STATEMENT OF REASONS FOR DECISION UNDER REGULATION 5 OF THE
GREAT BARRIER REEF MARINE PARK (AQUACULTURE) REGULATIONS 2000

I, IAN GORDON CAMPBELL, Minister for the Environment and Heritage, provide
the following statement of reasons for my decision to accredit Queensland law under
(the Aquaculture Regulations).

Legislation

1. Regulation 4 of the Aquaculture Regulations provides:

   For this Part, a law provides the requisite degree of protection for the Marine Park
   environment if it provides:

   (a) a degree of protection for the environment of the Marine Park that complies with
       Australia’s obligations under:

       (i) the Convention for the Protection of the World Cultural and Natural
           Heritage done in Paris on 23 November 1972; and

            Montego Bay, Jamaica on 10 December 1982; and

   (b) adequate protection from pollution for the animals and plants in the Marine
       Park.

Note  For the English text of the United Nations Convention on the Law of the Sea, see Australian
Cultural and Natural Heritage, see Australian Treaty Series 1975 No. 47.

2. Regulation 5 of the Aquaculture Regulations provides that:

   (1) The Minister may accredit a law of Queensland for this Part if the Minister is
       satisfied that the law provides the requisite degree of protection for the Marine Park
       environment.

   (2) The Minister may accredit a law under subregulation (1) only if the law is
       proposed for accreditation by the Minister of Queensland responsible for
       administering the law (the Queensland Minister).

   (3) When the Queensland Minister proposes a law for accreditation, the Minister
       need not consider the proposal unless the Queensland Minister provides the
       Minister with enough information about how the law is administered to allow the
       Minister to decide whether the law provides the requisite degree of protection for
       the Marine Park environment.

   (4) In considering whether to accredit a law, the Minister may take into account the
       effect of the law in combination with other Queensland laws.

   (5) The Minister must publish a notice in the Gazette of his or her decision.

   (6) An accreditation has effect from the day the notice of it is published in the
       Gazette.

   (7) The Minister must also prepare, and make publicly available, a statement of the
       reasons for his or her decision.
3. Regulation 6 of the Aquaculture Regulations provides:

(1) If the Minister has accredited a law under regulation 5, the Minister may revoke the accreditation if the Minister is satisfied that the law does not provide, or no longer provides, the requisite degree of protection for the Marine Park environment.

(2) In particular, the Minister may revoke the accreditation of a law if, because of the way it is administered, it does not provide that degree of protection.

(3) In considering whether to revoke the accreditation of a law, the Minister may take into account the effect of the law in combination with other Queensland laws.

(4) If the Minister revokes an accreditation of a law, he or she must publish a notice in the *Gazette* about the revocation.

(5) A revocation has effect from the day stated in the notice.

*Note*  See r 17 as to the effect that revocation of the accreditation of such a law has on the discharge of aquaculture waste from an aquaculture facility the operation of which is authorised by the law.

(6) That day:

(a) must not be earlier than the day on which the notice is published; and

(b) must not be later than 1 year after the day on which the notice is published.

(7) The Minister must also prepare, and make publicly available, a statement of the reasons for the revocation.

4. Regulation 7 of the Aquaculture Regulations provides:

(1) The Minister may declare that an accredited Queensland law is not taken to apply, for the purposes of these Regulations, in relation to a particular aquaculture facility.

*Note*  The power to make the declaration in relation to a particular aquaculture facility includes the power to make such a declaration in relation to a particular class of such facilities --- see the Act, subs 66 (9) and the *Acts Interpretation Act 1901*, subs 33 (3A).

(2) In considering whether to make such a declaration, the Minister:

(a) must take into account whether the law provides the requisite degree of protection, in relation to that facility, for the Marine Park environment; and

(b) may take into account the effect of the law in combination with other Queensland laws.

(3) In particular, the Minister may make such a declaration if the Minister is satisfied that, because of the way the relevant law is administered in relation to that facility, it does not provide that degree of protection for the Marine Park environment in relation to that facility.

(4) If the Minister makes such a declaration, he or she must publish it in the *Gazette*.

(5) A declaration has effect from the day stated in it.

*Note*  See r 17 as to the effect that such a declaration has on the discharge of aquaculture waste from an aquaculture facility the operation of which is authorised by the law.
(6) That day:

(a) must not be earlier than the day on which the declaration is published; and

(b) must not be later than 1 year after the day on which the declaration is published.

(7) The Minister must also prepare, and make publicly available, a statement of the reasons for the declaration.

Background

5. On 23 February 2000 the Great Barrier Reef Marine Park (Aquaculture) Regulations 2000 were enacted to regulate the discharge aquaculture waste into the waters of the part of the Great Barrier Reef Region that is not in the Great Barrier Reef Marine Park, or into streams that discharge into the Great Barrier Reef Region.

6. The Aquaculture Regulations regulate aquaculture discharge in a prescribed, geographically defined, region of Queensland adjacent to the Great Barrier Reef Marine Park. This region is defined as the “controlled area” under the Aquaculture Regulations.

7. The discharge of waste from an aquaculture facility within the controlled area is prohibited unless the discharge is in accordance with a permission granted under the Aquaculture Regulations. A permission under the Aquaculture Regulations is not required for:

- aquaculture operations that were operating (ie had sold aquaculture products) prior to 1 October 1999 (Reg 11);
- discharges allowed under Part 9 of the Environment Protection and Biodiversity Conservation Act 1999 (Reg 12);
- personal or commercial facilities of less than 1 hectare and not including hatchery operations (Reg 13); and
- concessional facilities with a total surface area for the aquaculture operation of greater than 1 hectare and less than 5 hectares and not including hatchery operations (Reg 14).

8. On 12 September 2002 my predecessor, the Hon Dr David Kemp MP, wrote to the then Queensland Minister for Environment seeking agreement to a course of action to be taken by the Australian Government and Queensland to streamline the environmental assessment and authorisation of aquaculture projects adjacent to the Great Barrier Reef Marine Park.

9. On 24 October 2002 the then Premier of Queensland responded agreeing that the Queensland Government would work with industry to develop the necessary procedures, guidelines and policies relevant to State accreditation under the Aquaculture Regulations.

10. In December 2002 the Government released the National Aquaculture Industry Action Agenda – Initiatives and Actions that included a commitment to streamline the regulation of aquaculture.

11. In June 2003 a joint Australian Government and Queensland consultation paper entitled Streamlining the Environmental Assessment and authorisation of Land-
Based Aquaculture Proposals Adjacent to the Great Barrier Reef Marine Park and World Heritage Area was provided to key stakeholders for comment. The Consultation Paper outlined the elements of the proposed process. The aquaculture industry and conservation interests commented on the consultation paper.

12. In August 2004 the Australian and Queensland Governments entered into an assessment bilateral agreement under s.45 of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). The agreement streamlines the assessment of proposals that trigger both the EPBC Act and the Queensland legislation. Such proposals can now be assessed through a single process provided under Queensland law, thus reducing duplication. Aquaculture proposals that trigger the EPBC Act will, in the majority of cases, be assessed under the bilateral agreement.

13. During 2003 amendments were made to Queensland legislation to reflect the provisions of the Aquaculture Regulations within the State’s assessment and approval processes. The key amendments included;

- insertion of new item into Table 2, Part 1 of Schedule 8 of the Integrated Planning Act 1997 (IP Act), making both a material change of use of premises for an environmentally relevant activity under the Environment Protection Act 1994 and a material change of use for aquaculture under the Fisheries Act an “assessable developments” for the purposes of the IP Act;
- addition of Part 8A into Chapter 5 of the IP Act to facilitate the notification process for aquaculture developments;
- incorporation of the definition of the ‘controlled area’ from the Aquaculture Regulations in Queensland’s IP Act;
- extension of submitter and associated appeal rights for specified aquaculture developments under the IP Act by adding a new provision s4.1.28A; and
- insertion of new provision s.76N of the Fisheries Act to allow conditions to be imposed, if necessary, for the best management, use, development or protection of fisheries resources or fish habitats.

14. Further, in 2004 Queensland developed operational and technical standards that will be applied through the IP Act to aquaculture developments including;

- Operational Policy for Licensing Wastewater Releases from Existing Marine Prawn Farms in Queensland;

- a procedural guideline for Licensing Discharges to Aquatic Environments;

- Disease and escape benchmarks.

15. On 23 December 2004 the acting Premier of Queensland wrote to me requesting accreditation of relevant Queensland law, specifically the following chapters of the Integrated Planning Act 1997:

- Chapter 1 (Purpose);
- Chapter 3 (Integrated Development Assessment System [IDAS]) excluding Part 4 (the existing notification stage);
- Chapter 4 (Offences, Enforcement and Appeals) excluding Part 2 (Building Tribunals); and
• Chapter 5 Part 8A (Notification Stage For Particular Aquaculture Development).

The request also covered this section of the Environmental Protection Act 1994: Section 435 (Offence to contravene a development approval).

**Material on which my decision was based**

16. The material upon which I have based my decision to accredit Queensland law was:

• the content of a letter and accreditation proposal dated 23 December 2004 provided to me by acting Queensland Premier Terry Mackenroth;

• the provisions of the Great Barrier Reef Marine Park (Aquaculture) Regulations 2000;

• the content of the 2002 Assessment Guidelines: Discharges From Land Based Aquaculture Adjacent to the Great Barrier Reef Marine Park used by the Great Barrier Reef Marine Park Authority in determining permit decisions;


• advice from my Department;

• the content of the Joint Commonwealth And Queensland Consultation Paper: Streamlining the Environmental Assessment and Authorisation of Land-Based Aquaculture Proposals Adjacent to the Great Barrier Reef Marine Park and World Heritage Area.

17. In making the decision on whether to accredit Queensland law pursuant to the Aquaculture Regulations, I took into account (among other matters) the

• legislative amendments made to Queensland law to ensure all aquaculture developments adjacent to the Great Barrier Reef Marine Park are assessable developments;

• development and application of agreed technical and operational standards to all new aquaculture developments and to those facilities with latent capacity upon expansion;

• amendments made to Queensland law that ensure new aquaculture developments are publicly notified and expansion of attendant appeal rights;

• a commitment by Queensland to audit permitted facilities and to take appropriate compliance action if facilities are found to not be complying with the permit conditions as well as to ensure continual improvements in licensed facilities.

**Findings on material questions of fact**

18. I found that Regulation 9 of the Aquaculture Regulations makes it an offence to discharge aquaculture waste into the waters of the part of the Great Barrier Reef Region that is not the Great Barrier Reef Marine Park, or into streams that discharge in the Great Barrier Reef Region, without a permission given by the Great Barrier Reef Marine Park Authority (GBRMPA).
19. I found that GBRMPA has developed assessment guidelines to provide guidance to all applicants seeking a permission under the Aquaculture Regulations. The assessment process undertaken by GBRMPA reviews aspects of the proposal that relate to its discharges and containment issues. Impacts of construction of aquaculture facilities are also examined to the extent that they relate to discharge of aquaculture waste.

20. I found that the Aquaculture Regulations and assessment guidelines require that aquaculture operations are undertaken in a way that does not pollute water in a manner harmful to animals and plants in the Marine Park. Specifically, these Regulations are designed to ensure that aquaculture operations do not have a significant adverse impact on water quality, biodiversity, sensitive communities and habitats, or amenity of the Great Barrier Reef Marine Park and/or the Great Barrier Reef World Heritage Area.

21. I found that the Aquaculture Regulations also allow for public notification of all aquaculture development proposals, and for submissions and appeal rights ensuring an open and transparent assessment and approval process for aquaculture developments adjacent to the Great Barrier Reef Marine Park.

22. I found that Queensland has developed a number of modifications to relevant laws and administrative processes affecting the assessment and authorisation of aquaculture activities adjacent to the Great Barrier Reef Marine Park. These actions include:

   - legislative changes to the Integrated Planning Act 1997, the Fisheries Act 1994 and the Integrated Development Assessment System, including a public notification requirement for new aquaculture developments and the expansion of attendant appeal rights;
   - the development of technical and operational standards for aquaculture, including:
     i. the Operational Policy for Licensing Wastewater Releases from Existing Marine Prawn Farms in Queensland (the Operational Policy).
     ii. the procedural guideline for Licensing Discharges to Aquatic Environments, and
     iii. Disease and escape benchmarks.
   - an ability to ensure continual improvements (to reduce environmental impact) in licensed farms;
   - a commitment to auditing of permitted facilities and the taking of appropriate compliance action if facilities are found to not be complying with the permit conditions; and
   - application of technical and operational standards to latent capacity of licences (licences and permits granted that are not being utilised to their full extent) when facilities expand from there existing operational size.

23. I found that Queensland has agreed to apply the above technical and operational standards to all new aquaculture facilities within the controlled area.

24. I found that the modifications to the Integrated Planning Act 1997 and the Fisheries Act 1994, their operation in combination with the Environmental Protection Act 1994,
and the manner in which these laws are to be administered results in a Queensland assessment and approval process for aquaculture developments within the controlled area adjacent to the Great Barrier Reef Marine Park that closely reflects that of the Aquaculture Regulations.

25. I found that the information provided by Queensland about the relevant Queensland laws and how these laws are administered is sufficient for me to determine whether these laws provide the requisite degree of protection for the Great Barrier Reef Marine Park environment.

26. I found that the proposed law meets the international obligations described under the Aquaculture Regulations in providing adequate protection for the environment of the Marine Park through the development of the amended assessment and approval processes and the application of operational and technical standards to all new and expanding aquaculture facilities. I also found that the Queensland laws will provide adequate protection from pollution for the animals and plants in the Great Barrier Reef Marine Park.

27. I found that Queensland had given an assurance to independently audit the performance of Queensland law on both process and outcome two (2) years from the date of implementation of he accredited process or when four (4) facilities have been assessed through the process, whichever occurs first.

28. I found that regulation 6 of the Aquaculture Regulations allows for the revocation of accreditation if I am no longer satisfied that the accredited process provides the requisite degree of protection of the Great Barrier Reef Marine Park environment. I also found that regulation 7 provides the ability to limit the application of accredited law in relation to a particular aquaculture facility.

Reasons for decision

29. In the light of my findings set out above I am satisfied that those Queensland laws referred, and their administration, will provide the requisite degree of protection for the Great Barrier Reef Marine Park environment.

30. In the light of this conclusion I decided to accredit the Queensland laws.