

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 252

ISSUED BY AUTHORITY OF THE MINISTER FOR THE ENVIRONMENT AND
HERITAGE

Great Barrier Reef Marine Park Act 1975

Great Barrier Reef Marine Park Amendment Regulations 2005 (No. 2)

Subsection 66(1) of the *Great Barrier Reef Marine Park Act 1975* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act or with a zoning plan, prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the Regulations is to:

- make technical amendments to the *Great Barrier Reef Marine Park Regulations 1983* (the Principal Regulations) to support amendments to the *Cairns Area Plan of Management 1998* (the Cairns Plan) and the *Whitsundays Plan of Management 1998* (the Whitsundays Plan) contained in the *Cairns Area Plan of Management Amendment 2005 (No. 1)* and the *Whitsundays Plan of Management Amendment 2005 (No. 1)*, respectively (see Schedule 1 to the Regulations); and
- support the Great Barrier Reef Marine Park Authority's (the Authority) Policy on Moorings in the Great Barrier Reef Marine Park (the Moorings Policy) which requires that a unique reference number be displayed on each mooring buoy, which will then be recorded in a publicly available moorings register (see Schedule 2 to the Regulations).

Further information regarding the amendments contained in Schedule 1 to the Regulations is set out in Attachment A.

Further information regarding the amendments contained in Schedule 2 to the Regulations is set out in Attachment B.

Consultation has not occurred with respect to the amendments to the Principal Regulations contained in Schedule 1 to the Regulations as they are considered to be minor and machinery in nature.

With respect to the amendments to the Principal Regulations contained in Schedule 2 to the Regulations, consultation occurred with members of the tourism industry and other mooring permit holders, as well as other stakeholders, including the Queensland Government, during the consultation phase for the Moorings Policy. These stakeholders are the primary users and managing agencies of moorings in the Great Barrier Reef Marine Park.

Since the approval of the Moorings Policy in May 2002, the Authority has continued to consult with these stakeholders regarding the implementation of various aspects of the Moorings Policy, including these Regulations. This consultation has included

conducting meetings with various stakeholders, and providing information to stakeholders through the Tourism & Recreation Newsletter. In addition, the Tourism and Recreation Reef Advisory Group (a consultative body to the Authority on tourism and recreation issues) has been consulted with respect to these proposed Regulations. The stakeholders are supportive of the Regulations.

Details of the proposed Regulations are set out in Attachment C.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Schedule 1 to the Regulations commences on the day after they are registered on the Federal Register of Legislative Instruments, and Schedule 2 to the Regulations commences on 1 January 2006.

ATTACHMENT A

Further information regarding the amendments to the *Great Barrier Reef Marine Park Regulations 1983* contained in Schedule 1 to the *Great Barrier Reef Marine Park Amendment Regulations 2005 (No. 2)*

Plans of Management are prepared in accordance with Part VB of the *Great Barrier Reef Marine Park Act 1975* (the Act), and are prepared for heavily used or particularly vulnerable areas of the Great Barrier Reef Marine Park (the Marine Park). Both the *Cairns Area Plan of Management 1998* (the Cairns Plan) and the *Whitsundays Plan of Management 1998* (the Whitsundays Plan) commenced in June 1998. Both plans were amended in 1999 and again in 2002 in response to submissions from users of the Areas. The Cairns Plan was also amended in 2004.

In May 2005, the Great Barrier Reef Marine Park Authority (the Authority) decided that the Plans warranted further amendment. As required by the Act, the public were invited to make submissions in connection with the proposed amendments prior to the closing date. Subsequently, on 8 September 2005, the Authority decided to formally adopt the amendments to the Cairns Plan and the Whitsundays Plan. The amendments to the Cairns Plan and the Whitsundays Plan will commence on the day that the amendments to the *Great Barrier Reef Marine Park Regulations 1983*, contained in Schedule 1 to the Regulations, commence.

ATTACHMENT B**Further information regarding the amendments to the *Great Barrier Reef Marine Park Regulations 1983* contained in Schedule 2 to the *Great Barrier Reef Marine Park Amendment Regulations 2005 (No. 2)***

In May 2002, the Great Barrier Reef Marine Park Authority (the Authority) approved the Policy on Moorings in the Great Barrier Reef Marine Park (the Moorings Policy). Clause 6.1.3 of the Moorings Policy requires that a unique reference number be displayed on each mooring buoy, which will then be recorded in a publicly available register.

The Authority adopted a staged approach to the implementation of the Moorings Policy with a voluntary trial of standard requirements for mooring buoys, including mooring reference numbers, in 2003 and 2004. A review of the voluntary approach recommended regulation of the mooring reference number display requirements to better achieve the policy aims for mooring reference numbers.

It is anticipated that the display of the mooring reference number on mooring buoys will encourage the sharing of moorings in the Great Barrier Reef Marine Park (the Marine Park). The display of a mooring reference number on mooring buoys located in the Marine Park will enable persons, including possible users, to ascertain who is the permit holder for a particular mooring. Encouraging the use of moorings improves the protection of the reef environment by eliminating the need to anchor in sensitive environments. The display of mooring reference numbers on mooring buoys in the Marine Park will also assist compliance efforts in identifying permitted and unpermitted structures in the Marine Park.

Schedule 2 to the Regulations implements this aspect of the Moorings Policy by requiring the holder of a relevant permission for a mooring to display a mooring reference number on the mooring buoy. This is achieved by creating an offence for the holder of a mooring permission to fail to display the mooring reference number on their mooring buoy. The maximum penalty for breach of the provision is \$1650.

ATTACHMENT C

Details of the Great Barrier Reef Marine Park Amendment Regulations 2005 (No. 2)**Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Great Barrier Reef Marine Park Amendment Regulations 2005 (No. 2)*.

Regulation 2 – Commencement

This regulation provides for Schedule 1 to the Regulations to commence on the day after they are registered on the Federal Register of Legislative Instruments, and Schedule 2 to the Regulations to commence on 1 January 2006.

Regulation 3 – Amendment of *Great Barrier Reef Marine Park Regulations 1983*

This regulation provides that the *Great Barrier Reef Marine Park Regulations 1983* (the Principal Regulations) are amended as set out in Schedules 1 and 2.

Schedule 1 – Amendments commencing on the day after registration**Item [1] – Subregulations 3(2) and (2A)**

This item is of a technical nature only. This item substitutes subregulations 3(2) and 3(2A) of the Principal Regulations with new subregulations 3(2) and 3(2A).

The purpose of this amendment is to clarify that a reference in the Principal Regulations to the *Whitsundays Plan of Management 1998* (the Whitsundays Plan) or the *Cairns Area Plan of Management 1998* (the Cairns Plan) is a reference to the Plans as in force on and after the commencement of subregulations 177(2) and 173(4), respectively.

Item [2] – Paragraph 173(3)(a)

This item is of a technical nature only. This item amends paragraph 173(3)(a) of the Principal Regulations by omitting the reference to “on the day on which this subregulation commences;” and replaces it with a reference to “on 2 December 2004;”, being the date on which that subregulation commenced.

Item [3] – After subregulation 173(3)

This item inserts a new subregulation 173(4) into the Principal Regulations. The purpose of this subregulation is to specify, for the purposes of subsection 39ZF(2) of the *Great Barrier Reef Marine Park Act 1975* (the Act), that the enforcement provisions inserted into the Cairns Plan by, and those amended by, the *Cairns Area Plan of Management Amendment 2005 (No. 1)*, take effect on the day this subregulation commences.

Item [4] – Regulation 177

This item substitutes regulation 177 of the Principal Regulations with a new regulation 177.

The purpose of subregulation 177(1) is to specify that Part 2 of the Whitsundays Plan, as amended by the *Whitsundays Plan of Management Amendment 2002 (No. 1)*, takes effect on 7 June 2002; being the date on which the *Whitsundays Plan of Management Amendment 2002 (No. 1)* commenced.

The purpose of subregulation 177(2) is to specify, for the purposes of subsection 39ZF(2) of the Act, that the enforcement provisions inserted into the Whitsundays Plan by, and those amended by, the *Whitsundays Plan of Management 2005 (No. 1)*, take effect on the day this subregulation commences.

Schedule 2 – Amendments commencing on 1 January 2006**Item [1] – Subregulation 3(1), after definition of *holders***

This item inserts a definition of *permitted mooring* into subregulation 3(1) of the Principal Regulations.

Item [2] – After regulation 101

This item inserts a new regulation 101A into the Principal Regulations as follows:

New Regulation 101A (Mooring buoy must display mooring reference number)

New subregulation 101A(1) inserts a definition of *mooring reference number* into the Principal Regulations for the purposes of this new Regulation.

New subregulation 101A(2) makes it an offence for a person who is the holder of a relevant permission for a permitted mooring to fail to permanently and legibly display the mooring reference number on the mooring buoy.

Pursuant to subsection 66(11) of the *Great Barrier Reef Marine Park Act 1975*, the maximum penalty that can be prescribed for offences against the regulations is 50 penalty units (subsection 4AA(1) of the *Crimes Act 1914* provides that one penalty unit is \$110). The maximum penalty for a contravention of this provision is 15 penalty units.

New subregulation 101A(3) clarifies that an offence against subregulation 101A(2) is an offence of strict liability. Strict liability is defined in section 6.1 of the *Criminal Code*. The defence of mistake of fact pursuant to section 9.2 of the *Criminal Code* is still available. In addition, subsection 6.1(3) of the *Criminal Code* clarifies that the existence of strict liability does not make any other defence unavailable.

Item [3] – Part 14, Table 189, after item 3

This item includes a reference to new subregulation 101A(2) into Table 189 of the Principal Regulations; thereby making an offence against

subregulation 101A(2) an offence for which an infringement notice may be issued. The infringement notice penalty that is applicable in these circumstances is 3 penalty units.