Safety Authority Act 1990* (Cth)

The role of AMSA is to enhance safety and protect the marine environment through:

- providing the national network of marine aids to navigation;
- monitoring the seaworthiness and safe and environmentally responsible operation of Australian and foreign vessels in Australian waters;
- administering the Australian system of certification of seafarers’ competency;
- the provision of a maritime distress and safety communications network;
- the operation of Australia’s Rescue Coordination Centre coordinating search and rescue operations for persons in civilian aircraft and vessels in distress within Australia’s search and rescue region; and
- managing Australia's National Plan to combat pollution of the sea by oil and other noxious and hazardous substances.


7.3 **Australian Fisheries Management Authority (AFMA)**

**CORE BUSINESS: MANAGEMENT OF COMMONWEALTH FISHERIES RESOURCES**

**What is AFMA?**

The Australian Fisheries Management Authority (AFMA) is the statutory authority responsible for the efficient management of Commonwealth fishery resources on behalf of the Australian community. AFMA manages fisheries on the high seas, within the 200 nautical mile Australian Fishing Zone (AFZ) and, in some cases, by agreement with the States to the low water mark. In doing so, AFMA provides management, advisory, compliance and licensing services and implements appropriate fisheries management arrangements.

The resources managed by AFMA are important community assets. They support significant commercial fishing activity, growing levels of recreational fishing and some subsistence and traditional fishing.
AFMA employs approximately 110 staff and is based in Canberra with a small office located on Thursday Island in north Queensland. However, staff are constantly visiting fisheries all around the Australian coastline.

**Why was AFMA established?**

AFMA was established in February 1992. Its operations are governed by the *Fisheries Administration Act 1991* (Cth) and the *Fisheries Management Act 1991* (Cth). These laws created a statutory authority model for fisheries management whereby day-to-day management of fisheries was vested in AFMA, with the broader fisheries policy, international negotiations and strategic issues being administered by a smaller group within the then Department of Primary Industries and Energy (now the Department of Agriculture, Fisheries and Forestry – Australia).

An important feature of the AFMA model is that it enables the Minister with portfolio responsibility for fisheries to remain at arm’s length from the day-to-day decisions on fisheries management. Decision-making is passed to an expertise-based Board. In turn, the Board is advised by a Management Advisory Committee (MAC) structure which draws its membership from relevant stakeholder groups, including the commercial fishing industry.

**What does AFMA do?**

In managing Commonwealth fisheries resources on behalf of the Australian community and key stakeholders, AFMA:

- makes and implements decisions that are consistent with their functions and legislative objectives;
- is committed to a partnership approach which actively involves a range of interested parties, including fisheries managers, scientists, industry, environment/conservation agencies and other stakeholders, in the process of developing and implementing fisheries management arrangements through the establishment and continued operation of MACs for each major Commonwealth fishery;
- processes licensing and entitlements transactions for all Commonwealth fisheries (excluding Torres Strait) to give effect to fisheries management arrangements;
- collects licence fees and management levies from foreign and domestic fishers to allow for cost recovery of licensing and management services;
- ensures, in accordance with government policy, that the biological and economic state of each Commonwealth managed fishery is assessed on a continuing basis and that important gaps in knowledge are identified and overcome through research projects funded by the Fisheries Research & Development Corporation (FRDC) and AFMA research funds;
- draws upon scientific and economic advice provided by Fisheries Assessment Groups (FAGs) which co-ordinate, evaluate and undertake stock assessment activity in each fishery and report their recommendations to the individual fishery Management Advisory Committees (MACs);
- manages a substantial data collection program:
  - through the Logbook Program, the Authority collects catch, effort and other information from operators in all Commonwealth managed and
Torres Strait Protected Zone fisheries to provide an understanding of the characteristics of each fishery;

- by providing professional observer services to domestic and foreign fishing vessels operating within the Australian Fishing Zone (AFZ);
- in conjunction with other relevant Commonwealth agencies, enforce the provisions of the Fisheries Management Act 1991 and the Torres Strait Fisheries Act 1984 through the detection and investigation of illegal fishing activity by both domestic and foreign fishing boats in the AFZ and Commonwealth fisheries.

For further information contact AFMA’s website: http://www.afma.gov.au/

7.4 Australian Quarantine and Inspection Service (AQIS)

Core business: Quarantine systems for goods coming into Australia; inspection and certification systems for goods going out of Australia

The Australian Quarantine and Inspection Service (AQIS) is an operating group within the Australian Government Department of Agriculture, Fisheries and Forestry (DAFF). It provides:

- quarantine inspection for the arrival in Australia of international passengers, cargo, mail, animals and plants or their products into Australia; and
- inspection and certification for a range of animal and plant products exported from Australia.

AQIS employs more than 2,800 people at airports, seaports, mail centres and other locations across Australia.

Quarantine functions of AQIS

The quarantine side of AQIS operations is perhaps most relevant to this document. AQIS implements and administers quarantine controls at Australia’s borders to minimise the risk of exotic pests and diseases entering Australia. This in turn maintains Australia’s animal, plant and human health status and protects Australia’s agriculture and its unique environment. Most quarantine work involves screening and inspecting foreign goods coming in through the designated international entry points of seaports, airports and international mail centres. In the case of seaports and sea vessels, the emphasis is on ensuring, through appropriate regulations and inspection, which the vessels are not bringing exotic organisms into Australia: this includes organisms that could be brought in by ballast water, on cargo and in cargo containers, and also in passenger luggage.

Special quarantine functions in northern Australia

In northern Australia, the routine quarantine work undertaken at seaports, airports and international mail centres is supplemented by a range of post-border surveillance and inspection activities, through a program of AQIS called the Northern Australia Quarantine Strategy.
NAQS exists because Australia is considered especially vulnerable to pests and diseases that could enter Australia from countries to our north. Migrating birds and wind currents can carry pests to our shores from neighbouring countries, often using islands as stepping-stones between mainlands. In addition, on our vast and sparsely populated northern coastline, foreign vessels may land undetected, so bypassing the usual quarantine checks at designated international entry points. Recognising these risks, the role of NAQS is to provide an extra safety net, in areas most vulnerable, to address the problem of pests and disease evading the usual quarantine border checks.

NAQS activities may be particularly relevant to those involved in native title claims, due to the concentration of NAQS activity within land and sea areas that also happen to be the focus and/or subject of native title claims.

The focus of NAQS work is in parts of Australia most vulnerable to exotic pest incursions – namely the coastal regions of northern Australia (from Broome in the west to Cairns in the east) including the offshore island regions of the Torres Strait and the Tiwi Islands. Coincidentally, much of the land and/or sea of these regions is either Aboriginal or Torres Strait Islander land or the subject of native title claim. For this reason, there is close collaboration between NAQS and Torres Strait Islander and Aboriginal communities of northern Australia, as well as between NAQS and other northern landowners. Some of these links are summarized:

- NAQS works through the appropriate indigenous land councils to broker access to land for the purpose of quarantine land surveys that are screening for early-warning signs of exotic pests, weeds and diseases. Such surveys are undertaken in collaboration with land owners with mutual benefits. These surveys are looking for land pests only (marine pests are excluded). However, the areas of inspection are coastal and access to the land often involves travel by sea.
- In the Torres Strait NAQS employs around 24 Quarantine Officers – one or two staff stationed on all of the inhabited islands within the Torres Strait Protected Zone with a main base at Thursday Island. Work focuses on inspecting goods moving by sea and air between Papua New Guinea, the Torres Strait and mainland Australia. Legislation exists to restrict the movement of quarantine risk materials between these areas.
- AQIS oversees laws with respect to shipping, including regulation of ballast waters, procedures and quarantine aspects of cargo, freight and packaging and other procedures for ships entering Australian waters.

For further information contact AQIS’s website: http://www.aqis.gov.au/

7.5 Australian Customs Service (Customs)

Core Business: Customs, Border Protection, Security and Surveillance of Maritime Areas

Customs manages the security and integrity of Australia’s borders. It works closely with other government and international agencies, in particular the Australian Federal Police, the Australian Quarantine and Inspection Service, the Department of
Immigration and Multicultural and Indigenous Affairs and the Department of Defence, to detect and deter unlawful movement of goods and people across the border.

**Border protection**

The agency is a national organisation employing over 4,800 people in Australia and overseas, with its Central Office in Canberra. It has a fleet of ocean-going patrol vessels and contracts two aerial surveillance providers for civil maritime surveillance and response.

Protecting the Australian community through the interception of illegal drugs and firearms is a high priority and sophisticated techniques are used to target high-risk aircraft, vessels, cargo, postal items and travellers. This includes intelligence analysis, computer-based analysis, detector dogs and various other technologies.

Clients of Customs include the Australian community, the Government, industry, travellers and other government agencies. The Australian Customs Service manages the security and integrity of the Australian border and assists people and cargo to move in and out of the country.

Customs works to detect and deter the unlawful movement of goods and people across the border. Protecting the Australian community by intercepting illegal goods, such as drugs and weapons, is a high priority.

**Coast watch**

Customs is tasked by the Government with providing a civil maritime surveillance and response service to a range of government agencies. Coast watch, a Division of Customs, provides this service.

Surveillance flights are undertaken to detect and report activities as diverse as: people smuggling, attempts to import or export prohibited goods, illegal trafficking in flora and fauna, and human incursions on coral reefs and other protected areas, the latter representing potential quarantine, health and marine habitat threats.

Coast watch also plays an important role in supporting Australia’s Oceans Policy by identifying and responding to illegal fishing in Australian waters, detecting and reporting environmental incidents such as marine pollution, and contributing to marine species protection through reporting sightings of marine mammals. Coast watch, as with all other operators of aircraft in Australia, also provides support to Australia’s search and rescue authorities.

Coast watch manages and co-ordinates Australia’s civil maritime surveillance and response program using a combination of assets, including contracted aircraft, Australian Defence Force patrol boats and aircraft, and seagoing vessels of the Customs National Marine Unit. The activities of Coast watch are determined by the surveillance and response needs of the various government agencies that form its client base.
Coast watch’s Area of Interest covers the Australian coastline, Australia's offshore territories, the Australian Fishing Zone (AFZ) and the Exclusive Economic Zone (EEZ) surrounding these areas. This amounts to approximately 37,000 kilometres of coastline and an offshore maritime area of nearly 15 million square kilometres. Coast watch is increasingly being called on to investigate incidents beyond the EEZ.

The Coast watch challenge is to manage and coordinate the civil maritime surveillance and response program over an extremely large geographic area, for a diverse range of client agencies.

The key to Coast watch’s effectiveness is an operational method that is client-driven, threat-based and risk-assessed. Coast watch’s effectiveness is directly related to the quality and timeliness of available information and the intelligence assessments that are derived from this information.

**National Marine Unit**

Customs has operated a fleet of sea-going vessels of various types and sizes since the mid 1970s. Responsibility for planning, tasking and deployment of the vessels now rests with a central management group, the National Marine Unit (NMU) in the Investigations and Enforcement Operations Branch of Customs, Canberra.

The Customs seagoing fleet plays a significant role in the maintenance of border safeguards by providing suitable vessels capable of maintaining a strategic presence around the Australian coast or responding against known or suspected breaches of Australia’s border and offshore sovereignty and/or sovereign rights.

The NMU fleet consists of eight 38m Bay-class Australian Customs vessels (ACVs), capable of patrolling out to, and sometimes beyond, the 200 nautical mile Exclusive Economic Zone anywhere around Australia’s 37,000 kilometre coastline. This offshore maritime area, at more than nine million square kilometres, is 20 per cent larger than the Australian mainland. Joint patrols are also conducted within the territorial seas of some neighbouring countries.

In addition, the NMU will be delivering a surveillance and enforcement program in 2003-2004 to provide for the protection of Australia’s southern ocean waters and resources.

The tasking and deployment of vessels to enforce border laws in Australia’s offshore maritime area is governed by a range of factors including coastal demographics, international marine activity and past history of illegal activities, all of which are used to assess likely risk areas. This deployment arrangement requires a flexible management approach based on continual evaluation of the nature of tasking, operational performance and ACV.

7.6 Queensland Fisheries Joint Authority (QFJA)

CORE BUSINESS: MANAGING FISHERIES IN THE GULF OF CARPENTARIA

The Queensland Fisheries Joint Authority (QFJA) comprises the Commonwealth Minister for Agriculture, Fisheries and Forestry and the Queensland Minister for Primary Industries and is responsible for managing certain fish stocks in the Gulf of Carpentaria under the Queensland Fisheries Act 1994. Principal fish stocks managed by the QFJA include mackerels, shark and demersal finfish.

The activities of the QFJA are limited to commercial fisheries.

The Queensland Fisheries Service (QFS) provides the QFJA with staff support in the areas of administration, consultation, monitoring and data collection.

For further information contact the QFS website: http://www.dpi.qld.gov.au/

7.7 Torres Strait Protected Zone Joint Authority (PZJA)

CORE BUSINESS: MANAGING FISHERIES WITHIN THE TORRES STRAIT PROTECTED ZONE

The Joint Authority was established by the Torres Strait Fisheries Act 1984 (Cth) to become the entity responsible for the management of fisheries in the Torres Strait Protected Zone (TSPZ) which was established by the Torres Strait Treaty 1985 between Australia and Papua New Guinea. The PZJA consists of the Commonwealth Minister for Agriculture, Fisheries and Forestry (Chair), the Queensland Minister for Primary Industries and the Chair of the Torres Strait Regional Authority. It is responsible for the management of fisheries within the Torres Strait Protected Zone and for the formulation of policies and plans for their management.

The Torres Strait Fisheries Act lacks the specific objectives found in the Fisheries Management Act 1991 (Cth) and as its sole objective requires that regard is had for the rights and obligations conferred on Australia by the Torres Strait Treaty, in particular the traditional way of life and livelihood of the traditional inhabitants, including traditional fishing.

The PZJA is also responsible for bilateral arrangements with Papua New Guinea to give effect to joint management, catch sharing and enforcement elements of the Torres Strait Treaty.

Areas under the jurisdiction of the PZJA extend beyond the Protected Zone boundary along its southern border under agreement with Queensland where the additional areas are of practical importance to the management of the fisheries in the Protected Zone. Maps of the areas of the individual fisheries managed by the PZJA area are available.

The Australian Fisheries Management Authority (AFMA) is the Commonwealth agency which, jointly with the Queensland Fisheries Service, co-ordinates and
delivers fisheries management and surveillance/enforcement programs in the Torres Strait Protected Zone on behalf of the PZJA.

For further information, visit the AFMA website: http://www.afma.gov.au/
7.8 Commonwealth Department of Environment and Heritage (DEH)

*Core business: Management, protection and conservation of the environment, including natural and cultural heritage places*

The Department of the Environment and Heritage advises the Australian Government on policies and programs for the protection and conservation of the environment, including both natural and cultural heritage places.

It is concerned with the conservation and appreciation of Australia’s natural and cultural heritage places.

**Environment Protection and Biodiversity Conservation Act 1999 (Cth)**

The Department of the Environment and Heritage administers environmental laws, including the Environment Protection and Biodiversity Conservation Act and a range of other Acts.

The EPBC Act promotes the conservation of biodiversity by providing strong protection for:

- listed species and communities in Commonwealth areas (this includes listed threatened species and ecological communities, listed migratory species and listed marine species);
- cetaceans (all whales, dolphins and porpoises) in Commonwealth waters and outside Australian waters;
- protected species in the Territories of Christmas Island, Cocos (Keeling) Islands and Coral Sea Islands;
- protected areas (World Heritage properties; Ramsar wetlands; Biosphere reserves; Commonwealth reserves; and conservation zones); and
- wildlife species and wildlife products subject to international trade.


7.9 Australian Heritage Council (AHC)

*Core business: Protection of places of natural, historic and indigenous heritage significance*

The Australian Heritage Council is the principal adviser to the Australian Government on heritage matters. The Council assesses nominations for the National Heritage List and the Commonwealth Heritage List and compiles the Register of the National Estate. The Council was appointed on 19 February, 2004.

The Australian Heritage Council’s main responsibilities are to:

- assess nominations in relation to the listing of places on the National Heritage List and the Commonwealth Heritage List;
- promote the identification, assessment and conservation of heritage; and
- compile and maintain the Register of the National Estate.
The Australian Heritage Council is an independent body of heritage experts established through the Australian Heritage Council Act 2003 (Cth). It replaces the Australian Heritage Commission as the Australian Government’s independent expert advisory body on heritage matters.

The Council’s role is to assess the values of places nominated for the National Heritage List and the Commonwealth Heritage List, and to advise the Australian Government Minister for the Environment and Heritage on conserving and protecting listed values. The Council may also nominate places with heritage values to these lists.

It is the Council’s duty to promote the identification, assessment and conservation of heritage and to advise the Minister on a range of matters relating to heritage. It also engages in research and promotional activities. The Council maintains the Register of the National Estate – a list of 13,000 natural and cultural heritage places throughout Australia. The Register is a reference database and used for public education and the promotion of heritage conservation generally.

For further information contact the website: http://www.ahc.gov.au/ or email address: ahc@deh.gov.au

7.10 National Oceans Office (NOO)

Core business: Development of Australian Oceans Policy

The National Oceans Office is responsible for the Australian Government’s regional marine planning programme. In addition, it undertakes scientific research to support this planning and provides a range of information management and communications services.

The Office is a branch of the Marine Division, Department of the Environment and Heritage. The Division’s function is to provide central coordination and policy advice to the Government on the marine environment including the implementation of Australia’s Oceans Policy. The Division also undertakes programmes and advises on marine species conservation, marine protected areas, regional marine planning, national integrated oceans management, marine science research and the promotion and development of Australia’s international oceans environmental objectives.

Australia’s Oceans Policy

Australia’s Oceans Policy aims to achieve healthy oceans: cared for, understood and used wisely for the benefit of all, now and in the future. Launched in 1998, the policy addresses the complex issues confronting the long-term future of one of the world’s largest Exclusive Economic Zones. The policy focuses on an integrated and ecosystem-based approach to ensure sustainable development of Australia’s marine resources. The policy is being implemented through a whole-of-government approach.
The primary means by which the National Oceans Office is implementing Australia’s Oceans Policy is through regional marine planning, an integrated and ecosystem-based approach to planning and management.

Regional marine planning focuses on:
- maintaining a sustainable ecosystem;
- generating certainty for industry;
- involving Indigenous peoples in the use, conservation and management of oceans;
- encouraging industry and community stewardship of Australia’s oceans; and
- facilitating stakeholder participation in oceans management and planning.

For further information contact NOO’s website: http://www.oceans.gov.au/

7.11 Commonwealth Attorney General’s Department
CORE BUSINESS: LEGAL AND LEGAL POLICY ADVICE TO THE FEDERAL GOVERNMENT INCLUDING NATIVE TITLE MATTERS

The Attorney-General’s Department provides expert support to the Government in the maintenance and improvement of Australia’s system of law and justice, including in relation to native title.

The Department is the central policy and coordinating element of the portfolio, for which the Attorney-General and Minister for Justice and Customs are responsible.

The Native Title Unit in the Attorney-General’s Department has responsibility for providing advice to the Attorney-General to assist in the formulation and implementation of native title policy. The Unit takes an active leadership role in a range of activities that are pivotal to the successful ongoing development of native title policy and to effective implementation of the Native Title Act 1993 (Cth) including the:
- Australian Government’s involvement in the resolution of native title applications;
- development of the Australian Government’s future act policy, and participation in the negotiation of native title agreements;
- monitoring the efficiency and effectiveness of the native title system; and
- provision of financial assistance to the States and Territories.

In addition, the Unit has an ongoing educative role within the Australian Government.

Objective
Shaping a native title system that delivers fair, effective and enduring outcomes.

Strategies
The Native Title Unit pursues this objective by implementing the following strategies:
seeking to resolve native title issues through agreement, where possible;
facilitating whole-of-government coordination across the native title system; and
working cooperatively with stakeholders in the native title system, in particular
the States and Territories, to implement the Native Title Act.

For further information contact AG’s website:  http://www.ag.gov.au/
8. State agencies

8.1 Environmental Protection Agency (EPA)

CORE BUSINESS: ESTABLISHMENT AND MANAGEMENT OF MARINE PARKS

The primary responsibility of EPA over marine areas is the establishment and management of marine parks. Marine parks are established over tidal lands and waters to protect and conserve special areas while allowing for the planned use of marine resources. Multiple-use management allows for many different activities in marine parks. Zoning plans set out the kinds of activities that can occur within each area. Marine parks protect a range of habitats including mangrove wetlands, seagrass beds, mudflats, sandbanks, beaches, rocky outcrops and fringing reefs.

Marine park boundaries can be established in waters up to the highest astronomical tide. They include the tidal water and land, subsoil and airspace above the boundaries. The plants and animals within the boundary are also part of the marine park.

Queensland’s marine parks can surround islands, or lie next to mainland or island national parks. Australia’s first marine park was established in 1937 at Green Island off the Queensland coast. In 1974, the second was declared over Heron and Wistari Reefs. In 1982, the Marine Parks Act was passed.


In keeping with the Queensland Government’s commitment to establish marine parks from the Gold Coast to the Gulf of Carpentaria, a number of new marine parks are proposed. These include the Great Sandy Marine Park which would incorporate tidal lands and waters south of the Great Barrier Reef Marine Park to the Noosa River, the Woongarra Marine Park and the Hervey Bay Marine Park.

Managing marine parks – objectives

Each Queensland marine park has unique features that require specific management. However, some management objectives are common to all marine parks. The most important ones are:

- to protect and preserve plants and wildlife, ecosystems and features of special scientific, archaeological or cultural importance;
- to encourage natural history appreciation and awareness; and
to ensure the marine park remains a diverse, resilient and productive ecological system while allowing user groups to access its resources.

Management
Each State marine park has a zoning plan which defines the zones in the park and describes how each zone can be used. Designated areas allow for special management of some locations.
Traditional custodians and user groups are involved in developing or altering zoning plans, which are revised every five years or so.

Marine management plans may also be developed to provide a planning framework and include guidelines on how an area will be managed. They set out the considerations, outcomes and strategies that form the basis for day-to-day management decisions. Some very popular reefs and islands have detailed management plans designed to alleviate problems at particular locations. A draft Hinchinbrook Marine Management Plan was recently released for public consultation.

Rangers
Marine park rangers are the public face of day-to-day management of the marine park. They are uniformed and qualified officers employed by the Queensland Parks and Wildlife Service, usually responsible for a designated geographical area (a district). Rangers need a broad range of skills to carry out their diverse responsibilities. They may also call on specialists to help carry out particular tasks.
Rangers participate in resource monitoring and assessment, public contact, interpretation, education, surveillance patrols and enforcement. They also help maintain infrastructure, plant and equipment.

Rangers also spend time ensuring cultural values of sea country are maintained. Working together with Traditional Owners, they help identify and protect sacred and special sites, and manage cultural resources.

Zoning plans
As mentioned above, each marine park in Queensland is divided into zones. The zoning plan for each marine park defines the zones and describes how each zone can be used.

A marine park zoning plan will usually include the objectives for each zone and specify which activities are allowed and which are prohibited or require a marine park permit. Designated areas allow for special management of some locations.

Zoning plan information guides show the different zones by using colours on zoning plan maps. Activities tables show what can and can’t be done in a particular zone.

Most zones allow a wide range of uses, including fishing and boating. Certain activities are prohibited in only a few zones. Before users visit a marine park, they should obtain a copy of a zoning plan from the Queensland Parks and Wildlife Service.
Zoning plans are legally enforceable because they are subordinate legislation. Penalties apply for breaches.

**Great Barrier Reef Marine Park**
Responsibility for establishing, planning and running the marine park rests with Great Barrier Reef Marine Park Authority, a Commonwealth Government agency profiled earlier in this guide.

The Queensland Parks and Wildlife Service (a State Government agency) is responsible for the day-to-day management of the marine park — the field operations or ‘wet end’ of marine park management. This involves public contact, environmental impact assessment, monitoring (e.g. effects of visitor activities), surveillance (by aircraft and patrol vessels), enforcement and education. The Queensland Parks and Wildlife Service is also responsible for managing island national parks and State marine parks.

The main tool used in managing the Great Barrier Reef is **zoning**, referred to above. To manage sites of high use, the Great Barrier Reef Marine Park Authority and the Queensland Parks and Wildlife Service are developing a number of management plans to complement the zoning plans. These are developed in consultation with reef users and traditional custodians to ensure protection of natural and cultural values while allowing for sustainable multiple uses.

Many of the activities carried out onshore can impact directly on the Reef. The Great Barrier Reef Marine Park Authority also works closely with management agencies adjacent to the mainland to ensure protection of the Reef.

For further information contact EPA’s website: [http://www.epa.qld.gov.au/](http://www.epa.qld.gov.au/)
8.2 Aboriginal and Torres Strait Islander Land Acts Branch, Department of Natural Resources and Mines (ATSILAB)

Core Business: The Transfer, Claim and Grant of Land to Aboriginal and Torres Strait Islander People

Business Area: ATSILAB is part of Native Title and Indigenous Land Services of the Department of Natural Resources and Mines.

About ATSILAB

ATSILAB’s core business is the transfer, claim and grant of land under the provisions of the *Aboriginal Land Act 1991* (Qld) (ALA) or *Torres Strait Islander Land Act 1991* (Qld) (TSILA). The transfer and grant of land in most circumstances results in the issue of an inalienable deed of grant in fee simple.

The transfer and grant of land under the ALA or TSILA are two separate procedures that are defined as the transfer and claims processes.

Transfer Process

Under the transfer process, land such as Aboriginal and Torres Strait Islander Deeds of Grant in Trust, reserves and shire lease lands, and unallocated State land declared by regulation to be transferable land can be transferred to Indigenous people without a claim being made.

In order for the Minister to approve the transfer of the land to the appropriate representatives (grantees), the staff of ATSILAB must undertake investigations and consultations with people particularly concerned with the subject land. Once grantees are appointed, it is the Minister's responsibility to direct that title issue to transfer the ownership of the land from one trustee (usually a Government department or Community Council) to the grantees, to hold the land in trust for the benefit of all Aboriginal or Torres Strait Islander people.

Claims Process

Under the claims process, claims can only be made over national parks and unallocated State land declared by regulation as available for claim or over certain transferred lands. Land claims are forwarded to the Land Tribunal for hearing and a recommendation is then made to the Minister as to whether the land should be granted. If the Minister is satisfied that the land should be made available to the successful claimants the Minister directs the title to be issued and appoints grantees.

To date 125 parcels of land have been transferred or granted to Indigenous groups who continue to hold the land in trust for the Aboriginal or Torres Strait Islander people particularly concerned with those lands.

Interaction with Native Title Act 1993 (Cth)

The transfer or grant of land under the ALA or TSILA does not impact upon any existing native title interests.
**Tidal land as defined under the ALA and TSILA**

The ALA and TSILA provide for the declaration, by way of regulation, of tidal land as available Crown Land for the purpose of transfer or grant. Tidal land is defined as land that is ordinarily covered and uncovered by the flow and ebb of the tide at spring tides.

**Contact point:** Manager ATSILAB on telephone 3406 2966  

**Review of the ALA and TSILA**

As a separate activity, a comprehensive review of the *Aboriginal Land Act* and the *Torres Strait Islander Land Act* is being undertaken. A review team was appointed to make recommendations concerning their future use, operation and application. These recommendations are likely to lead to amendment of the current policy and legislative framework.

An Issues Paper in relation to the review was released for discussion in September 2004. The review team completed a comprehensive round of consultations regarding the *Aboriginal Land Act* with Aboriginal people and communities, other stakeholders and key government departments.

The Department has released a Discussion Paper dealing with the *Aboriginal Land Act*, which examines a range of options to address identified issues. Written submissions from stakeholders concerning the issues identified in the paper and any other relevant issues were due by 10 June 2005. The review team will undertake further consultation with Aboriginal people and other stakeholders. Feedback from these consultations will assist the Department to develop its final recommendations for Cabinet.

**Contact:**  
Indigenous Land Acts Review  
Native Title and Indigenous Land Services  
Locked Bag 40, Coorparoo DC Qld 4151  
(07) 3896 3354

**8.3 Queensland Fisheries Service (QFS)**

**Core business:** Management, planning and compliance for fisheries, fish habitat and aquaculture

**About QFS**

QFS is the State government agency responsible for management, policy planning, licensing, resource allocation and enforcement relating to Queensland fisheries resources. The QFS administers the *Fisheries Act 1994* (Qld) and parts of the *Torres Strait Fisheries Act 1984* (Qld). The QFS, in partnership with the Torres Strait Regional Authority and the Commonwealth through the Torres Strait Protected
Zone Joint Authority, also undertakes day-to-day management of the fisheries resources of the Torres Strait.

The QFS is a business group of the Queensland Department of Primary Industries and Fisheries, and consists of the following four divisions:

- **Fisheries Policy and Sustainability** — responsible for:
  - Fishing Industry Development Council;
  - Ministerial Council for Fisheries, Forestry and Agriculture;
  - condition and trend;
  - fisheries assessment and monitoring;
  - commercial (see CFISH) and recreational fishing databases (see RFISH);
  - Native Title;
  - indigenous fishing;
  - ecologically sustainable development (see Meeting sustainability guidelines – Environment Australia accreditation);
  - Commonwealth/State issues;
  - Integrated Planning Act – policy;
  - recreational fishing (see Recreational fishing at a glance); and
  - Coastal Habitat Resources Information System (see CHRISweb).

- **Fisheries Resource Management** - is responsible for:
  - Queensland Fisheries Advisory Board;
  - marine Management Advisory Committees (see MACs);
  - Torres Strait/Protect Zone Joint Authority;
  - Queensland Fisheries Joint Authority; and
  - Individual fisheries – inshore finfish, trawl, reef, crab, line and harvest/collective fisheries (see Commercial Fisheries in Queensland for more details about these fisheries).

- **Fisheries and Aquaculture Development** — is responsible for:
  - industry development;
  - inland and freshwater fisheries;
  - marketing;
  - fish health/food safety;
  - marine habitat;
  - aquaculture policy and management; and
  - freshwater Management Advisory Committee (see MACs).

- **Fisheries Resource Protection** is responsible for:
  - Queensland Boating and Fisheries Patrol;
  - Vessel Monitoring System;
  - information systems development;
  - fisheries licensing; and
  - information and education.

**Contact point:** Department of Primary Industries & Fisheries’ Call Centre on freecall – 13 25 23.

8.4 Department of Natural Resources and Mines (NRM)

CORE BUSINESS: NATURAL RESOURCE MANAGEMENT – LAND, WATER, MINERAL, PETROLEUM, ENERGY AND VEGETATION.

About NRM

NRM is a State government agency that works closely with other government agencies, industry and the community to develop and implement policy and planning frameworks to manage Queensland’s natural resources. The department’s vision is ‘enhanced community benefit through sustainable natural resource management’.

NRM promotes the sustainable use and management of the State’s land, water, mineral, petroleum and vegetation resources by providing natural resource information, monitoring and evaluation services. The department believes that social, economic and environmental prosperity will be achieved if a balance between using and protecting our natural resources is maintained.

NRM’s stewardship role includes:
• Planning and managing land – land titling, body corporate, issue resolution (including Native Title and Indigenous land interests), supporting resource management, valuations and stock route management;
• Planning and managing water – water reform, water resource plans;
• Planning and managing vegetation – implementation of the native vegetation management program;
• Planning and managing pests;
• Planning and managing minerals, petroleum and energy – leasing and permits, promoting investment, safety and health;
• Community facilitation; and
• Supporting science – research into and assessment and monitoring of, natural systems.

Contact points: General enquiries and feedback on (07) 3896 3111
Enquiries about native title to Native Title & Indigenous Land Services on freecall – 1800 500 037.
Website: http://www.nrm.qld.gov.au/

8.5 Native Title and Indigenous Land Services, Department of Natural Resources and Mines (NT&ILS)

CORE BUSINESS: CO-ORDINATION OF QUEENSLAND GOVERNMENT NATIVE TITLE LAW, POLICY AND COMPLIANCE

While the Commonwealth Government took the lead in establishing how native title is to be acknowledged and respected under the Commonwealth Native Title Act 1993 (NTA), in practical terms native title moves into the State Government arena with respect to the provision of procedural rights associated with resource allocation and management issues, as the Queensland Government is responsible for controlling the majority of these processes.
All State government departments and agencies have Native Title Work Procedures. These Procedures enable officers to properly address any native title issues prior to every land and resource dealing going ahead, e.g. the grant of a lease over land where native title may continue to exist, the grant of a commercial fishing licence which impacts on native title rights and interests, the construction of a public work on a reserve where native title may continue to exist.

Essentially, the Procedures are aids to decision making and are designed to allow the business of government to proceed while appropriately considering native title issues and satisfying the requirements of the NTA.

The current set of Procedures took effect on 30 September 1998 when the majority of the 1998 amendments to the NTA came into force.

The 1998 Procedures consist of a number of work instructions, each of which are divided into individual attachments. The work instructions comprise the following:
1. dealings that can proceed without further reference to native title;
2. dealings that can proceed because native title is extinguished;
3. dealings that can proceed without notifying native title holders;
4. dealings that require notification and consideration of responses or other procedural rights before proceeding; and
5. other future act options.

Native Title and Indigenous Land Services (NT&ILS) within the Department of Natural Resources and Mines, as the State Government’s lead agency for native title, is reviewing the 1998 Procedures to make certain they continue to reflect current law and policy in addition to making the Procedures more user friendly and useful. As a result of the review a new format for the Procedures has been developed which see the Procedures consisting of chapters, each divided into individual modules. As each module is drafted and finalised, it replaces the earlier attachment. The Native Title Work Procedures can be found on the NT&ILS website at: http://www.nrm.qld.gov.au/nativetitle

8.6 Cultural Heritage Coordination Unit, Regional Services, Department of Natural Resources and Mines


**Commencement**

The Queensland Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Cultural Heritage Act 2003 (the Acts) both commenced operation on 16 April 2004.

**Ownership**

Under the Acts, there is legislative recognition that:
- Aboriginal and Torres Strait Islander people are the primary guardians, keepers and knowledge holders of their cultural heritage;
- Existing rights of ownership of cultural heritage by Aboriginal and Torres Strait Islander people and native title are not affected;
- There is Aboriginal or Torres Strait Islander ownership of:
  - human remains wherever held;
  - secret and sacred material currently held in state collections (such as the Queensland Museum);
  - cultural heritage removed from land; and
- Residual ownership (custodianship) of any other cultural heritage resides in the state (e.g. to ensure protection of heritage on freehold land).

**Blanket protection**
The Acts:
- recognise that a significant area does not necessarily have markings or other physical evidence indicating occupation or denoting its significance;
- ensure protection of areas and objects of significance to Aboriginal or Torres Strait Islander people in accordance with their tradition or history; and
- ensure protection of areas in Queensland where there is culturally, historically, or archaeologically significant evidence of occupation.

**Duty of care**
The duty of care provisions:
- require those conducting activities in areas of significance to take all reasonable and practical measures to avoid harming cultural heritage;
- are enforced by penalties for non-compliance; and
- are outlined in gazetted guidelines which set out measures for meeting them.

**Register and database**
A Cultural Heritage Register has been established. There is also controlled access to an existing database of approximately 18,000 sites.

**Registration of significance**
Aboriginal or Torres Strait Islander cultural heritage significance:
- is assessed by the Aboriginal or Torres Strait Islander Party. (The results are registered by the state if they are consistent with anthropological, biogeographical, historical or archaeological information—**this is a process registration and is not a re-assessment of significance**).
- is registered by completing a [Cultural Heritage Study](#) approved under the Act—there is no time limit on completing such a study.

Objections to a registration decision are put to the Land and Resources Tribunal, which makes a recommendation to the Minister for Natural Resources and Mines.

**Management plans**
Cultural heritage management plans:
- are required for certain high-level impact activities (e.g. where an environmental impact statement is required under legislation);
- may be initiated voluntarily (e.g. to ensure that duty of care is met);
require a four-month notification and negotiation process to reach agreement on how they will ensure that harm to cultural heritage is avoided or minimised;

- do not require that cultural heritage be registered as part of the planning process; and

- may be objected to via the Land and Resources Tribunal, which makes a recommendation to the Minister for Natural Resources and Mines – the minister’s decision is subject to judicial review.

Those preparing a Cultural Heritage Management Plan have access to culturally appropriate mediation by the Indigenous Issues Referee at the Land and Resources Tribunal.

**Permits**

Permits are no longer required—they have been replaced by duty of care provisions, the cultural heritage management plan process, and other agreement-based mechanisms.

**Existing agreements**

Transitional provisions ensure that existing cultural heritage agreements comply with the new legislation.

**Authorised officers**

These are appointed by the minister to investigate offences under the Act.

**Penalties**

- Maximum for breach of duty of care or damage to Aboriginal and Torres Strait Islander cultural heritage:
  - corporation—$750,000
  - individual—$75,000
- Additional for breach of a Stop Order—$1.275M
- Damage to a registered site or object—up to two years imprisonment
- Order to make good damage

**Departmental contacts:**

*Head office*
Cultural Heritage Coordination Unit
Regional Services
Department of Natural Resources, Mines and Energy
Phone: (07) 3238 3838.

*Compliance unit*
GPO Box 2454
Brisbane Qld 4001
Free call: 1800 440 340
8.7 Department of Transport

Queensland Transport (QT)

**CORE BUSINESS: DEVELOPMENT AND MANAGEMENT OF THE LAND, AIR AND SEA TRANSPORT ENVIRONMENT IN QUEENSLAND**

About QT

QT is the State government agency responsible for developing and managing the land, air and sea transport environment in Queensland.

Many of the department’s marine-specific activities are actually undertaken by Maritime Safety Queensland (MSQ), a government agency attached to QT. These activities are discussed in the section immediately following.

However, QT continues to have direct involvement in the following aspects of the management and regulation over marine areas in Queensland:

- undertaking transport planning studies;
- oversight of the State’s port authorities;
- development of policy advice on port issues;
- provision of recreational boating infrastructure;
- oversight and management of state boat harbours; and
- delivery of recreational marine vessel registrations and the licensing of their users.

Transport Planning

Managing and influencing the operation of maritime resources and infrastructure is an important part of transport planning. Planning for waterways varies widely, for example:

- the use of waterways as transport corridors for commercial and recreational craft;
- integration of waterways transport with other components of the transport system;
- operational impacts and constraints on existing marine infrastructure (boat ramps, barge ramps, boat harbours, privately owned marinas and ferry routes/stops);
- operational impacts on the use of commercial and recreational boats and vessels in waterways;
- dredging requirements and the disposal of spoil on land and in waterways;
- navigational and safety requirements;
- land-side access requirements to ports and future port land;
- marine pollution prevention and remediation; and
- managing environmental impacts.

QT facilitates the provision of efficient transport infrastructure, systems and services, including marine components, through:

- the development and implementation of Integrated Regional Transport Plans (IRTPs) for designated regions of the State; and
- the management of project-specific studies which influence the direction for transport investment.
Queensland’s Ports
The Queensland coastline is host to 15 modern and efficient trading ports, two community ports, and a number of non-trading ports located at regular intervals from Brisbane in the south-east to Burketown in the north-west.


The legislative regime enables the Queensland government to retain ownership of port authorities through the Shareholding Ministers (Minister for Transport and Main Roads and the Treasurer), and to set overall strategic direction.

Apart from the oversight of the seven port authorities, QT provides strategic port land management and the development of policy advice on port issues. QT is also overseeing development of a Queensland Port Network Strategy, as required under the Transport Infrastructure Act.

Specific information on each port authority is provided in subsequent sections of this document.

Recreational Boating Infrastructure and State Boat Harbours
QT undertakes a mix of policy, planning, regulatory and service delivery roles for recreational boating infrastructure within Queensland.

QT provides an overall strategic and policy role for all eleven state boat harbours and also manages Bowen, Mooloolaba, Rosslyn Bay, Snapper Creek and Urangan Boat Harbours on a day-to-day basis.

Aside from the five state boat harbours managed by port authorities (refer sections following), Port Douglas Boat Harbour is managed by Douglas Shire Council.

Registration and Licensing
In Queensland, marine licences and vessel registrations are both divided into recreational and commercial categories.

Recreational registrations and licences are available from Queensland Transport customer service centres, whereas applications for commercial ship registrations and marine licences must be made to MSQ regional offices.

Contacts:
Telephone: (07) 3834 2011
Email: HelpUs2HelpYou@transport.qld.gov.au
Website: http://www.transport.qld.gov.au/
Maritime Safety Queensland (MSQ)

Core Business: Protection of Queensland’s Waterways and Waterway Users

About MSQ
MSQ is a government agency attached to Queensland Transport (QT). MSQ’s role is to protect Queensland’s waterways and the people who use them – providing safer, cleaner seas.

MSQ has responsibility for:
- improving maritime safety for shipping and small craft through regulation and education;
- minimising vessel-sourced waste and providing response to marine pollution;
- providing essential maritime services such as port pilots and aids to navigation; and
- encouraging and supporting innovation in the maritime industry.

Maritime Safety Queensland administers a raft of legislation, including:
- Maritime Safety Queensland Act 2002;
- Maritime Safety Queensland Regulation 2002;
- Transport Operations (Marine Safety) Act 1994;
- Transport Operations (Marine Safety) Regulation 1995;
- Transport Operations (Marine Pollution) Act 1995; and

Environmental Protection
The Transport Operations (Marine Pollution) Act and supporting regulations were introduced to protect Queensland’s marine and coastal environment by minimising deliberate and negligent discharges of ship-sourced pollutants into coastal waters. This legislative framework is based on the International Convention for the Prevention of Pollution by Ships (MARPOL).

Risk assessment underpins the preparation and planning for marine oil spill preparedness and response within Queensland. This assessment provides a timely update to ensure Queensland’s strategy for protection of our pristine coastal waters and world heritage listed Great Barrier Reef Marine Park maintains world’s best practice.

MSQ has responsibility for oil spill equipment acquisition and maintenance, and the training of oil spill responders. Frequent desktop exercises are conducted for oil spill response, and contingency plans are developed under national plans for oil spill response.

During 2000/2001 QT’s maritime division trained 34 Indigenous rangers from Cape York and Torres Strait Islands’ communities in various elements of oil spill response.
In October 2002, MSQ and the Australian Maritime Safety Authority conducted a major oil spill response exercise in Torres Strait. Exercise 2002 was the fifth in a series of bi-annual oil spill response exercises conducted under the auspices of Australia's National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances.

In 2004, additional oil spill response training took place on Thursday Island, and a port-specific oil spill contingency plan was developed for the northern Cape York port of Quintell Beach (Lockhart River).

MSQ also prepares and distributes numerous marine pollution-related publications.

Maritime Safety
MSQ is responsible for administering the Transport Operations (Marine Safety) Act, which has as its objective the achievement of an appropriate balance between the regulation and management of maritime safety and the ongoing efficiency and effectiveness of the maritime industry in Queensland.

As the fundamental principle of the Transport Operations (Marine Safety) legislation, the general safety obligation transfers the responsibility of safety to owners and operators and encourages risk management.

The Act provides for significant penalties for breach of safety obligations.

Other key activities undertaken by MSQ to ensure the protection and safety of Queensland’s waterway users include the following:
- collating, analysing and reporting on marine incidents;
- provision and ongoing maintenance of aids to navigation;
- provision of pilotage services in all Queensland ports except Brisbane;
- development of Waterways Transport Management Plans;
- defining management areas for various maritime related activities;
- regulatory control of buoy moorings; and
- preparation of and distribution/sale of numerous marine safety-related publications and on-line databases.

A major places of refuge for distressed ships exercise is planned in 2005.

Registration and Licensing
Closely related to MSQ's more immediate maritime safety activities outlined directly above, is the registration of marine vessels and the licensing of their users.

Applications for commercial ship registrations and marine licences must be made to MSQ regional offices. Recreational registrations and licences are available from Queensland Transport customer service centres.

Contacts:
Telephone: (07) 3120 7462
Ports Corporation of Queensland (PCQ)

CORE BUSINESS: DEVELOPMENT, MANAGEMENT AND OPERATION OF EIGHT TRADING PORTS, TWO COMMUNITY PORTS AND THREE NON-TRADING PORTS ACROSS QUEENSLAND

About PCQ

Ports Corporation of Queensland (PCQ) develops and manages sea port facilities for thirteen port locations which handle a variety of cargoes:
- the trading ports of Hay Point (one of the largest bulk coal export ports in the world), Abbot Point, Lucinda, Mourilyan, Cape Flattery, Weipa, Karumba, and Skardon River;
- the community ports of Thursday Island and Quintell Beach; and
- the non-trading ports of Maryborough, Cooktown, and Burketown.

PCQ’s trading ports handle bulk shipments of coal, bauxite, zinc, silica sand, sugar and molasses, and live cattle, while the community ports supply neighbouring populations with essential general cargo and fuel. The non-trading ports are held for strategic purposes, should a commercial need arise in the future.

PCQ is committed to sustainable development and operation of its ports and has developed appropriate practices to manage potential environmental impacts and work constructively with local communities.

PCQ leases land or infrastructure to other organisations to carry out port-related activities and has a planning, coordinating and facilitation function in the port. Generally, the Corporation does not operate any port facilities and as such, there is little direct environmental impact from its own activities. However, in its coordination role, PCQ carries out monitoring of the whole port environment to complement any monitoring carried out by facility operators.

The main environmentally related activity carried out by the Corporation is dredging in its ports to maintain navigable depths for ships. The impacts of this activity are controlled through appropriate dredge management plans, extensive sediment testing and environmental monitoring; and close consultation with government agencies, environmental groups and the local communities.

PCQ has a comprehensive program of environmental monitoring, which is reviewed each year to ensure its continued appropriateness.
Port of Brisbane Corporation (PBC)

**CORE BUSINESS: DEVELOPMENT, MANAGEMENT AND OPERATION OF THE PORT OF BRISBANE**

**About PBC**
The Port of Brisbane Corporation (PBC) is a Government Owned Corporation established in 1994, responsible for the operation and management of Australia’s third busiest container port.

The Port of Brisbane is a deep-water port providing container terminals and bulk cargo facilities for a diversified range of commodities 30 berths and nearly 7500 metres of quayline.

Fisherman Islands is the centre of the port’s activities, providing integrated services including cargo-handling infrastructure, an interface between rail, road, and sea transport in the Brisbane Multimodal Terminal (BMT), and the Corporation’s offices.

PBC also manages the boat harbours at Manly, Scarborough, Cabbage Tree Creek, and the Gardens Point moorings, as well as a number of other public marine facilities.

The Port of Brisbane is located at Fisherman Islands at the mouth of the Brisbane River and adjacent to Moreton Bay Marine Park. The port limits and port operations extend from Caloundra to the southern tip of Moreton Island, and incorporate much of the Marine Park.

The Corporation strives to limit its impact on the surrounding environment by ensuring environmental management is a key component of the Corporation’s operational and commercial development strategy.

**Contacts:**
Telephone: (07) 3258 4888
Facsimile: (07) 3258 4703
Email: info@portbris.com.au

Bundaberg Port Authority (BPA)

**CORE BUSINESS: DEVELOPMENT, MANAGEMENT AND OPERATION OF THE PORT OF BUNDABERG**

**About BPA**
The Port of Bundaberg is administered by the Bundaberg Port Authority (BPA). The Authority was originally established in 1895 as the Bundaberg Harbour Board by The Bundaberg Harbour Act 1895. The port was renamed in 1987, and became a statutory Government Owned Corporation (GOC) on 1 July 1995.
The Port is used for importing and exporting of bulk and general cargoes and is a key link in the economic development of the Wide Bay/Burnett region.

BPA also manages the Burnett Heads Boat Harbour.

Ongoing operational works are being undertaken by BPA’s workforce, in close cooperation with the Environmental Protection Agency and other environment managers, to ensure that port operations continue to protect the integrity and safety of the surrounding environment. Significant monitoring both on-shore and off-shore has been undertaken to ensure that operations are conducted in accordance with the Authority’s Environmental Management Plan. The BPA has also completed long term management plans for the handling of dredge spoil.

Contacts:
Telephone: (07) 4159 4233
Facsimile: (07) 4159 4655
Email: info@bpa.net.au
Website: http://www.bpa.net.au/

Central Queensland Ports Authority (CQPA)

Core business: Development, management and operation of the Port of Gladstone and Port Alma

About CQPA
The Port Authority’s major functions are to facilitate the export of resources from the Central Queensland region, and to handle the import of raw material and the export of finished products from major industry established in Gladstone and Rockhampton.

The Port of Gladstone is Queensland’s largest multi-cargo port. Covering a distance of 30 kilometres, it offers six wharf centres featuring 14 berths.

In relation to industrial land holdings, the initial port facilities and some industry were established on the seaward side of the city.

Regulation and control of small craft at the Gladstone Marina is undertaken by CQPA.

Port Alma is a natural deep water harbour offering security and shelter. It can accommodate vessels of up to 180 metres in length.

The Port has three berths, comprising one general berth with crane, one berth for general cargo, and one dolphin berth which provides for bulk cargo.

CQPA believes that it is possible to maintain industrial development that is not detrimental to the environment. In response to this belief, CQPA has implemented an environmental management program aimed at monitoring and eliminating any negative effects port development may have on the environment.
Specific environmental monitoring undertaken by CQPA includes air, water quality, heavy metals, turbidity, benthic fauna, mangroves and seagrass monitoring. CQPA has also facilitated volunteer monitoring of wader birds and turtles.

Contacts:
Gladstone
Telephone: (07) 4976 1333 Facsimile: (07) 4972 3045

Port Alma
Telephone: (07) 4934 6931 Facsimile: (07) 4934 6928

Rockhampton
Telephone: (07) 4927 2133 Facsimile: (07) 4922 6096

Email: Contact Us
Website: http://www.cqpa.com.au/

Mackay Port Authority (MPA)

Core Business: Development, Management and Operation of the Port of Mackay and the Mackay Airport

About MPA
Originally operating from 1 January 1896 as the Mackay Harbour Board, it subsequently became the Mackay Port Authority on 1 January 1987 and was corporatised on 1 July 1995. It owns and operates the Port of Mackay and, since 1989, also the Mackay Airport.

The Port of Mackay is Queensland's fourth busiest multi-commodity port in terms of cargo throughput. Port infrastructure includes four berths and a jetty.

In relation to the adjacent small craft harbour, the segregation of small-craft operations from commercial shipping was a key strategy developed in the 1992 Port Development Plan. Out of this, the ownership and ongoing management of the marina was offered to the private sector, with Port Binnli's proposal being accepted.

The Authority owns (freehold) about 150 hectares at the Mackay Airport. At the seaport, it controls about 800 hectares, most of which is now freehold. It also holds perpetual leases over the seabed within the harbour walls.

The Authority realises the importance of its Environmental Management System and the associated process as it underpins. Its existing system had become dated, so the Authority has commissioned consultants to develop a new system, reflecting present legislation, expectation and resources.

Many of the Authority’s tenants carry out environmentally relevant activities. The Authority has this year worked very closely with local government and the Environmental Protection Agency to ensure that facilities have appropriate licences and systems.
Contacts:
Telephone: (07) 4955 8155
Facsimile: (07) 4955 2868
Email: rockport@rpaport.com.au
Website: http://www.rpaport.com.au/
Townsville Port Authority (TPA)

CORE BUSINESS: DEVELOPMENT, MANAGEMENT AND OPERATION OF THE PORT OF TOWNSVILLE

About TPA
The Townsville Port Authority (TPA) is a statutory Government Owned Corporation (GOC) that manages a dynamic and diverse port, a breakwater harbour with a land and sea jurisdiction in access of 400 square kilometres.

TPA is responsible for facilitating trade through the port by effectively managing its marine operations and land-based resources.

The Townsville Port is Queensland's third largest commercial port and continues to be one of the state’s fastest growing ports. The Port of Townsville has nine operational berths.

TPA also manages the Ross Creek Boat Harbour.

TPA has identified the environment as a key result area in the management of port operations. The aim of TPA’s environmental policy is to establish an overall approach to sustainable port development and operation and responsible environmental management, resulting in the continual improvement of environmental performance.

The scope of this policy includes all activities for which TPA has responsibility. This does not include the activities of port clients, as the Authority recognises that port clients are responsible for their own environmental management and to a degree TPA does not have the authority to exercise managerial control over individual port operators. However, the Authority recognises the benefits to coordinate environmental management initiatives of the wider port community and will attempt to control the various interfaces with port operators where applicable.

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Cairns Port Authority (CPA)

**Core Business: Development, Management and Operation of the Port of Cairns, Cairns International Airport and the Cityport Development**

**About CPA**
CPA’s seaport management has spanned 97 years, commencing in 1906 as the Cairns Harbour Board, and airport management 22 years, commencing in 1981. The Authority now operates three principal business units – Airport, Seaport and Cityport.

CPA is responsible for the management and operation of over 1100 hectares of strategic land and property comprising:
- Port of Cairns, a multi-purpose regional seaport that caters to a diverse range of industries;
- Cairns International Airport, the sixth busiest airport in the country (fifth in international passengers); and
- Cityport – an urban waterfront development project adjacent to the Central Business District.

Cairns Seaport is the closest port to the Great Barrier Reef and is located on Trinity Inlet. It is the most northerly major port on Australia’s east coast and has long been a natural consolidation and redistribution centre. Supplies are shipped to coastal communities north of Cairns as well as the Torres Strait Islands and the Gulf of Carpentaria.

The Cityport development features include:
- a modern reef fleet terminal facility;
- Cairns Marlin Marina, an enlarged and protected marina, eventually providing for up to 250 berths; and
- modern terminal facilities for locally based and international cruise liners.

The purpose of CPA’s environment policy is to establish an overall approach for the Authority to attain responsible environmental management of its lands and waters within port limits.

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8.8 Bureau of Mines and Petroleum, Department of Natural Resources and Mines

CORE BUSINESS: GRANT AND REGULATION OF MINING AND PETROLEUM INTERESTS WITHIN QUEENSLAND

Legislative basis

Exploration and mining (including petroleum) tenures may be granted in Queensland under the Mineral Resources Act 1989 and the Petroleum Act 1923 in ‘offshore’ places within State territorial waters.

Section 3 of the Mineral Resources Act provides for the application of the Act to the seabed and subsoil beneath the baseline waters of the State and to waters above that sea bed as if that seabed and subsoil were land within Queensland. Tenures may not be granted over protected areas or seabed or land excluded from the application of this Act by law of the Commonwealth. ‘Baseline waters’ means the waters between the mean low water springs level and the inside of the baseline under the Offshore Minerals Act 1998 (Qld).

The Petroleum Act provides in section 153 for a process to select builders and operators of, and persons to take an interest in, the Papua New Guinea to Queensland pipeline for the project called the ‘Papua New Guinea – Queensland Gas Project’.

The Petroleum (Submerged Lands) Act 1982 (Qld) deals with administration of petroleum resources in territorial seas. Of particular relevance to Queensland are the sections providing processes for a possible pipeline from Papua New Guinea to Gladstone in Queensland. Section 5 deals with the effect of territorial sea baseline changes on the pipeline licence, and sections 14, 64 and 65 deal with the application of laws in the area adjacent to the State and providing for the application for and grant of a pipeline licence in this area.

Bureau position regarding application of NTA

The Bureau of Mines and Petroleum notes that an ‘offshore’ place is defined in s. 253 of the Native Title Act 1993 (Cth) (NTA) as any land or waters to which the NTA extends other than those that are in an ‘onshore place’. Australia asserts sovereignty over offshore places under the Seas and Submerged Lands Act 1973 (Cth) and the NTA extends to these areas as provided in s. 6 of the NTA.

The definition of ‘onshore’ place under the NTA is ‘lands or waters within the limits of a State or Territory to which this Act [NTA] extends’.

Subdivision N of the NTA provides for acts affecting offshore places. Any such future act is valid to the extent that it relates to an ‘offshore place’ (s. 24NA(2)).

‘Offshore land and waters’ are excluded from the ‘right to negotiate’ provisions of the NTA (s. 26(3)).
The non-extinguishment principle applies to acts affecting 'offshore places' eg the grant of Exploration permits for minerals (s. 24NA(4) of the NTA). The non-extinguishment principle is defined in the NTA in s.238 and provides that, while the future act does not extinguish native title to the extent of the inconsistency, native title holders and registered native title claimants have the same procedural rights (if any) as if they held ordinary title (s. 24NA(8)). Ordinary title holders do not hold any other rights where 'rights to mine' are created in an 'offshore place'. Therefore there are no procedural rights which may accrue to native title holders and registered claimants.

'Offshore places' are excluded from the 'right to negotiate' process under s. 26(3) of the NTA.

Except to the extent that native title is held by the courts to exist at common law in 'offshore places', there are no native title implications for the grant of a right to mine in 'offshore places'.

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9. Local government

The Queensland Local Government Act 1993 is the current governing legislation that constitutes, regulates, and grants powers and responsibilities to Queensland local government. The Act provides Queensland local government with considerable autonomy and flexibility.

Under this Act, local governments make laws known as local laws and subordinate local laws; the latter prescribe detail that may change more frequently than a local law. Local laws will vary from one local government area to another. Many other Acts also contain specific powers for local government.

There are currently 125 local councils responsible for local government administration throughout the State. Of these, 43 local government areas are adjacent to the Queensland coastline. There are also 31 community councils established under the Community Services (Aborigines) Act 1984 and the Community Services (Torres Strait) Act 1984\(^\text{12}\) and 28 of these are adjacent to the coast.

The Queensland State government determines local government areas. As a matter of convention and policy, along the coastline this generally is extended to the high water mark. However, the foreshore area to the low water mark is also usually placed under the control of the relevant local government.\(^\text{13}\)

A local government’s jurisdiction can be exercised in its own area, known as its basic territorial unit, and also in any other place outside its basic territorial unit that is put under its control (e.g. foreshores) or is acquired by the local government. This total area is then described as the territorial unit.

It is within the territorial unit that local laws and subordinate laws apply, though application of such laws to areas outside the basic unit must be specifically expressed and can only be exercised for the purpose for which the place was put under its control or acquired by it.

Specific State government legislation can extend local government jurisdiction to coastal waters for a particular purpose. Chapter 13 Part 4 of the Queensland Local Government Act 1993 covers ‘Marine and Aquatic Matters’ and includes provision for local government to regulate small vessel harbours, jetties, breakwaters and ramps; bathing reserves; and foreshores.

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\(^\text{12}\) In the White Paper ‘Meeting the Challenges of Community Governance’ October 2003, the State announced an intention to re-establish Aboriginal Community Councils as Shire Councils subject to the Queensland Local Government Act 1993, and to repeal the Community Services (Aborigines) Act 1984 and replace it with alternate legislation.

\(^\text{13}\) Subsection 936(1) Queensland Local Government Act 1993.
Coastal management plans and coastal management districts\textsuperscript{14} are matters that a local government must take into account when preparing its planning scheme\textsuperscript{15}. These must also be considered whenever a local government assesses a particular development application when coastal plans have not been incorporated into a planning scheme.

Other activities performed by local governments that can impact on coastal areas include:
- managing public access;
- acquisition and management of coastal lands;
- management of waterways;
- water quality management infrastructure;
- cleaning of foreshores and waterways.

Local governments take advice regarding their obligations under native title and cultural heritage laws from a variety of sources. Some larger councils (such as Brisbane City Council) have internal expertise. Other councils refer questions to their legal and other advisors or to the Queensland Government. The Local Government Association of Queensland also employs a Native Title Policy Officer who is available to advise local governments as to their obligations.

\textsuperscript{14} Under the\textit{ Coastal Protection and Management Act 1995 (Qld)}. 
\textsuperscript{15} Under the\textit{ Integrated Planning Act 1997 (Qld)}. 
Attachment 1 – Acknowledgements and acronym listing

A. Agencies and organisations that provided material used in this guide

Aboriginal and Torres Strait Islander Land Acts Branch, Department of Natural Resources and Mines (ATSILAB)
Australian Customs Service (Customs)
Australian Heritage Council
Australian Maritime Safety Authority (AMSA)
Australian Quarantine and Inspection Service (AQIS)
Bureau of Mines and Petroleum, Department of Natural Resources and Mines
Commonwealth Attorney General’s Department
Commonwealth Department of Environment and Heritage (DEH)
Cultural Heritage Coordination Unit, Regional Services, Department of Natural Resources and Mines
Department of Natural Resources and Mines (NRM)
Department of Transport (DoT)
Department of Transport [for work in particular profiling Maritime Safety Queensland (MSQ), Ports Corporation of Queensland (PCQ), Port of Brisbane Corporation (PBC), Bundaberg Port Authority (BPA), Gladstone Port Authority (GPA), Rockhampton Port Authority (RPA), Mackay Port Authority (MPA), Townsville Port Authority (TPA) and Cairns Port Authority (CPA)]
Environmental Protection Agency (EPA)
Federal Court of Australia (FCA)
Great Barrier Reef Marine Park Authority (GBRMPA)
Local Government Association of Queensland Inc. (LGAQ)
National Native Title Tribunal (NNTT)
National Oceans Office (NOO)
Native Title and Indigenous Land Services, Department of Natural Resources and Mines (NT&ILS)
Queensland Fisheries Joint Authority (QFJA)
Queensland Fisheries Service, Queensland Department of Primary Industries (QFS)

B. Agencies or organisations that provided comments or suggestions in relation to this guide

Balkanu Cape York Development Corporation
Commonwealth Department of Agriculture, Fisheries and Forestry (DAFF)
National Native Title Tribunal
Torres Strait Regional Authority (TSRA)

C. Agencies or organisations that were consulted in regard to the content of this guide

Aboriginal Coordinating Council
Cape York Land Council Aboriginal Council
Carpentaria Land Council Aboriginal Council
Central Queensland Land Council Aboriginal Council
Gurang Land Council Aboriginal Council
Island Coordinating Council
National Native Title Tribunal
North Queensland Land Council Aboriginal Council
Queensland Indigenous Working Group
Queensland South Native Title Representative Body Aboriginal Corporation

D. Publications of particular assistance in drafting this guide

Hiley, G. (QC), 'Key Legal Developments in Native Title', Paper presented at Native Title Forum, NNTT, 1-3 August 2001, Customs House, Brisbane.


Sparkes, S (Dr.), ‘Native Title – All at Sea’, National Native Title Tribunal, Paper presented at the Native Title Representative Bodies Legal Conference 28-30 August 2001 and updated 12 October 2001 and 21 April 2002.
Attachment 2 – More detail on the ‘future act’ regime of the NTA

The 1998 amendment to the NTA provided an extended ‘future act’ regime for governments to follow in the future, ensuring that governments could deal with non-vacant Crown land where native title could still have existed. The ‘future act’ process that must be complied with by governments depends on what the ‘act’ is and where the intended ‘act’ is to take place.

The NTA provides that only those future acts that are identified in the 10 relevant Subdivisions in the NTA can be done validly. 16 For example, the grant of a fishing permit may fall within Subdivision H, which authorises acts relating to, among other things, living aquatic resources. All offshore activities not falling within an earlier Subdivision could be validly done under Subdivision N. The granting of permits to allow offshore petroleum mining may fall into this category.

In general, the doing of the act will attract the ‘non-extinguishment principle’ which means that inconsistent native title rights are suppressed, but not extinguished, and will revive after the future act ceases.17 Native title holders will have different types of procedural rights, depending on the type of act that is proposed. In some cases, this will mean that native title holders or claimants have a right to be notified that the act is going to be done, and for some acts, given an opportunity to comment. In other cases native title parties have a right to negotiate about the doing of the act. In some circumstances, a future act may only be done under an Indigenous Land Use Agreement. This requires the voluntary consent of native title parties to the doing of the future act.

A number of the 10 Subdivisions within their terms only relate to acts done on-shore and are therefore not relevant to future activity in an offshore area.18 The following list sets out the main Subdivisions in the NTA relevant to future activity conducted offshore19 and provides, in general terms, a description of the types of act covered:

- **Subdivision E** which provides that a future act that is the subject of an Indigenous Land Use Agreement (ILUA) registered under Part 8A of the NTA is valid.
- **Subdivision H** which provides that the making of legislation in relation to the management of water, airspace or living aquatic resources is valid. This would include regulations and legislative instruments such as zoning plans. The grant of leases, licences and permits under legislation that relates to such matters are also covered by this Subdivision.
- **Subdivision I** which provides that a renewal or regrant of a lease, licence or permit that is valid under another Subdivision is itself valid.

16 The relevant Subdivisions are Subdivisions E to N in Division 3 of Part 2 of the NTA.
17 Section 238 of the NTA.
18 ‘Offshore place’ is defined in the Act as a place that is not within the limits of a State or Territory. This will normally be on the seaward side of the mean low water mark except where bays and gulfs are within the limits of a State or Territory.
19 Subdivisions F (non-claimant applications) and G (primary production activities) can also apply to activities done offshore.
Subdivision J which provides that a future act done on an area that is the subject of a reservation or proclamation made for a specific purpose before 23 December 1996 is valid provided it has no greater impact on native title than an act done for that specified purpose. This may include an act done as a result of the proclamation of a marine park proclaimed before that date (for instance, the making of a plan of management).

Subdivision L which provides that a low impact future act is valid. Low impact future acts may include the grant of permits and licences not involving mining or construction of fixtures. This Subdivision only applies to acts done in a particular area before there is a determination of native title in that area.\(^{20}\)

Subdivision N which provides that any future act done offshore is valid. This Subdivision operates as a 'catch-all' in relation to future acts offshore; however, it only applies to future acts not falling within an earlier Subdivision.

There is no right to negotiate offshore as the ‘right to negotiate’ provisions\(^{21}\) do not apply to any act that is on the seaward side of the low water mark.\(^{22}\)

However, Subdivision N states that in relation to acts done offshore, registered native title bodies corporate and registered claimants have the same procedural rights as they would have if they held ‘corresponding rights and interests’ that are not native title rights and interests. While the meaning of this provision has not been tested in the courts, it may mean that where, for instance, the holder of a fishing licence has a right to be notified about the issuing of additional licences, then any native title holders whose native title includes the right to fish must also be so notified.

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\(^{20}\) That is, before the Federal Court or the High Court has determined whether native title exists in a particular area.

\(^{21}\) Subdivision P of Division 3 of Part 2 of the NTA.

\(^{22}\) Subsection 26(3) of the NTA.
Attachment 3 – Map native title sea claims in Queensland