

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2009 No. 304**

Issued by the Authority of the Minister for the Environment, Heritage and the Arts

*Great Barrier Reef Marine Park Act 1975*

*Great Barrier Reef Marine Park Amendment Regulations 2009 (No. 1)*

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 Act establishes the Great Barrier Reef Marine Park Authority (the Authority) and makes provision for and in relation to the establishment, control, care and development of a Marine Park in the Great Barrier Reef Region.

The Regulations amend the *Great Barrier Reef Marine Park Regulations 1983* (the Principal Regulations) consequential to the changes made to the Act by the *Great Barrier Reef Marine Park and Other Legislation Amendment Act 2008* (the Amendment Act).

The Regulation Amendments primarily deal with changes to permitting, Traditional Use Marine Resource Agreement (TUMRA) and new Environmental Impact Assessment (EIA) arrangements. These changes aim to rationalise, modernise and streamline permit processes and requirements and consolidate existing provisions to remove unnecessarily onerous requirements. The amendments also provide for better integration with key environmental laws, particularly the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). This helps simplify regulation, remove duplication and address gaps in protection.

The Regulations are outlined in more detail in Attachment A.

Consultation on the Regulations was undertaken with the Queensland Government. Relevant stakeholders, including industry groups and Traditional Owner Groups were consulted and offered an opportunity to meet and discuss the Regulation amendments.

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

The Regulations commence on the same day as Schedule 6 to the 2008 Amendment Act comes into force.

**Details of the Great Barrier Reef Marine Park Amendment Regulations 2009 (No. 1).**

**Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Great Barrier Reef Marine Park Amendment Regulations 2009 (No. 1)*.

**Regulation 2 – Commencement**

The regulation provides for the Regulations to commence on the same day Schedule 6 of the Amendment Act comes into force.

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

Schedule 1 of the Regulations amends the *Great Barrier Reef Marine Park Regulations 1983*.

**Regulation 4 – Transitional**

This regulation sets up a framework to transition from the Principal Regulations that are in force immediately before the commencement of these Regulations (the old Regulations) to the Principal Regulations, as amended (the amended Regulations). In particular, it establishes transitional regulations related to permissions, TUMRAs and orders made under regulation 94.

Under the transitional provisions, permissions and accreditations of TUMRAs in force at the time the Regulations commence will continue in force as if granted or accredited under the amended Regulations (subregulations 4(5) and 4(8)).

However, permissions in force before commencement of the amended Regulations will cease to be in force when they would have under the old Regulations, remain subject to the same conditions as were imposed under the old Regulations, but may be suspended, revoked or transferred, or the conditions modified, under the amended Regulations (subregulation 4(5)).

Similarly, accreditations of TUMRAs in force prior to the commencement of the amended Regulations will cease to be in force when they would have under the old Regulations, remain subject to the same conditions as were imposed under the old Regulations, but may be suspended, revoked or terminated, or the conditions of accreditation modified, under the amended Regulations (subregulation 4(8)).

Authorities and authorisations in place at the time the amendments commence, continue in force as if put in place under the amended Regulations (subregulations 4(6), (7) and (9)).

Applications for both permissions and accreditation of TUMRAs made but not determined before the commencement of the amended Regulations will be processed

and assessed according to the old Regulations (subregulations 4(2) and (3)). If granted, they will be subject to the amended Regulations.

Where an expression of interest has been called for but not determined under Division 2.5 of the old Regulations prior to the amendments taking effect, the old Regulations will continue to apply (subregulation 4(4)).

Regulation 94 of the old Regulations empowers the Authority to order the removal of abandoned, sunk or wrecked property or property that will cause damage to the Marine Park. Under these transitional provisions, an order made under regulation 94 prior to the commencement of the amended Regulations continues in force after the commencement of those Regulations as if such order had been made under the amended Regulations (subregulation 4(11)).

Regulation 70 of the old Regulations, which established important transitional arrangements in relation to permissions consequent upon the commencement of the *Great Barrier Reef Marine Park Zoning Plan 2003* (the Zoning Plan), has been repealed and consolidated into the transitional arrangements established by the Regulations (subregulation 4(10)). Therefore, despite the repeal of regulation 70, the existing transitional arrangements established by that provision continue. See also item 45 of Schedule 1.

#### Schedule 1 – Amendments

##### **Item [1] Regulation 3**

Item 1 is editorial in nature. It splits regulation 3 into two subregulations (see also item 14).

##### **Items [2], [8], [12], [41], [42], [68], [76], [77], [78], [92], [102], [103] and [108]**

These items omit from the Principal Regulations references to '*relevant*' permissions. This term is almost wholly redundant due to the insertion of new Part 2A dealing with permissions (see item 61). Each of these amendments reflect changes in terminology regarding permissions which are minor or machinery in nature and aimed at simplifying the regulations.

##### **Item [3] Regulation 3, definition of *business day***

Item 3 inserts a definition of '*business day*' to ensure clarity and consistency. A *business day* is defined as, a day that is not a Saturday, Sunday or a public holiday in Queensland.

##### **Items [4], [6], [7] and [11] Regulation 3, definitions of terms used in new Part 2A**

These items insert new definitions, and repeal redundant definitions, as a consequence of the insertion of new Part 2A dealing with permissions.

The term '*Commonwealth island*' is already referred to by the Principal Regulations, and is therefore defined consistently with the manner in which that term is used under existing regulation 95.

**Item [5] Regulation 3, definition of *Division 2.5 permission***

Item 5 repeals the definition of the term '*Division 2.5 permission*' from the Principal Regulations, as that term is redundant consequent upon the insertion of a new Part 2A, which consolidates all provisions regarding permissions (see item 61). In that new Part 2A, the term '*Division 2.5 permission*' has been replaced by the term '*special permission*' (see items 11 and 61).

**Item [9] Regulation 3, definition of *prescribed activity***

Item 9 repeals the definition of the term '*prescribed activity*' from the Principal Regulations, as that term is redundant consequent upon the insertion of a new Part 2A, which consolidates all provisions regarding permissions (see item 61).

**Item [10] Regulation 3, definition of *Queensland fisheries legislation***

Item 10 inserts a definition of the term '*Queensland fisheries legislation*' to apply throughout the Principal Regulations and, for consistency, defines the term in accordance with regulation 30. This amendment is part of broader changes to simplify and update references throughout the Principal Regulations to Queensland fisheries laws in consideration of significant recent amendments to Queensland's legislation. This is explained in further detail at item 16.

**Item [13] Regulation 3, note**

Item 13 repeals a list of terms that are defined in the Act. Paragraph 13(1)(b) of the *Legislative Instruments Act 2003* provides that expressions used in any legislative instrument have the same meaning as in the enabling legislation unless a contrary intention appears. The list is repealed in light of this provision and to avoid confusion should definitions in the Act or Principal Regulations change.

**Item [14] Regulation 3, definition of *relevant permission***

Item 14 inserts a revised definition of the term '*relevant permission*'. That term is used in the Act, the *Great Barrier Reef Marine Park Zoning Plan 2003* (the Zoning Plan), and various plans of management, in accordance with the meaning given by the Principal Regulations.

Due to a change in terminology in the amended Regulations regarding permissions provisions, the term 'relevant permission' has been rendered almost wholly redundant. However, it is necessary to retain a definition of the term for the purposes of the Act, the Zoning Plan and various plans of management. The revised definition is directly linked to two kinds of permissions described in new Part 2A (see item 61) which concern permissions required to engage in conduct in a zone under the Zoning Plan. This is consistent in effect with the previous definition for the term which has been repealed (see item 11).

#### **Item [15] Subregulation 3A(1)**

Item 15 clarifies that a reference made in the Principal Regulations to the *Cairns Area Plan of Management 1998*, the *Hinchinbrook Plan of Management 2004* or the *Whitsundays Plan of Management 1998*, is a reference to that Plan as in force on 18 December 2008. This clarifies the existing effect of subregulation 3A(1) and involves no substantive change in effect.

#### **Item [16] Subregulation 3A(2)**

Item 16 provides that, subject to certain exceptions in subregulation 3A(3), a reference in the Principal Regulations to a law of Queensland, including a fishery management plan made under paragraph 32(1)(a) of the *Fisheries Act 1994* of Queensland, is a reference to that law as in force from time to time.

Prior to this amendment, the Principal Regulations adopted or referred to Queensland laws as in force on 1 July 2004.

This item is intended to update existing references to Queensland legislation throughout the Principal Regulations and, where appropriate, remove the need for consequential regulation amendments each time the relevant Queensland laws are amended. It also provides for a simpler and more streamlined regulatory environment, which appropriately recognises Queensland's statutory responsibilities, including for the management of fisheries in and around the Great Barrier Reef Marine Park.

#### **Item [17] Subregulation 3A(3)**

Item 17 clarifies that a reference in the Principal Regulations to the *Transport Operations (Marine Safety) Regulation 2004* of Queensland (the Marine Safety Regulation) or the *Transport Operations (Marine Pollution) Regulation 2008* of Queensland (the Marine Pollution Regulation), are references to that law as in force on 18 December 2008.

This clarifies the existing effect of subregulation 3A (3) in relation to the Marine Safety Regulation, and updates existing references to the Marine Pollution Regulation (see also item 64).

#### **Item [18] Regulation 5**

Item 18 repeals regulation 5, which currently prescribes officers for the purposes of subsection 38J(7) of the Act. The Amendment Act removes subsection 38J(7), instead vesting powers with the Authority, which the Authority may subsequently delegate to appropriate officers. Regulation 5 is therefore redundant. This item involves no change in substantive effect.

#### **Item [19] Regulation 6, definition of *Fisheries Regulation***

Item 19 updates the definition of the term '*Fisheries Regulation*' as it applies to Part 2 of the Principal Regulations. Specifically, it adopts the *Fisheries Regulation 2008* of Queensland as in force from time to time. This is consistent with amendments

elsewhere to update references to Queensland laws, particularly Queensland fisheries legislation (see item 16).

**Item [20] Regulation 6, definition of *Spanner Crab Plan***

Item 20 omits the definition of the term '*Spanner Crab plan*' from Part 2 of the Principal Regulations, as the amended Regulations no longer refer to this particular fishery management plan and, therefore a definition is no longer required.

**Item [21] Regulation 8**

Item 21 replaces the existing generic reference in subregulation 8(1) to the 'law of Queensland' with a specific reference to 'Queensland fisheries legislation', which is a more appropriate description of the law which governs management arrangements for harvest fisheries in the Marine Park.

**Item [22] Regulations 9 to 12**

Item 22 omits existing provisions related to TUMRAs. The repealed provisions are re-enacted with some changes and consolidated with other TUMRA related provisions in a new Part 2B, dealing with TUMRAs (see item 61).

**Item [23] Regulation 13**

Item 23 amends the Zoning Plan definition of the term '*bait netting*' prescribed by regulation 13, by updating the references in that provision to particular provisions of Queensland's Fisheries Regulation, to reflect recent amendments to Queensland's legislation. The amendments also clarify the nets that are declared, and the limits that are prescribed, for both recreational fishers and commercial fishers who conduct '*bait netting*' in the Marine Park. The amendments do not change existing management intent.

**Item [24] Regulation 15, table 15, item 24**

Item 24 updates the scientific and common names for the animal species listed in item 24 of Table 15 of regulation 15 to reflect current Australian Standard Fish Names.

**Items [25], [26] and [27] Regulation 16**

Items 25, 26 and 27 update existing references to Queensland fisheries legislation contained in regulation 16, and make minor amendments to the names of particular fisheries to correspond with changes in terminology implemented under Queensland's amended fisheries legislation. The amendments are minor and machinery in nature.

**Item [28] Paragraph 21(b)**

Item 28 amends paragraph 21(b) of the Principal Regulations by replacing the reference to specific provisions of the Fisheries Regulation, with an updated reference to relevant provisions of Queensland fisheries legislation as in force from time to time. This change ensures any further amendments to Queensland's fisheries

legislation which impact the areas in which spearfishing may be conducted continue to be incorporated into regulation 21 of the Principal Regulations. This is consistent with amendments elsewhere to update references to Queensland laws (see item 16).

#### **Items [29] and [37] Regulations 22 and 34**

Item 29 makes minor amendments to the limitations prescribed by regulation 22 in relation to 'limited trapping' in the Marine Park, by updating the provision in accordance with recent amendments to Queensland fisheries legislation. The amendments do not alter the existing additional restrictions imposed by the Commonwealth on limited trapping, and simply remove outdated references to Queensland's Fisheries Regulation and Spanner Crab Plan (as in force on 1 July 2004), and adopt Queensland fisheries legislation (as in force from time to time).

Further, as the use of inverted dillies is being phased out under Queensland legislation, the amendments also remove any references to inverted dillies. This is consistent with amendments elsewhere to update references to Queensland laws, particularly Queensland fisheries legislation (see item 16).

Item 37 makes similar amendments to those referred to above in relation to the limitations prescribed by regulation 34 in relation to 'trapping' in the Marine Park.

#### **Item [30] Regulation 26**

Item 30 amends the limitations prescribed by regulation 26 in relation to 'netting', by replacing outdated references to Queensland's Fisheries Regulation (as in force on 1 July 2004) with references to relevant aspects of that legislation as in force from time to time. These amendments involve no change in substantive effect.

Further, an additional limitation has been inserted in relation to the use of set mesh nets in offshore waters in particular parts of certain Species Conservation (Dugong Protection) Special Management Areas, to support amendments to regulation 47 (see item 39).

#### **Item [31] Paragraphs 29(1)(a), (b) and (c)**

Item 31 updates the definition of '*protected species*' in the Principal Regulations to recognise as protected species, all listed threatened ecological communities within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999*, all species of cetacean, and each species of marine mammal, bird or reptile that is prescribed as 'near threatened wildlife' under the *Nature Conservation Act 1992* of Queensland as in force from time to time. This has the effect of recognising the applicability of those laws in the Marine Park and ensures a simple and consistent regulatory environment.

#### **Item [32] After subregulation 29(1)**

Subsection 3(1) of the Act allows the Principal Regulations to prescribe species for the purpose of the definition of '*protected species*'. To that end, this item prescribes the species listed in Table 29 of regulation 29 of the Principal Regulations, and each

species of marine mammal, bird or reptile that is prescribed from time to time as 'near threatened wildlife' under the *Nature Conservation Act 1992* (Qld). The amendments ensure the definitions of the term *protected species* under the Act, the Zoning Plan and the Principal Regulations are consistent.

#### **Item [33] Regulation 29, Table 29, items 5 to 11**

Item 33 amends Table 29 of regulation 29 of the Principal Regulations to include all species of the Family Pristidae (Sawfish) in the list of protected species on the basis that these species have already been declared 'no take' under Queensland fisheries laws because of conservation and sustainability concerns.

The item also amends the common and scientific names of species listed in items 5, 6, 7, 10 and 11 of the Principal Regulations to reflect current Australian Standard Fish Names.

#### **Item [34] Regulation 29, Table 29, item 15**

Item 34 corrects a typographical error in the scientific name for Leatherback turtles.

#### **Items [35] and [36] Regulation 30**

Items 35 and 36 amend the definition of '*Queensland fisheries legislation*' in the Zoning Plan, by updating the list of Queensland laws that are prescribed by regulation 30. References to the *Queensland Fisheries Act 1994* and the Fisheries Regulation (as in force on 1 July 2004) are updated to refer to those laws as in force from time to time, while references to specific fishery management plans have been replaced by a generic reference to all fishery management plans made under paragraph 32(1)(a) of the *Fisheries Act 1994* of Queensland. These changes recognise recent amendments to Queensland's fisheries legislation and ensure flexibility in adopting amendments to those laws as implemented from time to time.

#### **Item [38] Regulation 35**

Item 38 amends the limitations prescribed by regulation 35 in relation to 'trawling', by inserting a new requirement to comply with relevant provisions of the *Fisheries Regulation 2008* of Queensland, as in force from time to time, in addition to the existing requirement to comply with the *Fisheries (East Coast Trawl) Management Plan 1999* of Queensland (the EC Trawl Plan). This amendment is consequent upon recent amendments to Queensland's fisheries legislation, whereby certain provisions that were previously included in the EC Trawl Plan were migrated into the *Fisheries Regulation 2008*. The amendments are therefore minor or machinery in nature.

#### **Item [39] Regulation 47**

Consistent with amendments made by item 16 and elsewhere, item 39 amends regulation 47 of the Principal Regulations by updating references to particular provisions of Queensland's fisheries legislation in accordance with recent amendments to that legislation. These changes are machinery in nature and ensure greater consistency with current Queensland laws.



This item also inserts an additional special management provision to give greater protection to dugong in and around headland areas, by restricting the use of set mesh nets in certain parts of particular Species Conservation (Dugong Protection) Special Management Areas (Dugong Protection SMAs). Specifically, this item inserts a prohibition on the use of set mesh nets in offshore waters in any of the areas described in Parts 1 to 5 of Table 47.2, unless the net is no longer than 50 metres and is used in accordance with section 121 of the *Fisheries Regulation 2008* of Queensland (the Fisheries Regulation). The amendment also defines the terms '*set mesh net*', '*offshore waters*' and '*commercial fisher*' in accordance with the Fisheries Regulation. The areas described in Parts 1 to 5 of Table 47.2 include all offshore waters (ie greater than 2 metres deep) adjacent to a headland in various Dugong Protection SMAs which mirror Queensland's Zone B Dugong Protection Areas under Chapter 2 of Part 12 of the Fisheries Regulation. These changes reflect and implement an outcome of a recent Queensland Government review of management arrangements for the East Coast Inshore Fin Fish Fishery.

#### **Items [40] and [44] Paragraphs 54(b) and 69(b)**

Item 40 makes a minor amendment to paragraph 54(b) of the Principal Regulations to clarify that access to the various Restricted Access Special Management Areas referred to in that provision must be in accordance with all relevant laws of Queensland as in force from time to time. Prior to this amendment, the requirement was to comply with all relevant laws of Queensland as in force on 1 July 2004.

Item 44 makes a similar amendment to paragraph 69(b), so far as the limitation prescribed for entry to zones for the purposes of taking an animal or plant of a protected species or a strictly protected species is that it must be in accordance with Queensland fisheries legislation (as in force from time to time).

#### **Items [43] and [45] Regulations 66, 70 and 71**

Items 43 and 45 omit provisions that relate to permissions and re-enact similar provisions in new Part 2A which consolidates all permitting provisions (see item 61). Provisions which are substantially the same as regulations 66 and 71 have been moved into new Part 2A (see item 61).

Regulation 70 is a transitional provision and although it has been omitted from the Principal Regulations by item 45 its effect is preserved by subregulation 4(10) of the amendment Regulations.

#### **Items [46] and [47] Subregulation 72(1)**

Items 46 and 47 reflect recent amendments to the offence provisions contained in the Act, that pick up the standard criminal law terminology of 'engage in conduct' as defined in the Criminal Code.

Item 46 also updates cross-references to sections of the Act which were amended by the Amendment Act. These changes are minor and machinery in nature.

### **Item [48] Subregulation 72(3)**

Item 48 updates cross-references to sections of the Act which were amended by the Amendment Act. The changes are minor and machinery in nature.

### **Items [49], [50], [51], [53], [54], [55], [56], [57], [58] and [59]**

Items 49-51 and 53-59 make minor amendments to various provisions to update terminology relating to permissions as a consequence of the amendments inserting new Part 2A into the Principal Regulations, which deals with permissions (See item 61).

### **Items [52] and [60] Division 2.3 and Division 2.5**

Item 52 omits Division 2.3 from the Principal Regulations, while item 60 omits Division 2.5. Both Divisions comprised provisions related to permissions. Provisions of similar effect are established in new Part 2A, dealing with permissions (see item 61).

### **Item [61] After Part 2**

Item 61 inserts a new Part 2A into the Principal Regulations, establishing a framework for the granting and administration of permissions required under the Act, the Principal Regulations and the Zoning Plan. It consolidates existing permission related provisions, so all kinds of permissions are handled consistently. It also provides for better integration with the EPBC Act. This is consequential to recent Act amendments which establish the EPBC Act as the primary basis for environmental impact assessment within the Marine Park, including establishing the Marine Park as a matter of National Environmental Significance (NES). Item 61 also establishes a new Part 2B dealing with TUMRAs. The new Part 2B consolidates existing provisions and refines the existing framework in light of prior implementation experience.

### **Part 2A Permissions**

#### *Division 2A.1 - Permissions to which Part 2A applies*

Regulation 88 identifies the permissions to which Part 2A applies. All existing permissions available under the Act, Principal Regulations and Zoning Plan are consolidated into the new Part 2A.

#### *Division 2A.2 - Applications for permissions*

This Division provides for the making of an application for a permission and withdrawal of applications.

Regulation 88A requires applications to be made in a specified form approved by the Authority, include the information and be accompanied by any documents required by the form, and be lodged at a place or by a method specified in the form. It also provides that the Authority is not required to consider an application which does not

comply with the form, and if it decides not to consider the application for that reason, the Authority must give written notice to the applicant advising the matters that are incomplete. If the incomplete matters are not dealt with within 30 business days or any longer period specified by the Authority, the application is taken to have been withdrawn.

Regulation 88B allows an applicant to withdraw their permission application at any time before a decision has been made on the application, by providing written notice to the Authority.

Regulation 88C deals with deemed applications for permissions and provides that, if, pursuant to section 37AB of the Act, a referral made under the EPBC Act is taken to be an application for a permission made under the Principal Regulations, the referral is a deemed application.

Regulation 88C also stipulates when a deemed application for a permission is taken to be withdrawn. Specifically, it provides that a deemed application is taken to be withdrawn:

- if, under paragraph 74D(4)(a) of the EPBC Act, the Minister refuses to approve the taking of the proposed action – at the time of the Minister's decision;
- if, under subsection 133(7) of the EPBC Act the Minister refuses to approve the taking of the proposed action – at the time of the Minister's decision;
- if, under section 170C of the EPBC Act, the referral is withdrawn – at the time the referral is so withdrawn.

This regulation also reinstates the deemed application if the Minister subsequently makes a decision under paragraph 74D(4)(b) of the EPBC Act in relation to the proposed action.

Regulation 88D deals with advertising an application for a permission, and inserts substantially the same provisions as regulation 75 which is to be repealed with Div 2.3 (see item 52). The new regulation clarifies that the applicant must provide a copy of the advertisement to the Authority for publication on its website, as well as publish the advertisement in a newspaper circulating in the part of Queensland that is adjacent to the part of the Marine Park in which the proposed conduct is to be engaged in. The previous requirement to publish the advertisement in the Commonwealth Gazette has been removed. If the applicant fails to publish the advertisement as required by this regulation, the application is taken to have been withdrawn.

Regulation 88E provides that additional information may be requested by the Authority for the purpose of assessing an application for a permission, and such information may be provided by the applicant in the form of a report or assessment prepared for the purposes of the EPBC Act. It also provides that if the applicant does not provide the additional information or document to the Authority within 20 business days, or such longer period as the Authority allows, the application is taken to have been withdrawn.

### *Division 2A.3 – Applications for special permissions*

Division 2A.3 re-enacts existing Division 2.5 of the Principal Regulations within new Part 2A without substantive change in effect. Division 2.5 has consequently been repealed (see item 60). Division 2A.3 provides a process for allocating permissions where only a limited number of permissions to undertake a certain activity are available. This new Division makes only minor amendments to the old provisions to clarify the purpose and application of the Division, and to give effect to changes in terminology and cross-referencing consequent upon the insertion of new Part 2A.

### *Division 2A.4 – Consideration of applications*

This Division identifies the matters the Authority must and may take into account when considering an application for a permission.

Regulation 88Q sets out six mandatory considerations the Authority must take into account when considering an application for a permission and whether or not to impose any conditions on the permission if granted. Among other things, it requires the Authority to consider whether any approval or permit that is required under the EPBC Act in relation to the proposed conduct has been, or is likely to be, granted, and any relevant EPBC assessment documentation in relation to such approval or permit. The matters listed in this regulation must be considered by the Authority in relation to each application for a permission that it is required to determine (except applications for permissions to camp on a Commonwealth island – see new regulation 88W).

Regulation 88R sets out several discretionary considerations the Authority may take into account when considering an application for a permission and whether to impose conditions on the permission if granted. Discretionary considerations include, among other things, the new requirement in section 37AA of the Act for users of the Marine Park to take reasonable steps to prevent or minimise harm to the environment in the Marine Park; and whether the applicant is a suitable person to hold a permission in view of their history in relation to environmental matters, whether they owe any money as a chargeable permission holder, and whether they have any unpaid fines or civil penalties relating to a contravention of the Act or the Principal Regulations. In accordance with principles of administrative law, the various discretionary considerations which are established by this regulation need only be considered by the Authority, in relation to an application for a permission, if they are relevant to the application.

Regulation 88S deals with additional considerations to which the Authority must have regard when assessing applications for permissions to engage in conduct involving protected species, consolidates provisions relating to such permissions which have now been repealed (ie subregulations 74(7) and (8), repealed by item 52), and incorporates relevant EPBC Act considerations. The considerations given by this regulation are additional to the matters that the Authority must and may consider under new regulations 88Q and 88R.

Regulation 88T inserts into new Part 2A provisions which are substantially the same as repealed regulation 78 (see item 52). The provision has been moved into new Part 2A for the purpose of consolidating all regulations regarding permissions. Regulation

88T continues to limit the circumstances in which the Authority may grant a permission to take leader prawn broodstock in the Habitat Protection Zone in the Mission Beach Leader Prawn Broodstock Capture Area. Minor amendments have been made to update references to Queensland's fisheries legislation in view of recent amendments to that legislation, but such amendments involve no change in substantive effect. The new regulation also clarifies that it only applies in relation to the initial grant of a permission to take leader prawn broodstock in the relevant area. When assessing subsequent applications to replace permissions of that kind with another permission of the same kind, the applicant does not need to again satisfy the matters required by this regulation.

Regulation 88U inserts into new Part 2A provisions which are substantially the same as repealed regulation 78A (see item 52). The provision has been moved into new Part 2A for the purpose of consolidating all regulations regarding permissions. This new regulation continues to limit the number of permission the Authority may grant for conducting tourist programs consisting of swimming-with-whales activities involving dwarf minke whales in certain parts of the Cairns Planning Area, and involves no change in substantive effect.

Regulation 88V inserts into new Part 2A provisions which are substantially the same as repealed regulation 66 (see item 43). The provision has been moved into new Part 2A for the purpose of consolidating all regulations regarding permissions. Regulation 88V continues to limit the circumstances in which the Authority may grant a permission to a person to enter or use Princess Charlotte Bay Special Management Area for netting purposes. The new regulation clarifies that it only applies in relation to the initial grant of a permission to enter or use Princess Charlotte Bay Special Management Area for netting purposes. When assessing subsequent applications to replace permissions of that kind with another permission of the same kind, the applicant does not need to again satisfy the matters required by this regulation. Otherwise, this new regulation involves no change in substantive effect.

Regulation 88W deals with consideration of permissions to camp on Commonwealth islands. It provides that the assessment considerations set out under new regulations 88Q and 88R do not apply to the assessment of applications for permissions to camp on Commonwealth islands. Rather, in assessing an application for such a permission, the only consideration is the reasonable requirements for the orderly and proper management of the Marine Park and the camping site. This regulation simplifies requirements in relation to these kinds of permission which are routine in nature.

#### *Division 2A.5 – Granting and refusing permissions*

This Division deals with the grant or refusal of applications for permissions.

Regulation 88X requires the Authority to make a decision on an application for a permission, after taking into account the matters it is required or permitted to consider under the Act and new Part 2A of the Principal Regulations, provided the application has been made in accordance with Part 2A and the applicant has complied with any requirement or request by the Authority about the application.

Regulation 88Y requires the Authority to make a decision on an application for a permission within a reasonable period after receipt of an application, and to notify the applicant of its decision in writing. It includes a note indicating that the Authority is able to notify its decision by electronic communication (eg email) under the *Electronic Transactions Act 1999*.

Regulation 88Z deals with applications for permissions to conduct activities that are also subject to consideration under the EPBC Act – known as 'deemed applications' – and provides that the Authority must not make a decision in relation to a deemed application unless the Minister has determined either that the action is not a controlled action or, if it is a controlled action, the Minister has made a decision under section 133 of the EPBC Act to approve the action. This regulation also provides that if the Minister has decided that the action is not a controlled action, the Authority must make a decision on the deemed application within a reasonable period of time. If the Minister has made a decision that the action is a controlled action and has also decided to approve the action, the Authority must make a decision on the deemed application within 10 business days after the Minister's decision. However, subregulation 88Z(4) allows the Authority to extend the 10 business day period by written notice to the applicant, provided the notice is given within the 10 business day period.

#### *Division 2A.6 – Form, term and conditions of permissions*

This Division deals with the form, term and condition of permissions.

Regulation 88ZA specifies the form in which a permission must be issued by the Authority and the matters that the written permission must specify.

Regulation 88ZB specifies that a permission remains in force for the period specified in the permission unless it is revoked or surrendered before the end of that period. It also provides that a permission has no effect during any period of suspension, although the period of the permission continues to run during any period of suspension.

Regulation 88ZC inserts into new Part 2A provisions which are substantially the same as repealed regulation 105 (see item 69). The provision has been moved into new Part 2A for the purpose of consolidating all regulations regarding permission. Regulation 88ZC sets out the circumstances in which certain permissions are to continue in force beyond their specified date of expiry. These circumstances include where a person has applied for a further permission of the same kind in relation to the same conduct before the expiry of the original permission – or the Authority has decided under subregulation 88H(2) to treat the application for a further permission as having been made before its expiry (ie where there are special circumstances) – and the application has not been granted, refused or withdrawn before the expiry of the original permission. In those circumstances, the original permission remains in force until either the application for a new permission is taken to be withdrawn; the Authority makes a decision on the application; the original permission is surrendered or revoked; or the application lapses under regulation 132 (for non-payment of the application fee).

Regulation 88ZD inserts into new Part 2A provisions which are substantially the same as repealed regulation 77A (see item 52). The provision has been moved into new Part 2A for the purpose of consolidating all regulations regarding permissions, including special permissions. Consistent with repealed regulation 77A, this regulation delays the commencement of a special permission, to ensure that by the time the permission takes effect, all rights of review that may be open to a person who has lodged an unsuccessful application for the special permission under regulation 88A, would have expired. Therefore, there would be no risk that the Authority's decision to grant the permission could be overturned on review at the time that the permission comes into force. This is important because there are only limited numbers of permissions of the type to which Division 2A.3 applies, and applicants who are granted a permission by the Authority require certainty before investing resources into any activity that may be allowed under the permission.

Some new provisions have been included in regulation 88ZD to clarify that the delayed commencement of a special permission does not apply in circumstances where a person is simply seeking to replace a special permission with a permission of the same kind, or where the special permission is transferred to another person. In those circumstances, the special permission comes into force on the day of the Authority's decision to grant the renewal or approve the transfer (or such later date as may be specified by the Authority).

Regulation 88ZE specifies that the Authority may grant a permission subject to any conditions appropriate to the attainment of the objects of the Act, and provides examples of different kinds of conditions to which a permission may be subject. The examples of conditions provided are not intended to be exhaustive, and include:

- specifying the manner in which the permitted conduct is to be carried out;
- requiring the permission holder to prepare a plan for preventing, minimising and mitigating the potential environmental impacts of the permitted conduct for approval by the Authority;
- requiring specific monitoring and audit activities to be carried out in relation to the permitted conduct; requiring the permission holder to pay the Authority's reasonable costs associated with inspections and supervision of any project permitted;
- requiring the permission holder to provide undertakings to the Commonwealth appropriate to the attainment of the objects of the Act, etc.

This regulation also provides that the Authority may grant a permission subject to the condition that the permission holder undertakes specified activities to protect, repair or mitigate damage to the Marine Park environment; or a condition requiring the permission holder to make a financial contribution for the purpose of supporting such activities; however, such conditions must not be imposed in circumstances where they are not directly related to activities permitted by the permission unless the permission holder has consented to the condition.

Regulation 88ZF inserts into new Part 2A provisions which are substantially the same as repealed regulation 104 (see item 69). The provision has been moved into new Part 2A for the purpose of consolidating all regulations related to permissions. Regulation 88ZF continues to allow the Authority to include in a permission a condition allowing the permission holder to give another person written authority to carry out any activity

that may be lawfully carried out in accordance with the permission. It also provides that, if such a condition is given, the permission holder can give to another person a written authority to carry out any activity that may be lawfully carried out under the permission.

In circumstances where an authority is given to another person, this regulation provides that the permission is therefore taken to authorise that person to carry out the activity, any conditions to which the permission is subject continue to apply to the carrying out of the activity, the permission holder retains responsibility for any activity carried out by the other person under the authority, and the permission holder may still carry out the activity despite giving an authority.

#### *Division 2A.7 – Transfer of permissions and changes in beneficial ownership*

##### *Subdivision 2A.7.1 – Transfer of permissions*

This Subdivision deals with the application for, and consideration of, an application to transfer a permission.

Regulation 88ZG provides that a permission holder may apply to the Authority to transfer their permission, unless it is suspended, or is due to expire, prior to the proposed transfer date. It also stipulates the form of the transfer application, how it is to be lodged, and that a fee is payable (subregulation 88ZG(2)).

Similarly to the requirements under new regulation 88A, this regulation provides that the Authority is not required to consider a transfer application which does not comply with the requirements of subregulation 88ZG(2), and if it decides not to consider the application for that reason, the Authority must give written notice to the applicant advising the matters that are incomplete. If the incomplete matters are not dealt with within 30 business days, or any longer period specified by the Authority, the transfer application is taken to have been withdrawn.

Regulation 88ZH sets out three mandatory considerations the Authority must, and two discretionary considerations it may, take into account when considering an application to transfer a permission. These mirror various considerations that apply under new regulations 88Q and 88R in relation to applications for a permission (see above), and the considerations that applied under repealed subregulation 106(3) in relation to applications to transfer a permission (see item 69). Therefore, the new provisions involve no change in substantive effect.

Regulation 88ZI provides that additional information may be requested by the Authority for the purpose of assessing an application to transfer a permission, and such request may be made to the transferor or transferee. It also provides that if the transferor or transferee does not provide the additional information or document to the Authority within 20 business days, or such longer period as the Authority allows, the transfer application is taken to have been withdrawn.

Regulation 88ZJ establishes a link with EPBC Act approvals and provides that the Authority must not approve the transfer of a permission that relates to an activity which is also the subject of an approval under the EPBC Act unless the Minister has



consented to the transfer of the approval under section 145B of the EPBC Act. This provision has been inserted for practical purposes, as a person cannot conduct an activity in the Marine Park which requires both an approval under the EPBC Act and a permission, without obtaining both the approval and the permission. Accordingly, a permission should not be transferred unless the Minister has also consented to the transfer of the approval.

Regulation 88ZK inserts into new Part 2A provisions of similar effect as repealed subregulation 106(4) which deal with the approval of a transfer of a permission. New regulation 88ZK provides that the Authority must give written notice of its decision to approve or refuse the transfer of a permission:

- within 20 business days after receiving the application; or
- if additional information has been requested – within 20 business days of receiving the additional information (unless the application is taken to have been withdrawn for failing to supply such information); or
- if the Authority has notified the applicant of a longer period for considering the application – no later than the end of that longer period.

This regulation also stipulates that the Authority cannot approve a transfer unless the transfer application fee has been paid. If the Authority approves the transfer, it must issue a new permission of identical effect and with identical conditions as the original permission, unless the transferee agrees otherwise. However, the new permission given to the transferee may include various additional conditions related to protecting the Commonwealth's interests; for example, a condition requiring the provision of a security by way of a bond, guarantee or cash deposit; or a condition requiring the permission holder to indemnify the Authority in respect of costs to the Authority that the permission holder's activities may incur, etc. Finally, regulation 88ZK provides that the permission held by the transferor is cancelled at the time the transferee is granted the new permission.

Regulation 88ZL inserts into new Part 2A provisions which are substantially the same as repealed regulation 107 (see item 69). The provision has been moved into new Part 2A for the purpose of consolidating all regulations related to permissions. Regulation 88ZL continues to provide that any authorisations that are attached to a permission are transferred with the permission, and clarifies that authorisations cannot be transferred separately from the permissions to which they attach. This regulation involves no change in substantive effect.

#### *Subdivision 2A.7.2 Change in beneficial ownership of company*

This Subdivision also establishes a new set of provisions relating to a change in the beneficial ownership of a company that holds a permission. This provides the Authority with the capacity to modify or revoke a permission, when, as provided for by the Regulations, the Authority determines that the changed company is not a suitable person to hold the permission.

Regulation 88ZM requires a permission holder that is a company to notify the Authority if there is a change in the beneficial ownership of the company within 20 business days after the change occurs. This regulation also stipulates that a change in beneficial ownership of a company occurs when there is a change in the persons

holding an interest in 50% or more of the total voting shares of the company, or if the company becomes a subsidiary of another company.

Regulation 88ZN provides that the Authority may request further information about a notified change in the beneficial ownership of a company, so that it may properly consider whether there may be grounds under new regulation 88ZO to suspend, revoke, or modify the conditions of, the permission. If the company does not provide the additional information within 20 business days (or such longer period allowed by the Authority) after the Authority gives the request, the Authority may suspend or revoke, or modify the conditions of, the company's permission. However, before suspending, revoking or modifying the permission for that reason, the Authority must notify the company in writing of the facts and circumstances it considers justify such action, and allow the company 20 business days to provide reasons why the permission should not be suspended or revoked, or why the conditions should not be modified. Any reasons provided by the company must be taken into consideration by the Authority when deciding whether or not to suspend, revoke, or modify the conditions of, the permission.

Regulation 88ZO prescribes the circumstances in which the Authority may exercise discretion to suspend, revoke, or modify the conditions of, a permission because of a change in beneficial ownership. The relevant grounds include where the changed company is considered to not have the capacity to satisfactorily develop and manage the project which is the subject of the permission; the changed company owes a fee, fine or other amount payable under the Act or Regulations; there are reasonable grounds to believe that the changed company cannot comply with one or more conditions of the permission; or the changed company is not a suitable person to hold the permission in view of their history in relation to environmental matters, etc.

If the Authority intends to suspend, revoke, or modify the conditions of, the permission held by the changed company, for any of the reasons referred to in subregulation 88ZO(1), subregulation 88ZO(2) requires the Authority to notify the changed company within 20 business days after either receiving the notice of the change, or – if the Authority has requested additional information in relation to the notice – receiving the additional information.

#### *Division 2A.8 – Modification, suspension and revocation*

This Division deals with modification of permission conditions, suspension and revocation of permissions, and consolidates existing provisions into a new Part 2A dealing with permissions.

Regulation 88ZP provides that the Authority may, by written notice to a permission holder, modify the conditions of the permission to ensure it remains appropriate to the attainment of the objects of the Act. Such modification may be either with the consent of the permission holder or, in certain limited circumstances, without consent. Before taking action to modify a condition of a permission without the permission holder's consent, subregulations 88ZP(3) and (4) require the Authority to give written notice to the permission holder of the relevant facts and circumstances which justify modifying the condition, allow the holder 20 business days to provide reasons why the condition should not be modified, and consider any reasons provided.

Regulation 88ZQ provides that the Authority may suspend a permission, or modify its conditions, for the purpose of conducting an investigation if the Authority has reason to believe certain matters, including that the holder has, or is likely to, contravene a condition of their permission; that unforeseen unacceptable impacts have, are, or are likely to occur to the Marine Park or people who are in it; or the holder's history in environmental matters is such that they may no longer be an appropriate person to hold the permission. The regulation requires the Authority to provide written notice to the permission holder of the reasons for the suspension of the permission, or modification of conditions, and allow them no less than 10 business days to provide reasons to the Authority as to why the modification or suspension should be removed.

Subregulation 88ZQ(3) provides that the modification or suspension commences on the day the Authority notifies the permission holder, or such later date as may be specified in the notice.

Subregulations 88ZQ(3) and (4) require the Authority to investigate the matter and consider any reasons provided by the permission holder in response to the notification, as soon as practicable after notifying them. The investigation must be completed within either 20 business days after the day on which the modification or suspension commences, or 20 business days after the permission holder provides reasons to the Authority in response to the notice, whichever occurs later. These provisions are of similar effect to repealed regulations 109 and 110.

Regulation 88ZR is a new provision prescribing the action to be taken by the Authority following an investigation under regulation 88ZQ. If the Authority finds there are no reasonable grounds for modifying the condition or suspending the permission, it must immediately remove the modification or suspension and then notify the permission holder in writing. If the Authority finds there are reasonable grounds for modifying the condition or suspending the permission, it may, by written notice to the permission holder, either continue the modification, continue the suspension, or revoke the permission. Such action must be taken no later than 10 business days after completing its investigation – otherwise, the modification or suspension, as the case may be, ceases to have effect.

This regulation also requires the Authority to provide written reasons in the notice to the permission holder of any decision to continue the modification or suspension, or to revoke the permission. Where the decision to modify a permission is continued by the Authority, the permission has effect as if it had been granted subject to that modified condition. Where the decision to suspend a permission is continued, the permission remains suspended for the period set out in the notice. Where the Authority decides to revoke the permission, the revocation takes effect on the day the Authority gives the notice to the permission holder.

Regulation 88ZS inserts into new Part 2A provisions which are substantially the same as repealed regulation 125 (see item 80). The provision has been moved into new Part 2A for the purpose of consolidating all regulations related to permissions. Minor amendments have been made to clarify the dates from which any suspension or revocation decisions made by the Authority under regulation 88ZS would commence, and to provide a permission holder with the opportunity to respond to any proposed

suspension of their permission before it occurs. These procedural matters are consistent with the other new suspension regulations.

Regulation 88ZT inserts into new Part 2A provisions which are substantially the same as repealed regulation 111 (see item 69). The provision has been moved into new Part 2A for the purpose of consolidating all regulations related to permissions. Regulation 88ZT continues to prescribe the circumstances in which the Authority may suspend a chargeable permission in relation to the payment of the Environmental Management Charge (EMC), but also includes provisions setting out further detail about the procedure to be followed by the Authority when deciding whether to suspend a permission on the grounds referred to in subregulation 88ZT(1).

Specifically, the new regulation provides that before taking action to suspend a permission under subregulation (1), the Authority must give a written notice to the permission holder setting out the facts and circumstances that the Authority considers justify suspending the permission; advise the holder that they may, within 10 business days after the date of the notice, provide reasons to the Authority why the permission should not be suspended; and consider any reasons provided. These further matters are consistent with other new suspension regulations.

Regulation 88ZU inserts into new Part 2A provisions which are similar to repealed regulation 112 (see item 69). The provision has been moved into new Part 2A for the purpose of consolidating all regulations related to permissions. Regulation 88ZU sets out the circumstances in which the Authority may revoke a permission, including where:

- the permission holder consents;
- the holder has been found guilty of an offence against the Act or Principal Regulations, or certain provisions of the Criminal Code relating to provision of false or misleading information to the Commonwealth;
- the Federal Court has made a declaration that the permission holder has contravened a civil penalty provision in the Act;
- if the permission has been suspended under regulation 88ZT – the holder has not, within 10 business days of the suspension, taken action that would enable the Authority to reinstate the permission;
- the conduct that is the subject of the permission is also the subject of an approval under Part 9 of the EPBC Act and that approval has been revoked under section 145 of that Act;
- the holder did not begin to engage in the permitted conduct in the Marine Park within 120 days after date the permission was granted or transferred, unless the permission states otherwise.

Before taking action to revoke a permission, this regulation requires the Authority to give a written notice to the permission holder setting out the facts and circumstances that the Authority considers justify revoking the permission; advise the holder that they may, within 10 business days after the date of the notice, provide reasons to the Authority why the permission should not be revoked; and consider any reasons provided.

Subregulation 88ZU(5) permits the Authority to suspend the permission by written notice to the permission holder, pending its decision whether to revoke the

permission. If the Authority decides to suspend the permission for that purpose, the suspension commences on the day the Authority notifies the permission holder, or such later date as may be specified in the notice, and ends on the earlier of the day the Authority makes a decision whether or not to revoke the permission or 20 business days from the date of the notice of suspension.

Where the Authority decides to revoke the permission, the revocation takes effect on the day the Authority gives the notice to the permission holder, or such later date as may be specified in the notice.

Regulation 88ZV is a new provision which applies in circumstances where the Authority has revoked a permission on the grounds that the conduct that is the subject of the permission is also the subject of an approval under Part 9 of the EPBC Act which has been revoked and, subsequently, the revoked approval has been reinstated under section 145A of that Act. In those circumstances, regulation 88ZV requires the Authority to reinstate the revoked permission as soon as possible after the revoked approval has been reinstated, and notify the permission holder in writing of the reinstatement.

#### *Division 2A.9 – Offence provisions*

This Division establishes three new offence provisions relating to permissions.

Regulation 88ZW creates an offence of strict liability for failing to produce a copy of a permission to the Authority, or an inspector, upon request. The elements required to satisfy the offence are that the person holds a permission, engages in conduct in the Marine Park, the Authority or an inspector requests the person to produce a copy of the permission, and the person fails to comply with the request. This regulation establishes a maximum penalty of 50 units. As an alternative to prosecution, item 114 establishes an infringement notice penalty for this new offence of 1 penalty unit.

Regulation 88ZX creates an offence of strict liability where there has been a change in beneficial ownership of a permission holder who is a body corporate and the person (body corporate) fails to notify the Authority in writing within 20 business days of the change occurring. It establishes a maximum penalty of 50 units. As an alternative to prosecution, item 114 establishes an infringement notice penalty for this new offence of 10 penalty units.

Regulation 88ZY inserts into new Part 2A provisions which are substantially the same as repealed regulation 113 (see item 69). That provision has been moved into new Part 2A for the purpose of consolidating all regulations related to permissions. Regulation 88ZY continues to provide that a person who held a permission and failed to comply with a condition of the permission may still be convicted of an offence for failing to comply with the condition even though the permission has been revoked or has otherwise ceased to be in force. This regulation involves no change in substantive effect.

### *Division 2A.10 Miscellaneous*

Regulation 88ZZ inserts into new Part 2A provisions which are substantially the same as repealed regulation 71 (see item 45). The provision has been moved into new Part 2A for the purpose of consolidating all regulations related to permissions. Regulation 88ZZ continues to prescribe circumstances for the purpose of subsection 38BA (5) of the Act (formerly, subsection 38B). If any of the prescribed circumstances apply, then the offences set out in subsections 38BA(1) and (3) of the Act are not available. This regulation involves no change in substantive effect.

## **Part 2B TUMRAs**

### *Division 2B.1 – Preliminary*

Regulation 89A prescribes the definition of '*holder*' for the purposes of new Part 2B dealing with TUMRAs. It defines *holder* as an individual who is a member of the traditional owner group covered by the TUMRA and to whom correspondence may be sent on behalf of the group.

### *Division 2B.2 – Accreditation of TUMRA*

This Division deals with accreditation of TUMRAs and consolidates the existing provisions of the Principal Regulations into a new Part 2B.

Regulation 89B deals with applications for accreditation of TUMRAs and contains similar provisions to new regulation 88A regarding applications for permissions. However, regulation 89B stipulates that an individual who applies, or group of individuals who jointly apply, for accreditation of a TUMRA on behalf of a traditional owner group must be a member/s of the traditional owner group covered by the TUMRA.

Regulation 89C is a new provision dealing with the withdrawal of applications for accreditation of TUMRAs. It has been inserted to clarify the process that applies in circumstances where a TUMRA holder wishes to withdraw the application for accreditation, and for consistency, has been drafted in similar terms to regulation 88C, which concerns withdrawal of permission applications. Under subregulation 89C(2), a notice of withdrawal must be signed by the applicant or applicants who lodged the application, on behalf of the traditional owner group, or by their authorised representative.

Regulation 89D inserts into new Part 2B provisions which are substantially the same as repealed subregulations 9(3) and (4) (see item 22). Those provisions have been moved into new Part 2B for the purpose of consolidating all regulations related to TUMRAs. Minor amendments have been made to clarify the kinds of information that a TUMRA must contain, but the changes are not substantive in effect. Subregulation 89D(2) is a new provision which enables the traditional owners who are covered by the TUMRA to be identified in a variety of ways, including by name, family, clan, traditional owner group or any other means used by the group to identify group members.

Regulation 89E inserts into new Part 2B provisions which are substantially the same as repealed subregulations 9(5) and (6) (see item 22). Those provisions have been moved into new Part 2B for the purpose of consolidating all regulations related to TUMRAs. Regulation 89E continues to provide that the Authority may, for the purposes of assessing an application for accreditation of a TUMRA, request additional information from the applicant. It also provides that if the applicant does not provide the additional information or document to the Authority within 20 business days, or such longer period as the Authority allows, the application is taken to have been withdrawn. This is consistent with similar provisions in new regulation 88E.

Regulation 89F inserts into new Part 2B provisions which are substantially the same as repealed subregulation 10(2) (see item 22). Those provisions have been moved into new Part 2B for the purpose of consolidating all regulations related to TUMRAs. Regulation 89F continues to prescribe what matters the Authority must take into account when considering an application for accreditation of a TUMRA, and is drafted in almost identical terms to repealed subregulation 10(2). Therefore, this regulation involves no substantive change in effect.

Regulations 89G inserts into new Part 2B provisions which are similar in effect to repealed subregulations 10(1) and (3) (see item 22). Those provisions have been moved into new Part 2B for the purpose of consolidating all regulations related to TUMRAs. Regulation 89G continues to require the Authority to make a decision on an application for accreditation of a TUMRA, after taking into account the matters it is required or permitted to consider under the Act and new Part 2B of the Principal Regulations, provided the application has been made in accordance with Part 2B and the applicant has complied with any requirement or request by the Authority about the application. It also requires the Authority to make a decision on an application for accreditation of a TUMRA within a reasonable period after receipt of an application.

Subregulation 89G(3) prohibits the Authority from deciding to accredit a TUMRA until it has made reasonable efforts to consult with a relevant representative Aboriginal and Torres Strait Islander body about whether each member of the group covered by the TUMRA is a traditional owner in relation to the relevant part of the Marine Park covered by the TUMRA, considered any advice received from such a body, and made an assessment of the impact that the traditional use of marine resources is likely to have on the Marine Park.

Subregulation 89G(4) is a new provision requiring the Authority, within 10 business days of making a decision not to accredit a TUMRA, to give the TUMRA holder written notice setting out the reasons for the decision not to accredit the TUMRA.

Regulation 89H inserts into new Part 2B provisions which are substantially the same as repealed subregulation 10(8) (see item 22). Those provisions have been moved into new Part 2B for the purpose of consolidating all regulations related to TUMRAs. It continues to provide that a TUMRA has no force in the Marine Park unless it is accredited by the Authority. Consistently with similar provisions in new Part 2A dealing with permissions, it also provides that an accreditation of a TUMRA has no effect during any period in which it has been suspended, although the period of accreditation continues to run.

Regulation 89I inserts into new Part 2B provisions which are similar in effect to repealed regulation 11 (see item 22). Those provisions have been moved into new Part 2B for the purpose of consolidating all regulations related to TUMRAs. Regulation 89I continues to permit the Authority to impose conditions on the accreditation of a TUMRA either at the time of accreditation, or after accreditation.

Under subregulation 89I(2), if the conditions are imposed after accreditation, the Authority is required to give the holder of the accredited TUMRA a written notice setting out the details of any condition imposed, the reasons for it, and the date from which the conditions take effect. Subregulation 89I(3) inserts a requirement for the Authority to consult with the holder of the TUMRA before imposing a condition after accreditation of the TUMRA. New subregulation 89I(4) requires that any conditions imposed by the Authority must be appropriate to the attainment of the objects of the Act. Subregulation 89I(5) clarifies that a condition may include a requirement that in specified circumstances a person may give the Authority a written undertaking.

Regulation 89J inserts into new Part 2B provisions which are substantially the same as repealed subregulations 10(4), (5) and (6) (see item 22). Those provisions have been moved into new Part 2B for the purpose of consolidating all regulations related to TUMRAs. It requires the Authority, within 10 days of deciding to accredit a TUMRA, to give to the holder of the TUMRA a copy of the accredited TUMRA and a certificate of accreditation. The certificate of accreditation must specify the commencement date for the accreditation, specify the period of accreditation, and set out any conditions to which the accreditation is subject. If relevant, it may also include a condition that allows the holder of the TUMRA to give to a person written authority to carry out any activity that may lawfully be carried out in accordance with the accredited TUMRA, and specifying the maximum number of persons the holder may authorise.

Regulation 89K inserts into new Part 2B provisions which are substantially the same as repealed regulation 104 (see item 69). The provision has been moved into new Part 2B for the purpose of consolidating all regulations related to TUMRAs. Regulation 89K provides that if a certificate of accreditation of a TUMRA contains a condition allowing the holder of the accredited TUMRA to give another person written authority to carry out any activity that may be lawfully carried out in accordance with the TUMRA, then the holder may give such an authority to another person, and such authority must be given in accordance with the management arrangements under the accredited TUMRA.

In circumstances where an authority is given to another person, this regulation provides that the accredited TUMRA is therefore taken to authorise that person to carry out the activity, and any conditions to which the accredited TUMRA is subject continue to apply to the carrying out of the activity. These provisions have been drafted consistently with similar provisions in Part 2A relating to authorities given in connection with permissions.

Regulation 89L prescribes the circumstances where an accreditation of a TUMRA is to continue in force. This is a new provision which continues the operation of an accreditation of a TUMRA in circumstances where an application is made to 'renew' an existing accreditation of a TUMRA, the Authority has not made a decision on the



application before the original accreditation expires, and the application has not been withdrawn before the expiry of the original accreditation. In these limited circumstances, the original accreditation will be taken to remain in force until the first of the following events occur:

- the application is withdrawn by the applicant/s;
- the application is taken to have been withdrawn for failing to provide additional information to the Authority within the necessary time;
- the Authority makes a decision on the new application for accreditation.

This regulation is consistent with similar provisions under new Part 2A in relation to applications for permissions.

#### *Division 2B.3 – Modification of TUMRA*

This Division deals with the modification of a TUMRA or its conditions of accreditation.

Regulation 89M permits the holder of an accredited TUMRA, on behalf of the traditional owner group covered by the TUMRA, to apply to the Authority for approval to modify the TUMRA, or for the Authority to modify a condition of the TUMRA's accreditation. The application must be made in the form approved by the Authority, provide details of the decision that the holder wants the Authority to make, include the information and be accompanied by any documents required by the form, and be lodged at a place or by a method specified in the form. This regulation also provides that the Authority is not required to consider an application which does not comply with each of those requirements, and if it decides not to consider the application for that reason, the Authority must give written notice to the applicant advising the matters that are incomplete. If the incomplete matters are not dealt with within 30 business days or any longer period specified by the Authority, the application is taken to have been withdrawn.

Regulation 89N provides that the Authority may, for the purposes of assessing an application for approval to modify a TUMRA or for the Authority to modify a condition of the TUMRA's accreditation, request additional information from the holder of the TUMRA. It also provides that if the holder does not provide the additional information or document to the Authority within 20 business days, or such longer period as the Authority allows, the application is taken to have been withdrawn. This is consistent with similar provisions in new regulations 88E and 89E.

Regulation 89O deals with a decision on application. This regulation requires the Authority to make a decision on an application for approval to modify a TUMRA or for the Authority to modify a condition of the TUMRA's accreditation, if the holder has complied with any requirement or request by the Authority about the application.

It also requires the Authority to make a decision on an application within a reasonable period after receipt of an application.

Subregulation 89O(3) prohibits the Authority from deciding to approve an application if it considers that the modification proposed in the application may have an impact on the Marine Park that was not previously considered by the Authority in relation to

the TUMRA, and the Authority has not made an assessment, or had an assessment made, of the impact that the proposed modification is likely to have on the Marine Park.

Subregulation 89O(4) is a new provision permitting the Authority to approve the application for modification of the TUMRA or its conditions of accreditation, if it has made an assessment of the likely impacts of such modification on the Marine Park and the assessment criteria provided under regulation 89F, and is satisfied that it is appropriate to do so.

Regulation 89P applies in circumstances where the Authority has made a decision under subregulation 89O(1) to approve an application to modify a TUMRA or its conditions of accreditation. This regulation provides that, within 10 business days of making such a decision, the Authority must give written notice of the decision to the holder of the TUMRA which specifies the date from which the approved modification takes effect, and may, if it considers it necessary or appropriate, give the holder a copy of the modified TUMRA as approved and a new certificate of accreditation that incorporates the effect of the decision.

Regulation 89Q provides that the Authority must, within 10 business days of making a decision to refuse to approve an application made under regulation 89M, give the holder of the TUMRA a written notice of decision and the reasons for it.

#### *Division 2B.4 – Modification, suspension and revocation*

This Division deals with modification of the conditions of accreditation of a TUMRA, and suspension and revocation of a TUMRA's accreditation.

Regulation 89R provides that the Authority may suspend a TUMRA's accreditation, or modify its conditions of accreditation, for the purpose of conducting an investigation if the Authority has reason to believe certain matters, including that the person authorised by the TUMRA to undertake a traditional use of marine resources has not complied with the provisions of the TUMRA in relation to the use, or a condition of the TUMRA's accreditation; or that damage, degradation or disruption to the physical environment or living resources of the Marine Park has occurred, is occurring or is likely to occur because of the operation of the TUMRA. The regulation requires the Authority to provide written notice to the holder of the TUMRA of the modification or suspension, including details of when the modification or suspension takes effect.

Subregulations 89R(4) and (5) require the Authority to carry out the investigation as soon as practicable after notifying the TUMRA holder of the modification or suspension, and complete its investigation within 20 business days after the day on which the modification or suspension commenced. These provisions are of similar effect to repealed regulations 109 and 110 (see item 69).

Regulation 89S is a new provision prescribing the action to be taken by the Authority following an investigation under regulation 89R. If the Authority finds there are no reasonable grounds for modifying the condition of accreditation, or suspending the TUMRA's accreditation, it must immediately remove the modification or suspension

and then notify the TUMRA holder in writing. If the Authority finds there are reasonable grounds for modifying the condition of accreditation, or suspending the TUMRA's accreditation, it may, by written notice to the permission holder, either continue the modification or the suspension. Such action must be taken no later than 10 business days after completing its investigation – otherwise, the modification or suspension, as the case may be, ceases to have effect.

This regulation also requires the Authority to provide written reasons in the notice to the TUMRA holder of any decision to continue the modification or suspension, as the case may be, and the period for which any continued suspension is to remain in force.

Regulation 89T inserts into new Part 2B provisions which are similar to repealed regulation 112 (see item 69). The provision has been moved into new Part 2B for the purpose of consolidating all regulations related to TUMRAs. Regulation 89T sets out the circumstances in which the Authority may, by written notice to the holder of the TUMRA, suspend or revoke the accreditation of the TUMRA, including where:

- the holder of the accredited TUMRA consents to the suspension or revocation, on behalf of the traditional owner group covered by the TUMRA;
- the Authority is satisfied on reasonable grounds that a person authorised by the TUMRA to undertake a traditional use of marine resources has not complied with either the provisions of the TUMRA in relation to the use, or a condition of the TUMRA's accreditation;
- the Authority has reasonable grounds for believing that if the application for accreditation was being considered again, it would not have been granted because of circumstances that were not foreseen at the time of the original granting of accreditation; or
- the holder of the accredited TUMRA, or the person who applied for accreditation of the TUMRA, has been found guilty of an offence against the certain provisions of the Criminal Code relating to provision of false or misleading information to the Commonwealth.

Before taking action to suspend or revoke the accreditation of the TUMRA for any of the reasons described above, except where the holder of the TUMRA consents to the suspension or revocation, this regulation requires the Authority to give a written notice to the TUMRA holder setting out the facts and circumstances that the Authority considers justify suspending or revoking the accreditation of the TUMRA; advise the holder that they may, within 10 business days after the date of the notice, provide reasons to the Authority why the TUMRA's accreditation should not be suspended or revoked; and consider any reasons provided before deciding whether to suspend or revoke accreditation.

Where the Authority decides to suspend or revoke the TUMRA's accreditation, the suspension or revocation, as the case may be, takes effect on the day the Authority gives the notice to the TUMRA holder, or such later date as may be specified in the notice.

#### *Division 2B.5 – Termination of accredited TUMRA*

This Division deals with termination of an accredited TUMRA.

Regulation 89U inserts into new Part 2B provisions which are substantially the same as repealed regulation 12 (see item 22). That provision has been moved into new Part 2B for the purpose of consolidating all regulations related to TUMRAs. Regulation 89U continues to prescribe the circumstances in which the holder of an accredited TUMRA may terminate the TUMRA, advise the Authority of the termination, and thereby cancel the TUMRA's accreditation. This regulation provides that the accreditation of a TUMRA will cease to have effect from the date of the notice of the termination, or such later date as may be specified in the notice. The regulation involves no change in substantive effect.

### **Item [62] Part 3**

Item 62 omits Part 3 of the Principal Regulations which Part concerned permissions to carry on prescribed activities in the unzoned area of the Marine Park. As part of the consolidation and streamlining of provisions relating to all kinds of permissions in new Part 2A – including permissions for the purpose of section 38CA of the Act to engage in conduct in an unzoned area of the Marine Park (see paragraph 88(1)(d) at item 61) – Part 3 is redundant and has been repealed.

### **Item [63] Regulation 93B, definition of discharge**

Item 63 omits the definition of '*discharge*' from Part 3A of the Principal Regulations. The Amendment Act establishes a general definition of *discharge* under subsection 3(1). Paragraph 13(1)(b) of the *Legislative Instruments Act 2003* provides that expressions used in a legislative instrument have the same meaning as in the enabling legislation unless a contrary intention appears. The definition of *discharge* provided under regulation 93B is therefore redundant and has been repealed.

### **Item [64] Regulation 93B, definitions of *Grade A treated sewage*, *Grade B treated sewage* and *Grade C treated sewage***

Item 64 amends the definitions of the terms '*Grade A treated sewage*', '*Grade B treated sewage*' and '*Grade C treated sewage*', which are used in Part 3A of the Principal Regulations, by replacing outdated references to Schedule 7 of the *Transport Operations (Marine Pollution) Regulation 1995* of Queensland with updated references to Schedule 7 of the *Transport Operations (Marine Pollution) Regulation 2008* of Queensland as in force on 18 December 2008 (see also item 17).

The changes to Queensland's legislation adopted by the amendments are minor and clarify matters such as the appropriate sewage assessment measure, and update terminology, in accordance with scientific terminology used presently in Australia.

As an interpretive aid, the item also reproduces the relevant Parts of Schedule 7 of the amended Queensland legislation in the new note to regulation 93B.

### **Item [65] After regulation 93F**

The Amendment Act provides that it is a defence to the offence of discharging waste in the Marine Park if circumstances prescribed by the Principal Regulations for the purpose of that subsection exist in relation to the discharge (subsection 38DD(6)).

Item 65 inserts new regulation 93G into the Principal Regulations for the purpose of prescribing such circumstances. Specifically, the new regulation prescribes the circumstances which are set out in regulations 93D and 93E relating to when untreated and treated sewage may be discharged from vessels.

#### **Item [66] Regulation 94**

Item 66 re-enacts existing regulation 94 with some modifications. The existing regulation 94 empowers the Authority to order the removal of abandoned, sunk or wrecked property. Item 66 expands this power to also allow such orders to require action to remedy, mitigate or prevent damage caused by the removal of such property. This provides a similar scope of powers to those that are available under section 55 of the *Sea Installations Act 1987*. Other minor changes include updating terminology for consistency with new Part 2A (eg references to 'a relevant permission or a permission under regulation 93' have been changed to 'a permission under Part 2A').

#### **Items [67], [69], [75] and [80] Regulations 96 to 99, 104 to 113, 117, and 125**

These items repeal provisions which have been consolidated into new Part 2A of the Principal Regulations, dealing with permissions. Provisions of substantially equivalent effect are inserted by item 61.

#### **Items [70] and [71]**

Items 70 and 71 create a new Part 4AA and consolidate into that Part existing provisions of the Principal Regulations related to a register of permissions, TUMRAs and related information. The amendments are minor and machinery in nature.

#### **Item [72] Paragraphs 114(3)(a) and (c)**

Item 72 makes amendments to terminology that are minor in nature and consistent with terminology used in relation to permissions in new Part 2A.

#### **Items [73], [74] and [89] Regulations 116, 133A and 133B**

Items 73, 74 and 89 move the provisions which stipulate the fee payable in relation to a request for a copy of a document or information that is kept in the Authority's register, from regulation 116 to Part 7 of the Principal Regulations, as that Part relates specifically to fees.

These amendments are machinery in nature and create no new changes in effect.

Item 89 also establishes regulation 133B, which inserts a new reinstatement fee for the purpose of paragraph 88ZT(3)(b) of the Principal Regulations. It provides that a \$120 fee is payable to the Authority in circumstances where a permission has been suspended for failure either to pay an Environmental Management Charge (EMC) or to provide EMC returns in accordance with the Principal Regulations. This fee recognises the administrative cost incurred by the Authority in these circumstances.

### **Item [79] Regulation 117M**

Item 79 omits regulation 117M as it is a transitional provision that is no longer required.

### **Item [81] and [94]**

Items 81 and 94 are consequent upon the repeal of regulation 125 and the re-enactment of a provision of substantially similar effect in new Part 2A (regulation 88ZS). The amendments merely update the cross reference referred to in subregulation 126(1) and item 4 of Table 134 to new paragraph 88ZS(1)(d).

### **Items [82], [83], [86], [88], [90], [91], [95], [100] and [106]**

Items 82, 83, 86, 88, 90, 91, 95, 100 and 106 repeal references to various provisions of the Act or Principal Regulations which are now redundant, and update cross references to various provisions of the Principal Regulations which have been amended, consequent upon the insertion of new Part 2A, which deals with permissions (see item 61). The changes are machinery in nature and are of no substantive effect.

### **Items [84] and [85] Regulation 128**

Items 84 and 85 amend regulation 128 by inserting amended definitions for the terms '*public environment report*' and '*environmental impact statement*' as used in items 4 and 5 in table 128 of the Principal Regulations. The amendments include references to various types of reports, statements or assessments prepared in accordance with relevant Parts of the EPBC Act, under a law of Queensland, or for the purposes of a bilateral arrangement under the EPBC Act between the Commonwealth and Queensland, and better reflect the integrated approach to EIA established by Schedule 4 of the Amendment Act.

The provisions recognise that, under these arrangements more 'intensive' forms of EIA, such as an Environmental Impact Statement or Public Environment Report, will be carried out under the framework of the EPBC Act or relevant Queensland law, but will provide a basis for the Authority to consider the grant of necessary permissions under the Act.

### **Item [87] Regulation 128, table 128, item 3A**

Item 87 inserts new item 3A into Table 128 of regulation 128 of the Principal Regulations, to include a permission application fee for activities that require assessment either on 'referral information' or on 'preliminary documentation' under Part 8 of the EPBC Act. The insertion of these fees, which are consistent with the fees that apply to activities requiring public notice to be given, enable the Authority to recover administrative costs associated with assessing these types of permission applications.

### **Items [93] and [96] Regulation 134**

Items 93 and 96 amend the provisions of regulation 134 by replacing references to 'Division 2.5' permissions with references to 'special' permissions. These changes reflect updates in terminology and are consequent upon amendments to items 11 and 61. The amendments are minor in nature and involve no change in substantive effect.

### **Item [97] Subregulation 137(2)**

Item 97 repeals the note to subregulation 137(2), as that note is redundant consequent upon the repeal of regulation 74 and the insertion of new Part 2A (see item 61). The amendment is minor in nature and involves no change in substantive effect.

### **Items [98], [99] and [120]**

These items correct typographical errors, in particular, the spelling of “Lady Elliott Island” has been amended to “Lady Elliot Island”.

### **Item [101] Regulation 167**

Regulation 167 presently establishes requirements for holders of chargeable permissions to submit “returns” to the Authority on a quarterly basis so that the Authority can calculate their liability to pay the environmental management charge (EMC) in accordance with the Principal Regulations.

Item 101 improves the enforceability of this requirement by making it an offence not to submit a charge return and, where required, a copy of the relevant part of a permission holder's logbook, to the Authority on time. This regulation establishes a maximum penalty of 50 penalty units. As an alternative to prosecution, item 116 establishes an infringement notice penalty for these new offences of 2 penalty units.

### **Item [104] Subregulations 183 (1) and (1A)**

Item 104 updates regulation 183, which sets out the requirements for the Authority to publish notice of various types of its decisions made under the Principal Regulations. As a result of changes inserting new Parts 2A and 2B into the Principal Regulations (see item 61), and the consequent repeal of redundant provisions, item 104 amends regulation 183 by updating cross references to various other provisions of the Regulations. The changes are mostly machinery in nature, and still require the Authority to publish notice of the following kinds of decisions made under Parts 2A, 2B and 4A:

- a decision on an application for any kind of permission;
- a decision to suspend, revoke, impose a condition on, or modify conditions of, a permission;
- a decision on an application for approval to transfer a permission;
- a decision on an application for accreditation of a TUMRA;
- a decision to suspend or revoke the accreditation of an accredited TUMRA;
- a decision to modify a condition of, or impose a condition on, the accreditation of a TUMRA; and

- a decision on an application for an exemption from one or more provisions of Part 4A, relating to conduct involving cetaceans in the Marine Park.

Two changes created by this item are; first, publication of such notices must, in the future, be on the Authority's website and not, as under current arrangements, in the Commonwealth *Gazette*. Secondly, new subregulation (1A) is inserted, which creates an exception to the general publication of notice requirement for decisions relating to applications for permissions to camp on a Commonwealth island, given their high volume and routine nature. Accordingly, the Authority is not required to publish notice of its decisions for all Commonwealth island camping permissions.

#### **Item [105] Paragraph 184 (1) (a)**

Item 105 merely updates cross references as a consequence of the changes to regulation 183 explained in item 104.

#### **Item [107] Paragraphs 185 (1) (a) and (b)**

Item 107 amends paragraphs 185(1)(a) and (b) of the Principal Regulations by updating cross-references to provisions which have been either repealed or amended, and by including two further exceptions to the general rule enabling persons whose interests are affected by a decision of the Authority to seek reconsideration of the decision. The two further exceptions concern decisions on an application for a permission to camp on a Commonwealth island, and decisions regarding referrals under the EPBC Act which are taken to be applications for permissions made in accordance with the Principal Regulations. The rationale behind these changes is that camping permits are high volume, routine permissions and therefore a mechanism for reconsideration would create an unnecessary administrative burden. Where an activity is also subject to an EPBC Act approval, reconsideration would more appropriately occur in the context of the EPBC Act decision.

#### **Item [109] Subregulation 185(6)**

Item 109 amends subregulation 185(6) as a consequence of amendments to new Part 2A, which Part allows permission holders to apply to the Authority for approval to transfer all kinds of permissions that are required under the Act, Zoning Plan and Regulations (see item 61). Previously, only chargeable permissions could be transferred to another person under the Principal Regulations. Accordingly, subregulation 185(6) omits the word 'chargeable' thereby allowing proposed transferees and transferors of all kinds of permissions to seek reconsideration of the Authority's decision on a transfer application.

#### **Item [110] Subparagraph 185(8)(c)(iii)**

Item 110 amends subparagraph 185(8)(c)(iii) as a consequence of amendments to regulation 183, which changes an existing requirement to publish a notification of the Authority's decision in the Commonwealth *Gazette*, to instead require publication on the Authority's website (see item 104). The amendment is minor in nature and involves no change in substantive effect.



### **Item [111] Subregulation 186(1)**

Item 111 amends subregulation 186(1) by replacing the reference to '40 days' with a reference to '30 business days'. The amendment standardises references to time periods consistently with other amended regulations, so such periods are expressed in an equivalent or greater number of 'business days'. The term '*business day*' is defined by regulation 3 (see item 3).

### **Item [112] After regulation 187**

Section 64 of the Amendment Act provides for reconsideration and review of specified decisions made under the Act. This item prescribes for the purposes of that provision, the time limits for requesting and considering reconsideration, the matters to be included in the request for reconsideration and when the reconsideration decision takes effect. These requirements are aligned with the requirements for review of decisions made under the Principal Regulations.

### **Item [113] After Part 13**

Item 113 inserts new Part 13A and new regulations 187B and 187C, dealing with inspectors' powers.

New regulation 187B empowers inspectors to give reasonable directions to any person who is within the Marine Park; or who is outside the Marine Park and who the inspector reasonably believes may enter, or has recently entered and left, the Marine Park; for the purpose of ensuring the Act and Principal Regulations are complied with. The inspector may give such a direction orally, in writing, by radio or by any other appropriate means of communication. Subregulations 187B(4) and (5) provide that it is an offence of strict liability to fail to comply with such a direction given by an inspector, and stipulates a maximum penalty of 50 penalty units. As an alternative to prosecution, item 117 inserts an infringement notice penalty for this new regulation offence of 10 penalty units.

Regulation 187C empowers an inspector to request that a person who is believed to have committed an offence against the Act or the Principal Regulations leave the Marine Park, or leave a zone or location within the Marine Park, for a specified period that is reasonable in the circumstances. An inspector may also require a person to produce a copy of such permission, permit or authority as is required under the Act, the Principal Regulations or the Zoning Plan. Under subregulations 187C(3) and (4) it is an offence of strict liability for a person to fail to comply with a requirement made of the person by an inspector under this regulation, and a maximum penalty of 50 penalty units applies. As an alternative to prosecution, item 117 inserts an infringement notice penalty for this regulation of 10 penalty units.

These new provisions re-enact section 45A and subsection 48(2) of the Act. Those sections are to be repealed by Schedule 5 of the Amendment Act. As explained in the Explanatory Memorandum for the Amendment Act, failure to comply with a direction is specified as an offence and is an offence of strict liability. This is consistent with the Senate Scrutiny of Bill Committee's *Sixth Report 2002* as it is considered that the offences are regulatory in nature, they regulate matters related to environmental

protection which are of particular public interest, the offences would benefit from being dealt with expeditiously to ensure public confidence in the regulatory regime, they establish a maximum penalty of only 50 penalty units, and they will be subject to an alternative infringement notice penalty, which will enhance effectiveness and efficiency in dealing with a high volume of contraventions.

The exercise of powers is subject to requirements for an authorised officer to produce an identity card issued under the Act.

#### **Items [114], [115], [116], [117] and [118] Table 189 of regulation 189**

Items 114, 115, 116, 117 and 118 prescribe certain offences under the Principal Regulations and the Act to be infringement notice offences. Given the high volume of contraventions against the various offence provisions contained in the Principal Regulations and the Act, an ability to issue an infringement notice provides for more effective deterrence through the use of on the spot fines and more efficient administration. The availability of infringement notices provides yet a further enforcement option that can be used in relation to minor offences, where the immediate imposition of a penalty would enhance deterrence and the efficiency of enforcement.

#### **Item [119] Regulation 206**

Item 119 amends the form of identity card prescribed by the Principal Regulations for the purpose of subsection 45(1) of the Act. Specifically, it omits the reference to 'Commonwealth of Australia' and replaces that with the Commonwealth Coat of Arms and the words 'Australian Government', which is consistent with the Australian Government Branding Design Guidelines published by the Department of the Prime Minister and Cabinet (as updated September 2009). The amendments also clarify that a person who is issued an inspector card is an inspector under both the Act and the EPBC Act, which is consistent with the Amendment Act.