

**From:** [ALLIANCE TO SAVE HINCHINBROOK](#)  
**To:** [Innovation, Tourism Development and Environment Committee](#)  
**Subject:** Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Bill 2019  
**Date:** Tuesday, 12 March 2019 5:02:42 PM

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## Alliance to Save Hinchinbrook Inc.

PO Box 2457 Townsville Q 4810

[hinchinbrookforever@gmail.com](mailto:hinchinbrookforever@gmail.com)

[www.hinchinbrook.com](http://www.hinchinbrook.com)

12 March 2019

A/Committee Secretary  
Innovation, Tourism Development and Environment Committee  
Parliament House  
George Street  
Brisbane Qld 4000  
By email only: [itdec@parliament.qld.gov.au](mailto:itdec@parliament.qld.gov.au)

### **Inquiry into: Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Bill 2019**

Please accept our submission to this inquiry.

The *Alliance to Save Hinchinbrook Inc.* (ASH) and its predecessor *Friends of Hinchinbrook Inc* (FOH, now wound up) have a long history in the development of legislation essential to the protection of the Great Barrier Reef World Heritage Area (GBRWhA) and the GBRWhA coast. We were also witness and objector to the abolition of this highly protective legislation (see below), as carried out by Kate Jones (then Minister for Environment) and the Bligh government in early 2012.

The title of the Bill indicates the loss of focus of the Queensland Parliament on the Great Barrier Reef World Heritage Area (GBRWhA). The coastal boundary of the GBRWhA is the low water mark of Queensland and its eastern boundary extends east of the coral reef known as the Great Barrier Reef (GBR). The GBR comprises only 7% of the GBRWhA – as noted by UNESCO in their GBR Mission Report (2012).

It is profoundly senseless to imagine that the outer reef (GBR) can be “protected” in isolation. The GBRWhA was accepted by UNESCO for world heritage listing precisely because it comprised a large enough area of great natural beauty, of great biological and geological diversity, and was located in a country (Australia) that had the capacity (wealthy, legal and political stability) to ensure its preservation as a unique and complex ecosystem, in perpetuity.

It is the outcome of Queensland government failure to understand this crucial point and its historical haste to remove the only actually protective legislation the GBRWhA ever had (Queensland legislation, something to have been celebrated) that have belatedly led to the attempt (this Bill) to remedy the deterioration of GBR corals that is partly the result of climate

change impacts and very much the result of water quality deterioration. Water quality deterioration is solely the responsibility of the Queensland Bligh Government when (in 2012) it amended the Queensland Coastal Act, and abolished the catchment-based Queensland Coastal Plan (QCP) 1995 and the associated statutory Regional Coastal Management and Protection Plans (RCMPs).

Our submission is attached, along with some attachments to our submission.

Yours faithfully

Margaret J Moorhouse  
Alliance to Save Hinchinbrook Inc  
PO Box 2457  
Townsville Q 4810  
[hinchinbrookforever@gmail.com](mailto:hinchinbrookforever@gmail.com)  
[www.hinchinbrook.com](http://www.hinchinbrook.com)





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### **Inquiry into: Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Bill 2019**

Please accept this document as Attachment 5 to our submission already made to this inquiry.

As noted in our submission already made, the *Alliance to Save Hinchinbrook Inc.* (ASH) and its predecessor *Friends of Hinchinbrook Inc* (FOH, now wound up) have a long history in the development of legislation essential to the protection of the Great Barrier Reef World Heritage Area (GBRWhA) and the GBRWhA coast. We were also witness and objector to the abolition of this highly protective legislation (see below), as carried out by Kate Jones (then Minister for Environment) and the Bligh government in early 2012.

The present Bill does not address water quality impacts arising from coastal development, which is now entering a phase of unfettered approvals (see below for Clump Point Mission Beach approval process) which generate new and ongoing impacts on water quality of the GBRWhA, related to disturbance of coastal processes and associated operational activities.

In view of the sometimes staggering ignorance about Queensland's recent legislative history, we offer the following story of the major legislation relevant to the present Bill, and the effects of implementation and abolition of successive coastal legislation, which had measures capable of controlling coastal pollution; as an important – if not essential – background for Queensland parliamentarians to consider.

In 2003, following Commonwealth direction and seven years of consultation and Interim Arrangements, Queensland enacted catchment based coastal legislation, the best ever written to protect the GBRWhA and its water quality. In 2009 the Bligh government abolished it.

Reinstating this abolished legislation (reviewed and updated) would be a far more effective way to achieve control of water quality along the coast than a mish mash of voluntary 'standards'.

Yours sincerely

Margaret Moorhouse

Secretary/treasurer

Alliance to Save Hinchinbrook Inc.

## Pre-history

In 1993 the Queensland coast was in the grip of the white-shoe brigade, recipients of historical government largesse in the form of special permissions for coastal and island development, including leases for 'integrated resorts'. These leases were often traded rather than developed, and (being generally commercially non-feasible) often abandoned partly developed.

One such lease was on the Hinchinbrook Channel, at Oyster Point (between Stoney Creek and Cardwell) on coastal land so low-lying that its eastern boundary was (and remains) literally in the sea, a so-called 'right line boundary'. It was owned by public company Tekin Australia and the related (same directors) shelf company Resort Village Cardwell.

The liquidation of Tekin and Resort Village Cardwell in 1990 and 1993 resulted in the loss of some \$41m public investment. The former directors immediately (1993) started a new shelf company, Cardwell Properties. They were joined by Gold Coast and Hamilton Island developer Keith Williams who, within two months, became sole director and renamed the so-called 'integrated resort' project as 'Port Hinchinbrook'.

Despite the absence of effective coastal legislation, the government did succeed in limiting the proposal to the existing (Tekin) approval and site. Although the Queensland Harbours and Marine Department (*Boat Harbour Feasibility Study 1977*) had reported that the Oyster Point site was 'unsuitable' for marina development for purely engineering reasons including 'severe siltation', the government took refuge in the view that the risk of the development failing in its own terms was solely the commercial risk of the developer. The obvious future cost to the natural environment, water quality and the public purse was not considered.

## The Legislation

**The current Bill is limited to water quality. Although it addresses some obvious elements related to water pollution, it fails to address *cumulative, combined and possible consequential impacts* (UNESCO GBR Mission Report 2012) on coastal development related water quality in the Great Barrier Reef World Heritage Area. Retaining this area's world heritage listing depends on returning its water quality to the standards of the distant past.**

**Current Commonwealth legislation has no practical effect on water quality.**

**EPBC Act.** The evidence is that the EPBC Act has proved inadequate to have any effect in protecting the GBRWHA including water quality. Even major breaches of environmental responsibility have been overlooked – witness the recent suggestion by the Commonwealth Environment Minister that UNESCO should change the boundaries of a RAMSAR site to accommodate a giant development (Toondah).

**GBRMP Act.** The GBRMPA has only the *Great Barrier Reef Marine Parks Act* (GBRMP Act), which is principally an activities permitting Act. In 1998 the GBRMPA wrote water quality regulations under clause 66(2)E of the GBRMP Act, in response to the threat of discharges from an on-shore aquaculture proposal for Armstrong Beach (Llewellyn Bay) south of Mackay. In recent years the GBRMPA informed me that this clause was on the list for deletion. As far as we know, this was the only means available to the GBRMPA to control coastal water quality, and it related only to aquaculture.

**Jurisdiction:** After some preliminary legal advice in 1993/94 (under Chair Graham Kelleher), the GBRMPA's Acting Chair Wendy Craik opted out of jurisdiction over the Hinchinbrook Channel, in 1993 abandoning the Channel and the Cardwell Properties proposal (now called 'Port Hinchinbrook') to Queensland.



## Queensland legislation – brief history

In 1995 the Commonwealth Keating government had acted under the now-abolished *World Heritage Properties and Conservation Act* (WHPC Act), so that the Governor General of Australia declared a *Proclamation* over a length of the Hinchinbrook Channel adjacent to the mainland project site to enable Commonwealth control over development impacts in the Hinchinbrook Channel.

About the time of the Queensland approval of ‘Port Hinchinbrook’ (1994), the Howard Commonwealth government prevailed upon Queensland to write its first *Queensland Coastal Act*, enacted in 1995.

In 1996 the Commonwealth Howard Government granted a Consent under the WHPC Act, accompanied by conditions including a legal agreement between the Howard Government and the Queensland Borbidge Government to write and enact new Queensland Coastal legislation that would prevent damaging impacts on the GBRWHA, with *Interim Arrangements* in place until such legislation was enacted.

In 1996 Friends of Hinchinbrook Inc (FOH, now wound up) challenged this Consent in the Federal Court in Sydney, under the *Administrative Decisions (Judicial Review) Act* (ADJR Act). The Consent was upheld on the basis of two of the Consent conditions being met – legal agreements to control impacts (1) on the site (the *Deed of Agreement* binding the developer and three levels of government); and (2) on the GBRWHA (the Commonwealth-Queensland legal agreement to enact world heritage protective legislation).

From Senator Robert Hill’s media release September 1996 ‘Decisions under the *World Heritage Properties Conservation Act 1983* - Proposed Port Hinchinbrook Resort Development’ - see Attachment 6):

*Importantly, the Commonwealth and Queensland have agreed to develop and implement a regional management plan for the Hinchinbrook area ...*

*The agreement on the development of a regional plan for the Hinchinbrook area is a major achievement. Commonwealth involvement in the regional planning process gives it the capacity to address in an integrated manner the full range of developments that could impact on world heritage values. The Commonwealth will be in a position to implement a comprehensive management regime designed to protect world heritage values in the region, and so prevent conflicts over land use rather than responding in an ad hoc and belated fashion in the way the previous government did.*

Both agreements relied on by the court were substantially honoured. The *Regional Coastal Management Plans* (RCMP) were enacted in 2003, after substantial and detailed public consultation.

In 2009 a dredging licence was granted to Port Hinchinbrook Services. Under the QCP 2003, seadumping was refused - spoil had to be stored on land. The licence inappropriately allows release of sulphuric acid (at pH 6.0) into waters closely connected to the GBRWHA.

In late August 2009 the Queensland (Bligh) Government released a new draft Queensland Coastal Act.

ASH holds correspondence (2010-2011) from then Environment Minister Kate Jones assuring ASH, against the evidence within the draft and obfuscation about the continuation of the RCMPs, that there would be no lowering of protection standards for the GBRWHA. Water quality was not considered.

Late in the consultation process for the new draft QCP, conservationists discovered that another plan had been completed secretly, that is without the public being informed. This was the *Tourism Opportunities Plan 2010-2020* (TOP) developed by then Minister Kate Jones, her department, and the Tourism Industry. In frank contradiction of the *Far North Queensland Regional Plan 2009-2031* (FNQ 2031 Plan) and local planning, which specifically excluded Mission Beach as a growth node and specified it as a village based on natural and cultural values, the TOP prioritized a “safe boat mooring haven at Mission Beach in order to encourage growth”.

The TOP is now part of present Tourism Minister Kate Jones' portfolio. The port/marina at Mission Beach has been approved, to expose the living coral reefs of Clump Point to future ongoing deteriorated water quality.

In early 2012 the Queensland government reneged on the 1996 Howard-Borbridge legal agreement and abolished the entire QCP 2003 and its important world-heritage-protective RCMPs.

The loss of the QCP 2003 meant the loss of concurrence agency status for the Department of Environment, which had enabled the department to in effect veto inappropriate development at the time of its application to Council, thus saving Councils and developers time and money in fruitless application processing; as well as protecting the natural coastal environment, including water quality.

During 2012-2014 the Labor Party made an election commitment to reinstate the RCMPs, strangely worded as 'world class coastal legislation'. No attempt was ever made to honour this promise, the Newman government being untruthfully blamed for the loss of the QCP 2003.

In early 2012 I met with the UNESCO GBR Mission Team, Dr Fanny Douvère and World Heritage Committee President Tim Badman (Cairns). The Team had already met many politicians and bureaucrats between Brisbane and Cairns but had not been informed (until I informed them) of the abolition of the QCP 2003 and its RCMPs, nor of the loss of World Heritage protection inherent in the QCP 2012. In their subsequent *MISSION REPORT Reactive Monitoring Mission to Great Barrier Reef (Australia) (2012)* (the Report) they said:

*'Considering the rapid increase of coastal developments, including ports infrastructure, and the fact that circa 35 new development proposals are awaiting determination by 2013, including in highly sensitive or already pressured areas, the mission concludes that this is of high concern to the conservation of the OUV for which the property is inscribed on the World Heritage List.'*

Recommendation 2 (part) of the Report:

*R2: Not permit any new port development or associated infrastructure outside of the existing and long-established major port areas within and adjoining the property. It is essential that development is not permitted if it would impact individually or cumulatively on OUV, including the integrity of the property. This measure should apply both within and in the adjacent areas to the property. This measure should take immediate effect and requires full application until the Strategic Assessment and the resulting long-term plan for the sustainable development of the property has been completed, and has been considered by the World Heritage Committee at its 39th session in 2015.*

Recommendation 7 (part) of the Report:

*R7: Ensure that any determination made for applications under the EPBC Act, considering this is the principal legislation to ensure development does not negatively impact the values and integrity of the property, includes for each application:*

*...*

*b) A thorough consideration of the combined, cumulative and possible consequential impacts of development, infrastructure and associated activities on the OUV as material considerations in determining all applications, benchmarked on the date of inscription of the property in 1981;*

*The mission considers that the following recommendations to further improve the conservation of the property and strengthen its management should also be implemented as soon as possible, and before the 39th Session of the World Heritage Committee:*

**To date, these remarks and recommendation have not been addressed. Not one realistic step has been taken by Commonwealth or State government towards honouring the obligations inherent in obtaining and keeping this area's world heritage listing – which depends on returning its water quality to the standards of the distant past.**

## AS AGREED WITH QUEENSLAND JULY 1996

### Regional Plan for the Protection of the World Heritage Values of Hinchinbrook Channel and its World Heritage Environment (3 pp)

08/07/96 copy

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PAGE 2/3

As Agreed with Queensland

#### REGIONAL PLAN FOR THE PROTECTION OF HINCHINBROOK CHANNEL AND ITS WORLD HERITAGE ENVIRONMENT

In a major advance for the protection of the World Heritage values of the Hinchinbrook Channel region, the Commonwealth and Queensland Governments announced agreement to move decisively to complete a comprehensive management plan.

Hinchinbrook Channel and Island are an outstanding part of the Great Barrier Reef World Heritage area. The Channel is a vital habitat for the locally endangered dugong and home to many other important species. Hinchinbrook Island has long been cherished as a wilderness landscape.

wilderness

The agreement, announced by Senator Robert Hill, Commonwealth Minister for the Environment and his State counterpart, Mr Brian Littleproud, will ensure the area is used wisely into the future and that its World Heritage values are protected.

"I am delighted that we have been able to reach agreement on this essential step" Senator Hill said. "I have a legal responsibility to protect World Heritage areas. This agreement gives me enormous confidence that arrangements will soon be in place, developed under Queensland law, and to be administered by Queensland, ensuring our international obligations will be met."

"This is a good approach for Queensland," said Mr Littleproud. "It enables the parameters for use of the area to be set. It will ensure an orderly approach to planning and development within the vicinity and will provide sensible and

"orderly approach"



PP. 5/6 3/4

transparent arrangements, clear to anyone wishing to use or enjoy the Channel and its environs."

Both Ministers agreed that the Plan, once in place, will deal with many of the broader issues raised in relation to the Port Hinchinbrook development. This will be achieved by:-

- providing baseline data on water quality, sedimentation and turbidity
- providing for a management strategy to ensure dugong protection
- detailing arrangements for the identification and protection of seagrass and other vital habitat
- providing a framework for dealing with the cumulative and sequential impacts and uses for the area
- giving specific recognition and protection to World Heritage values
- providing appropriate controls over the usage of sensitive areas in the region
- establishing appropriate arrangements for the management of boats, especially as they relate to the protection of dugong
- making appropriate provision for the protection of Aboriginal cultural heritage.

8 JUL '86

The Commonwealth has made \$100,000 available to Queensland to commence work on studies necessary to underpin the study, which will establish key baselines to monitor impact and change.

The Governments have reached agreement on a Steering Committee to oversee the study and development of the plan. They have agreed a process involving Queensland law which will involve extensive public consultation and review.

2 YRS

It is expected to be completed within two years, although both Ministers have agreed to examine interim protection measures pending the completion of the plan, if an urgent need is demonstrated.

**Media Release Senator the Hon Robert Hill**  
**Leader of the Government in the Senate**  
**Minister for the Environment**

## **Hill Delivers on Hinchinbrook Commitment**

11 September 1996 (110/96)

Federal Environment Minister Robert Hill has delivered on his commitment to a transparent and open process for assessing the application for further works at the Port Hinchinbrook development.

Senator Hill has tabled key documents relating to the assessment process followed prior to the decision to approve certain works on the Port Hinchinbrook development.

The documents cover scientific advice given to the Minister, advice from his Department and portfolio agencies, and the application and supporting documents from the developer.

Senator Hill has emphasised that his decision was based on the best available scientific evidence.

The Commonwealth has ensured that world heritage values will be protected by securing a legally enforceable deed of agreement involving the developer, the Queensland Government and the local shire to ensure that any work undertaken meets best practice engineering standards.

World heritage values will also be protected by the development of a regional plan for the Hinchinbrook area. The plan will provide for the protection of dugong, regulation of boat traffic, and the preservation of wilderness qualities of the Hinchinbrook area.

The agreement on the development of a regional plan is a major achievement. The Commonwealth will be in a position to implement a comprehensive management regime designed to protect world heritage values in the region, and so prevent conflicts over land use rather than responding in an ad hoc and belated fashion in the way the previous government did.

I wish to emphasise the Commonwealth's commitment to the regional planning process. We understand the Queensland government shares our commitment to this process. The Commonwealth, however, has particular responsibility for protection of world heritage values. Accordingly, if for any reason the regional planning process does not deliver the required protection for world heritage values, then I will use all powers available to me to protect world heritage values in the Hinchinbrook area, including those values in the Hinchinbrook Channel and on Hinchinbrook Island.

## **Decisions under the *World Heritage Properties Conservation Act 1983* - Proposed Port Hinchinbrook Resort Development**

I am pleased to release the key documents relating to the assessment process I followed before making my decisions in relation to the proposed development adjacent to Hinchinbrook Channel.

I have made my decisions on the basis of the best scientific advice available. In accordance with this advice, I have taken all necessary steps to ensure the protection of world heritage values.

I have secured a legally binding commitment from the developer to use best practice engineering approaches when undertaking relevant activities associated with the resort development.

Importantly, the Commonwealth and Queensland have agreed to develop and implement a regional management plan for the Hinchinbrook area. The plan will address broader issues associated with management of the region - I expect it will regulate boat traffic, implement protective measures for dugong and other endangered species and will ensure visitor numbers to Hinchinbrook Island are restricted.

The agreement on the development of a regional plan for the Hinchinbrook area is a major achievement. Commonwealth involvement in the regional planning process gives it the capacity to address in an integrated manner the full range of developments that could impact on world heritage values. The Commonwealth will be in a position to implement a comprehensive management regime designed to protect world heritage values in the region, and so prevent conflicts over land use rather than responding in an ad hoc and belated fashion in the way the previous government did.

I wish to emphasise the Commonwealth's commitment to the regional planning process. We understand Queensland share our commitment to this process. The Commonwealth, however, has particular responsibility for protection of world heritage values. Accordingly, if for any reason the regional planning process does not deliver the required protection for world heritage values then I will use all powers available to me to protect world heritage values in the Hinchinbrook area, including those values in the Hinchinbrook Channel and on Hinchinbrook Island.

In general terms, I adopted the following process in making my decision:

- Cardwell submitted its application, including a report by Sinclair Knight Mertz, seeking consent to implement a beach and foreshore management plan and to dredge a marina access channel at Oyster Point.
- The application and supporting documentation were distributed by the Great Barrier Reef Marine Park Authority ('GBRMPA') to key stakeholders, relevant Commonwealth agencies and to a panel of six independent scientists.
- The six independent scientists prepared their reports. These reports were summarised and synthesised by another expert - Dr Russell Reichelt from the Australian Institute of Marine Science.

- GBRMPA reviewed the reports of the scientists - including the Reichelt report - and the stakeholder comments. GBRMPA also considered representations made by the applicant, who was given an opportunity to comment on the scientist's reports. GBRMPA provided a brief to my Department.
- My Department provided advice to me suggesting that I seek legally enforceable undertakings from the developer to ensure best engineering approaches are used and that I seek an agreement from Queensland on the development of a management plan for the Hinchinbrook region.
- I deferred making a decision while a deed of agreement was negotiated with the applicant, Queensland and Cardwell Shire Council. This deed ensures best engineering practice will be used by the developer. In addition a memorandum of understanding (MOU) was negotiated and signed with Queensland providing for a regional management plan to be prepared. As discussed above, this plan addresses the potential regional impacts associated with development in the Hinchinbrook area (including the proposed development at Oyster Point).
- I also observed the requirements of the Australian Heritage Commission Act 1975 and, in relation to the Commonwealth entering into the Deed, the *Environment Protection (Impact of Proposals) Act 1974*.
- I observed my statutory obligation to consult the Queensland Minister for the Environment before making my decision.
- Further advice was received from GBRMPA.
- In light of the best available scientific evidence, the advice from my portfolio agencies and the protective mechanisms that were put in place, I was advised by my Department that giving approval to dredging a marina access channel and implementing a beach and foreshore management plan would be consistent with the protection, conservation and presentation of the world heritage values.

I note that the parts of the attached documents which might disclose the legal advice provided to me in relation to my decisions have been deleted.

Robert Hill  
Minister for the Environment

A copy of Senator Hill's statement to the Senate is [attached](#).

Media Release August 22, 1996

## **STRICT CONDITIONS SET FOR HINCHINBROOK**

The Federal Government has laid down strict environmental conditions for further work to be done on the proposed Port



Hinchinbrook development at Oyster Point.

Federal Environment Minister Robert Hill has insisted that the Port Hinchinbrook developer enter into a deed of agreement to ensure best practice engineering methods are employed in further work on the site.

The deed of agreement has been signed by the Commonwealth, the Queensland Government, the Cardwell Shire Council, and the developer, Mr Keith Williams. The approvals granted by Senator Hill relate to dredging a marina access channel and implementing a beach and foreshore management plan.

The deed of agreement ensures:

- silt curtains and other techniques will be used to ensure no increased turbidity in the Hinchinbrook Channel during dredging of the access channel;
- implementation of foreshore stabilisation which will include a large number of mangrove plantings, the use of regrowth to stop erosion on the beach front, and refusal to remove any additional mangroves;
- the setting of strict water quality standards to deal with turbidity and pH levels; and
- a stringent monitoring program to ensure all conditions are met.

Senator Hill, who has released a key scientific report on the

project, says the decision to allow the work is based on the best scientific advice available.

"The scientific advice I have before me indicates that the world heritage values of the region will not be threatened provided the best practice engineering methods are employed.

"Having given approval for these specified activities to proceed, the Government has moved to ensure that the developer is legally obliged to deliver environmentally responsible construction processes.

"The deed of agreement means that we now have in place all the necessary conditions to ensure the protection of the world heritage values in the immediate vicinity of the site."

Senator Hill has also acknowledged the concerns expressed in relation to broader regional impacts associated with developments in the Hinchinbrook region.

Senator Hill has moved to address these concerns by reaching agreement with the Queensland Government on a Hinchinbrook regional plan.

A comprehensive regional plan will be developed which will provide for:

- the protection of world heritage and national estate values in the Hinchinbrook area;
- the conduct of Dugong monitoring studies and the

implementation of appropriate protection measures for Dugong and other endangered species;

- the regulation of boating activity, including speed limits where appropriate to protect marine animals;
- the identification and protection of Aboriginal cultural values; and
- the protection of seagrass.

The Great Barrier Reef Marine Park Authority (GBRMPA) and the Australian Heritage Commission will be full participants in the development of the Hinchinbrook regional plan.

GBRMPA will also move to immediately develop Dugong management plans for areas of the Marine Park immediately adjacent to the Hinchinbrook Channel.

In addition, a recently released draft Plan of Management for Hinchinbrook Island National Park aims to provide for the orderly control of visitors to Hinchinbrook Island, emphasising a commitment to preserve the island's wilderness characteristics.

For further comment contact Matt Brown on 06 277 7640.

Copies of a summary of protection arrangements for Hinchinbrook Channel, the Reichelt Report, and the Memorandum of Understanding between the Commonwealth and Queensland Governments on the development of a regional plan are available from Senator Hill's office.