

31 January 2014

Great Barrier Reef Strategic Assessment
Public Consultation Manager
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Dear Sir or Madam:

Great Barrier Reef Strategic Assessment Program Report

1. We welcome the opportunity to provide a submission on the management of the Great Barrier Reef and the adjacent coastal zone.

Who we are

2. The Environmental Defenders Office of Northern Queensland ('EDO NQ') is a non-profit, non-government community legal centre which helps people understand their legal rights to protect the environment in the public interest. We assist both urban and rural clients. A large number of our clients and stakeholders are concerned about the management and impacts on the Great Barrier Reef and hence our submission on these issues.

The focus of this submission

3. The draft Great Barrier Reef Region Strategic Assessment Program Report calls for:
 - (a) Targets to guide management, these targets being specific, measureable and time bound, and serving as a focus for management activities enabling all parties with a stake in protection and management of the Great Barrier Reef to more clearly and specifically report on their contributions and effectiveness¹; and
 - (b) The streamlining, harmonising and enhancement of regulatory tools "The Authority will improve alignment of its regulatory tools, reduce unnecessary regulatory burden and seek to harmonise definitions and provisions with other similar and relevant legislation, while maintaining

¹ Draft Great Barrier Reef Region Strategic Assessment Program Report (2013) 24.

strong levels of environmental protection and adequate safeguards”.²

In light of the increasingly weak compliance and enforcement approach taken by Commonwealth and Queensland Governments in relation to the Great Barrier Reef Marine Park (GBRMP) (as evidenced in this submission), we urge the Commonwealth and Queensland Governments to urgently address the worrying trends outlined below.

4. The main points raised in this submission and detailed below are as follows:

We note that:

- (a) offending against environmental regulations and Acts within the Great Barrier Reef Marine Park continue to escalate, and in the period 1996 through to the present, offences have grown on a 25° upwards incline;*
- (b) compliance resources and activity have declined over time at both state and federal levels; and*
- (c) there has been an increasing tendency for ‘soft’ enforcement options to be applied within the Great Barrier Reef Marine Park in contrast to earlier ‘hard’ enforcement activity including prosecutions.*

GBRMPA Compliance and Enforcement

1. We have undertaken a review of events designated by the Great Barrier Reef marine Park Authority (GBRMPA) as ‘potential offences’, and resulting enforcement action.

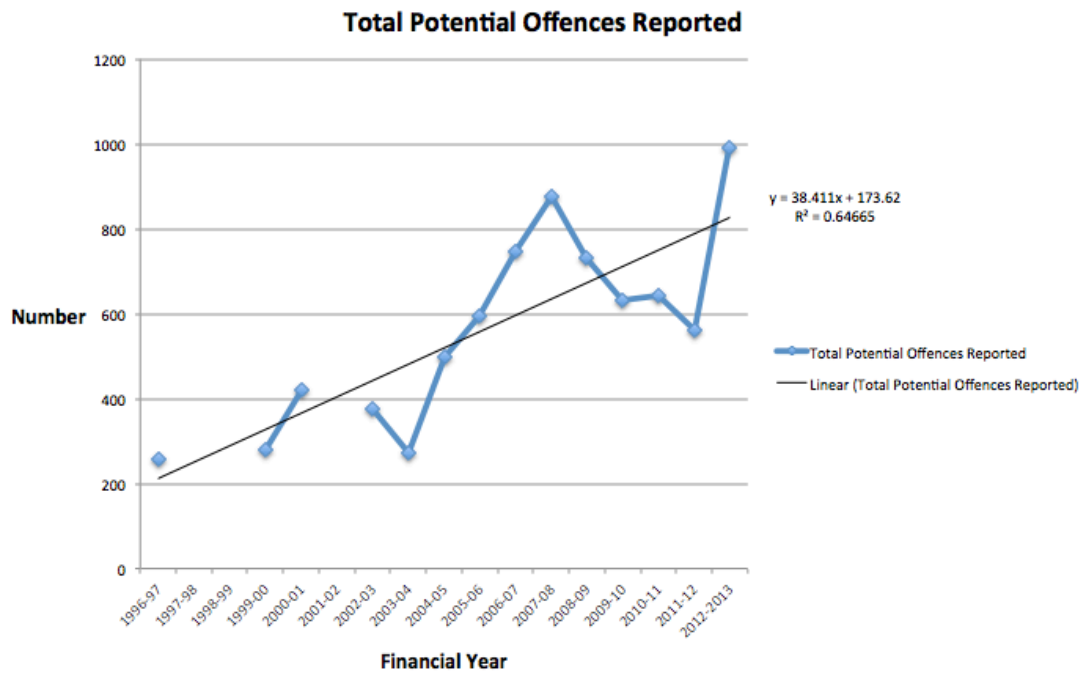
We note that there are gaps in the publicly accessible data relating to GBRMPA’s compliance enforcement record.

2. Itemised enforcement measures are not set out in detail until the Annual Report relating to the 2002/03 financial year. In particular, little or no compliance statistics are available in GBRMPA Annual Reports for the period stretching from the first reported year of 1976/77 to the 2001/02 financial year.
3. The level of detail in compliance reporting was again significantly reduced in the Annual Report for the 2009/10 financial year.
4. Despite these omissions, trends in GBRMPA’s enforcement history are clearly evident. From 1996 to 2013 potential offences³ within the GBRMP have steadily increased from 258 offences per annum to 992 offences per annum respectively.

² Draft Great Barrier Reef Region Strategic Assessment Program Report (2013) 34.

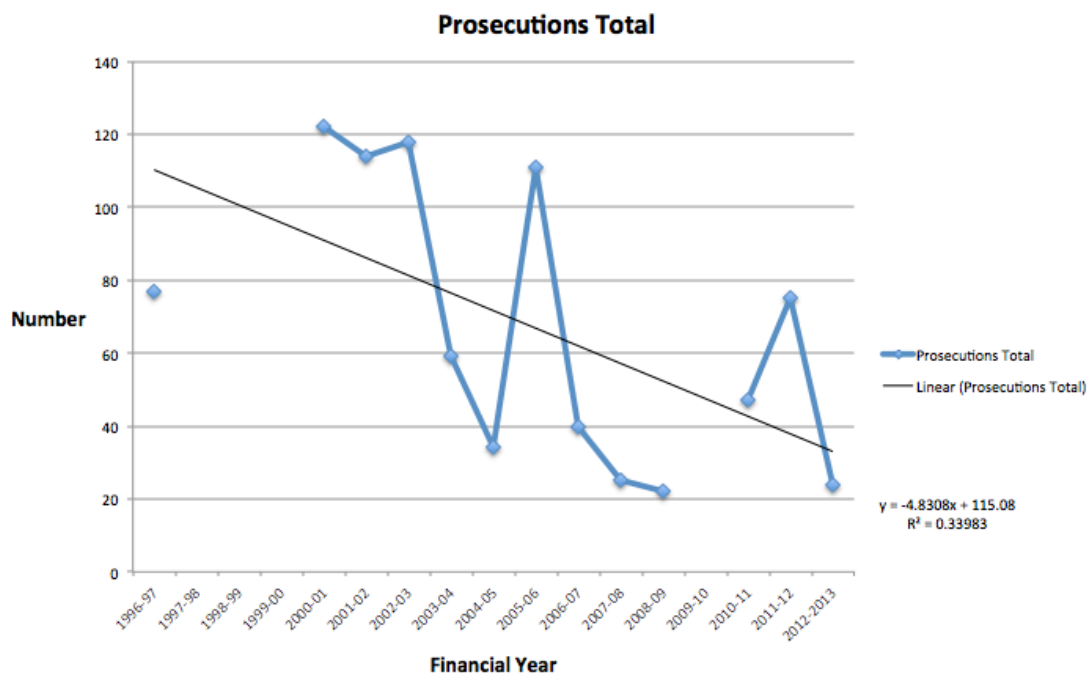
³ A description of offence categories is provided in Appendix 1.

Graph A



5. In the same period an almost mirror-image reverse trend can be identified in relation to the number of prosecutions in response to these offences. In 1996-97 there were 77 prosecutions compared to only 24 in 2012/13, whilst 2000/01 reflected the highest yearly-recorded prosecution total of 122. In 2012/13 there was only one offence prosecuted for every 41 offences committed (a ratio of prosecutions to offences of 1:41). In contrast, the ratio was 1:3 in 1996/97.

Graph B

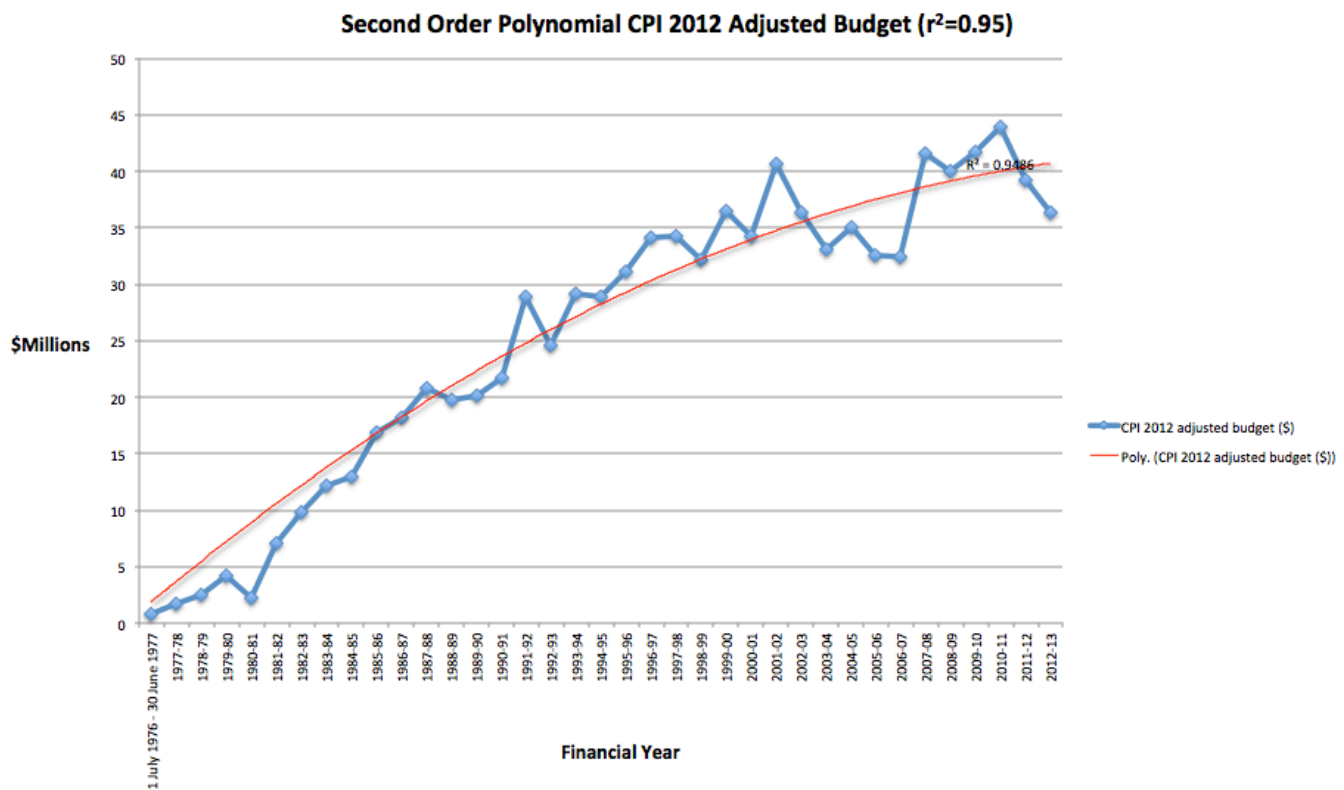


6. Put another way, in 1996/97, 30% of offences were subject to prosecution, whereas by 2012/13, this rate had reduced to a mere 2%.
7. The first prosecutions under the *Great Barrier Reef Marine Park Act 1975* occurred in the 1985/86 financial year, nine years after GBRMPA's inception in 1975. The first and only custodial sentence to ever be handed down for damage to the GBRMP took place in the 2012/13 financial year in relation to the April 2010 grounding of the vessel *Shen Neng*.
8. The most common commonwealth offences tend to be recreational fishing and commercial trawling offences. Recreational line fishing offences made up 48.1% of commonwealth offences in the 2012/13 financial year.
9. Other than by prosecution, compliance measures taken in response to offences may include 'advisory letters', infringement or warning notices, a public education process, referral to another agency or an administrative action. The vast majority of offences are now dealt with by Commonwealth and Queensland advisory letters - an increasing trend. By way of example of how prevalent the use of 'advisory letters' has now become, Commonwealth and Queensland advisory letters in 2012/13 made up 45.5% of total enforcement measures, whereas advisory letters reflected only 18.9% of enforcement measures in 2002/03 - a year in which 118 prosecutions were recorded.

Possible causes of increased offending and decreased enforcement

10. It is clear that enforcement agencies have gradually relaxed their Great Barrier Reef prosecution effort over time - this despite a constant increase in the level of offending. There has been an increasing tendency to replace 'hard' prosecution activity with 'soft' 'advisory letters', and as a result, any real deterrence from harming the Great Barrier Reef has been eroded. This is reflected in the relentlessly increasing offence figures.
11. When GBRMPA's funding appropriations (both Commonwealth and Queensland) for the period 1976/77 to the present are CPI-adjusted relative to 2012, the behaviour of the data can best be described by the second order polynomial ($r^2=0.95$) displayed in Graph C:

Graph C



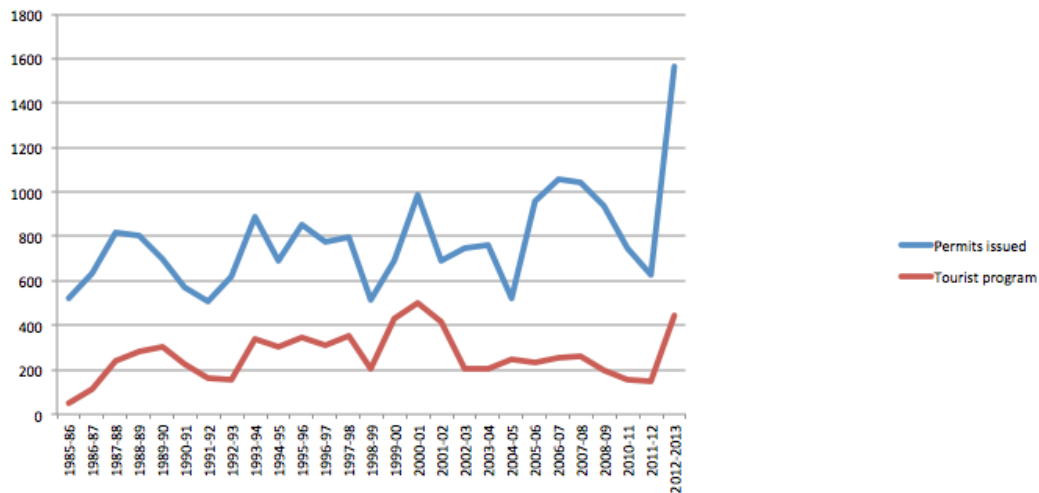
12. Graph C indicates that although funding levels have generally increased, they have been increasing at a progressively lower rate over time (leading to a 'levelling off' of any growth in the CPI-adjusted appropriations).

Summary

13. In summary:

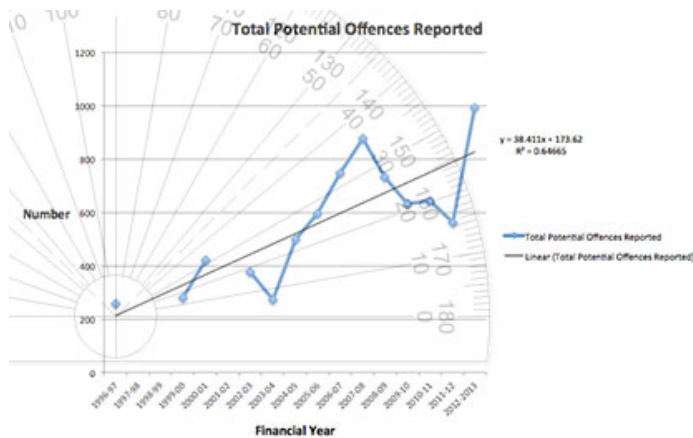
- the rate of increase in funding appropriation for GBRMPA is steadily decreasing;
- an emphasis on enforcement via 'hard' prosecution has given way to 'softer' approaches including education and 'advisory letters'; and
- in 2012/13 there was a massive increase in the rate of permit issuance by GBRMPA (Graph D).

Graph D



- as a result of the tension caused by reduced rate of increase in real funding, increasing permit issuance, and an abandonment of hard enforcement, offence numbers continue to grow at an alarming 25^o incline (Graph E):

Graph E



Solutions

14. To reverse or explain these disturbing trends, we recommend that:

- 14.1.1. GBRMPA be invited to report fully on compliance activity and prosecution-based enforcement resources and activity (as a proportion of total budget) for itself and all agencies with enforcement responsibilities within the GBRMP for the period 1976 to the present;

- 14.1.2. GBRMPA be encouraged to make publicly available and in a timely fashion, all information related to offences and enforcement within the GBRMP;
- 14.1.3. A Senate Inquiry be held into the adequacy of GBRMPA structure and funding with particular reference to:
- Trends in compliance and enforcement behaviour of GBRMPA and other responsible agencies (Commonwealth and Queensland) as outlined in this submission;
 - the relationship between Commonwealth approved 'detailed conditioning' attached to major project approvals and the capacity of GBRMPA and other responsible agencies to *actually* monitor and enforce conditions (there being little point in having a regulatory dog if it does not bark); and
 - the recent Commonwealth Government removal of funding for Environmental Defenders Offices throughout Australia and the desirability of maintenance of the traditional role of EDOs in properly exercising one of their core public interest functions – holding Commonwealth and State governments and industry accountable for their actions and inactions *vis-à-vis* the environment, and law reform aimed at increasing the effectiveness of the law in aiding with the sustainable management of the natural environment.
5. The Commonwealth and Queensland governments are urged to ensure that maritime operations receive proper consideration in any further work associated with the *Great Barrier Reef Region Strategic Assessment Report* and *Program Report*, and that the Commonwealth government ensure ongoing adequate resources for AMSA, which should immediately increase maritime safety inspector staff levels and the rate of commercial vessel inspection in the port of Cairns.

Yours faithfully,



Fergus Power
Principal Solicitor, EDO NQ

APPENDIX A

1. Graph A displays total potential offences - indicating the number of Commonwealth and Queensland offences under the *Great Barrier Reef Marine Park Act 1975* which were reported to the Field Management Program per financial year, and as arising from the reported incident reports within the Great Barrier Reef Marine Park (GBRMP).

(a) In recent annual reports, offences have been categorised by activity:

- (i) Commercial fishing
- (ii) Government
- (iii) Indigenous
- (iv) Recreational
- (v) Research
- (vi) Shipping
- (vii) Tourism Industry
- (viii) Other

(b) These activities may be sub-categorised into:

- (i) Breach of permit – bait netting, collecting, unattached dory, crabbing
- (ii) Fishing – line fishing, unattached dory, spearfishing, crabbing, netting, trawling, grounding
- (iii) Historical shipwrecks – grounding
- (iv) Maritime incident – grounding, pollution/discharge, sinking and pilotage
- (v) Unpermitted activity – restricted access areas, fire, hunting,
- (vi) Moorings offence – unpermitted, commercial activity (tourist)
- (vii) Wildlife – bycatch, non traditional take, unknown take type, interaction with cetacean
- (viii) Plan of management – camping, littering
- (ix) Failure to pay Environmental Management Charge (EMC)
- (x) Other

2. Graph B displays the total commonwealth and Queensland prosecution numbers per financial year under the *Great Barrier Reef Marine Park Act 1975*.

(a) Other than by prosecution, compliance measures taken in relation to offences may include:

- (i) Advisory letters (Commonwealth and Queensland)
- (ii) Infringement notices (Commonwealth and Queensland)
- (iii) Warning notices (Commonwealth and Queensland)
- (iv) Public education process
- (v) Referral to other agency
- (vi) Administrative action

(b) Alternatively there may be:

- (i) Insufficient evidence
- (ii) Inability to locate the offender
- (iii) Offences that are not investigated
- (iv) No offence.