

EXPLANATORY STATEMENT

Issued by the authority of the Minister for the Environment

Great Barrier Reef Marine Park Act 1975

Great Barrier Reef Marine Park Regulations 2019

The *Great Barrier Reef Marine Park Act 1975* (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 Region).

Under subsection 66(1) of the Act, 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 primary objective of the *Great Barrier Reef Marine Park Regulations 2019* (the Instrument) is to prescribe 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 main object of the Act (set out in subsection 2A(1)) is to provide for the long term protection and conservation of the environment, biodiversity and heritage values of the Region. The Instrument replaces the sun setting *Great Barrier Reef Marine Park Regulations 1983* (the old regulations).

The other objects of the Act (set out in subsection 2A(2)) are to do the following, so far as is consistent with the main object:

- allow ecologically sustainable use of the Region for purposes including the following:
 - public enjoyment and appreciation;
 - public education about and understanding of the Region;
 - recreational, economic and cultural activities; and
 - research in relation to the natural, social, economic and cultural systems and value of the Region;
- encourage engagement in the protection and management of the Region by interested persons and groups, including Queensland and local governments, communities, Indigenous persons, business and industry; and
- assist in meeting Australia's international responsibilities in relation to the environment and protection of world heritage (especially Australia's responsibilities under the World Heritage Convention).

The Instrument gives effect to these objects by regulating use of the Great Barrier Reef Marine Park (Marine Park). The Instrument provides for:

- Giving effect to, and enforcing the observance of, the *Great Barrier Reef Marine Park Zoning Plan 2003* (the Zoning Plan) and Plans of Management, which are made pursuant to the Act;
- The grant of permissions in the Marine Park, the imposing of conditions which permissions may be subject to, the charging of fees by the Authority in respect of permissions, the keeping of records relating to permissions and a regime for modification, revocation and suspension of permissions;
- The accreditation of Traditional use of Marine Resources Agreements (TUMRAs) entered into between Traditional Owners in respect of the Marine Park;
- The regulation of the discharge of sewage in the Marine Park;
- The regulation of property and things in the Marine Park;
- Reporting by the Authority on the condition of the Region through the Outlook Report;
- The regulation of interactions with cetaceans in the Marine Park;
- The operation of vessels in the Marine Park; and
- The collection and remittance of an Environmental Management Charge (EMC) by commercial operators in the Marine Park.

Details of the Instrument and the notes on clauses are set out at **Attachment A**.

A Statement of Compatibility with Human Rights is at **Attachment B**. To assist readers in transitioning from the old regulations to the Instrument, **Attachment C** provides a table which indicates the old regulation number and, where relevant, the equivalent new section number.

Suite of legislation for the management of the Marine Park

The Marine Park is regulated by the Act, the Instrument, the Zoning Plan and Plans of Management.

One of the primary purposes of the Instrument is to give effect to the Zoning Plan. The Zoning Plan is the main planning instrument for the conservation and management of the Marine Park and is provided for in Part V, Division 2 of the Act. The Marine Park is managed as a multiple use area. This means that, while enhancing the conservation of the Marine Park, the Zoning Plan also provides for a range of recreational, commercial and research opportunities, and for the continuation of traditional activities.

Additionally, Plans of Management (provided for in Part VB of the Act) complement the Zoning Plan by addressing issues specific to an area, species or community in greater detail than can be accomplished by the broader reef-wide Zoning Plan. There are currently four Plans of Management. The *Shoalwater Bay (Dugong) Plan of Management 1997* addresses a

species; while the *Cairns Area Plan of Management 1998*, the *Hinchinbrook Plan of Management 2004*, and the *Whitsundays Plan of Management 1998* are all addressing issues specific to these areas of the Marine Park.

The Instrument is part of the suite of legislation which underpins the functions of the Authority. The relationship between this suite of legislation is set out in the Act, which allows the Zoning Plan and Plans of Management to rely on content in the Instrument and other legislative instruments (see subsections 35DA(1) and 39ZFA(1) of the Act). Paragraph 66(2)(bb) of the Act complements sections 35DA and 39ZFA by confirming that Zoning Plans and Plans of Management may prescribe matters for the purposes of regulations made under the Act.

Decision making

The Instrument includes a number of administrative decision making processes in relation to such things as granting or refusing of permissions, accrediting TUMRAs and exemptions from the application of certain provisions or parts of the Instrument. These administrative decisions are included in the Instrument consistent with the Act's framework for regulation which allows for a zoning plan or plans to be made and the intention that the Instrument will in turn give effect to any such zoning plans. The decision making provisions have been drafted in accordance with the principles of the Attorney-General's Department, *Australian Administrative Law Policy Guide* (the Administrative Guide).

The Act contemplates the inclusion of decision making provisions in the Instrument in the wide range of regulation making powers in section 66(2) of the Act. As the primary instrument to give effect to the Zoning Plan, section 66(2)(b) of the Act gives the Instrument the power to provide for, give effect to, and enforce the observance of zoning plans. The Instrument therefore establishes the decision making provisions for TUMRAs and the permissions system, which are necessary to give effect to the provisions of the Zoning Plan that contemplate TUMRAs and permissions. The Act specifically gives power for the Instrument to provide for the grant or issue of licenses, permissions, permits and authorities, the conditions subject to which they are granted or issued, and the charging of fees by the Authority in respect of such licences, permissions, permits and authorities (see section 66(2)(u) of the Act).

Consistent with the Administrative Guide the Instrument provides for appropriate notification, reconsideration and review of administrative decisions made by the Authority.

Enforcement regime

The criminal offence provisions of the Instrument have been drafted consistently with the Attorney General's, *A Guide for Framing Commonwealth Offences, Infringement Notices and Enforcement Provisions* (the Guide for Framing Commonwealth Offences). The Act provides that the maximum penalty for an offence in the Instrument is 50 penalty units (see subsection 66(11) of the Act). The majority of offences are directed to giving effect to the Zoning Plan. As a primary purpose of the Instrument is to give effect to the Zoning Plan, made under the Act, the offences are appropriately contained in the Instrument rather than the Act.

In support of the regulatory scheme the Instrument sets out some of the functions and powers of inspectors (however the majority of inspector powers are contained in the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and also provides for the issuing of infringement notices for certain offences committed in the Marine Park. It is not considered appropriate that these regulatory powers be in an Act that triggers the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act). This is because of the unique nature of the regulation of the Marine Park involving the Act, the Instrument, the Zoning Plan and Plans of Management. The Marine Park requires a unique regulatory environment and the suite of legislation is designed to do that in the most effective way. It was, however, considered appropriate to align the provisions in the Instrument relating to regulatory powers to the extent possible with the provisions in the Regulatory Powers Act. This has been done for most of the provisions relating to the contents of infringement notices, to the extent those provisions were able to be more standardised.

By regulating the use of the Marine Park through an enforcement regime, the Instrument establishes clear parameters which people are compelled by law to follow in order to achieve the objects of the Act.

Sun setting regime

Sun setting provisions in the *Legislation Act 2003* provide that a legislative instrument ceases to have effect after a specific date, unless further legislative action is taken to extend that law. In effect, sun setting provides a 'use-by date' for legislative instruments. In this way, Parliament has ensured legislative instruments are periodically reviewed and updated. The old regulations are due to sunset on 1 April 2019. Similarly the *Great Barrier Reef Marine Park (Aquaculture) Regulations 2000* (the Aquaculture Regulations) are due to sunset on 1 October 2019.

The Instrument repeals the old regulations and the Aquaculture Regulations. The Instrument is intended to replace the old regulations with regulations that are in substantially the same form. The Aquaculture Regulations are being repealed as they have been determined to be redundant.

Documents incorporated by reference

Subsection 66(13) of the Act authorises the Instrument to apply, adopt or incorporate any matter contained in an instrument or other writing as in force or existing from time to time (overriding section 14 of the *Legislation Act 2003*).

The Instrument incorporates the following documents by reference (which are not Commonwealth Acts or disallowable legislative instruments):

- The *Great Barrier Reef Marine Park Zoning Plan 2003* (the Zoning Plan), as in force from time to time, available from the Federal Register of Legislation at www.legislation.gov.au. The Zoning Plan provides for a range of ecologically sustainable recreational, commercial and research opportunities and for the continuation of traditional activities;
- The *Planning Act 2016* (Qld) and the *Planning Regulation 2017* (Qld), as in force from time to time, available from www.legislation.qld.gov.au;

- The *State Planning Policy*, as defined in Schedule 24 to the *Planning Regulation 2017* (Qld) as in force from time to time, available from www.dilgp.qld.gov.au;
- The research guidelines (if any) as in existence from time to time available from www.gbrmpa.gov.au. The research guidelines at the time of making of the Instrument are entitled *Guidelines: Managing Research in the Great Barrier Reef Marine Park* and are available at <http://elibrary.gbrmpa.gov.au/jspui/bitstream/11017/3227/1/Managing-Research-in-the-GBRMP.pdf>. These Guidelines outline the Authority's approach to managing research activities in the Marine Park and specify key considerations and limitations in relation to research activities. They also guide development and assessment of applications for research permissions and institutional accreditations for limited impact research activities;
- The *Fisheries Act 1994* (Qld) as in force from time to time, available from www.legislation.qld.gov.au including:
 - A fisheries management plan made under paragraph 32(1)(a) of the *Fisheries Act 1994* (Qld) to the extent that the plan applies in the Marine Park, available from www.legislation.qld.gov.au, as in force from time to time;
 - A declaration made by the Chief Executive under the *Fisheries Act 1994* (Qld), to the extent the declaration applies to the Marine Park, available from www.legislation.qld.gov.au, as in force from time to time;
- The *Fisheries (East Coast Trawl) Management Plan 2010*, as in force from time to time, available from www.legislation.qld.gov.au;
- The *Fisheries Regulation 2008*, as in force from time to time, available from www.legislation.qld.gov.au;
- The *Transport Operations (Marine Safety) Regulation 2016* (Qld) as in force at the time the Instrument commences available from www.legislation.qld.gov.au;
- The *Transport Operations (Marine Pollution) Regulation 2018* (Qld) as in force at the time the Instrument commences available from www.legislation.qld.gov.au;
- Chapter VII of the *International Convention for the Safety of Life at Sea*, done at London on 1 November 1974, as in force for Australia from time to time. The Convention is in Australian Treaty Series 1983 No. 22 ([1983] ATS 22) and could in 2019 be viewed in the Australian Treaties Library on AustLII website <http://www.austlii.edu.au>; and
- The *International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High level Radioactive Wastes on Board Ships* done at London on 27 May 1999, as in force from time to time. The INF Code could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Other legislation/documents referred to throughout the Instrument

Commonwealth Acts and Instruments

- *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act)
- *Administrative Appeals Tribunal Act 1975* (AAT Act)
- *Navigation Act 2012*
- *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*
- *Marine Safety (Domestic Commercial Vessel) National Law*

Document referred to

- *Geocentric Datum of Australia 1994* (also known as GDA94) published in Gazette No. GN35 of 6 September 1995 and available at <https://www.icsm.gov.au/datum/geocentric-datum-australia-1994-gda94>

Plans of Management

The Plans of Management are disallowable instruments made under the Act:

- *Cairns Area Plan of Management 1998*
- *Hinchinbrook Plan of Management 2004*
- *Shoalwater Bay (Dugong) Plan of Management 1997*
- *Whitsundays Plan of Management 1998*

State legislation

The following Acts and instruments are also referred to throughout the Instrument. They are not intended to be incorporated by reference but are relevant to the Instrument. These are all available at www.legislation.qld.gov.au

- *Environmental Protection Act 1994* (Qld)
- *Nature Conservation Act 1992* (Qld)
- *State Development and Public Works Organisation Act 1971* (Qld)
- *Planning Act 2016* (Qld)
- *Planning Regulations 2017* (Qld)
- *Transport Operations (Marine Safety) Act 1994*
- *Repealed Fisheries Regulation 1995 (Qld) as in force on 1 July 2004*
- *Repealed Fishing Industry Organisation and Marketing Act 1982* (Qld)

Consultation

Consultation on the Instrument was conducted with the Attorney-General's Department (including the Human Rights Unit, Administrative Appeals Tribunal Section, Administrative Law Section, Courts Section and the Criminal Law Reform Section), Commonwealth Department of Public Prosecutions, Australian Bureau of Statistics, Australian Maritime Safety Authority, Department of the Environment and Energy, Queensland Department of the Premier and Cabinet, Queensland Office of the Great Barrier Reef and Maritime Safety Queensland. Geoscience Australia was consulted in relation to the parts of the Instrument

which describe points, lines and areas by reference to their location on the Earth's surface. Consultation partners supported the re-making of the Regulations as proposed.

Internal consultation was carried out with policy line areas and staff with relevant expertise within the Authority to ensure the content of the Instrument is current and appropriate.

Additionally, extensive consultation has been undertaken in relation to the old regulations over the last twelve years. This consultation has informed regular amendments to the old regulations. All of the consultation on and amendments to the old regulations have ensured that the content of the old regulations has remained contemporary, efficient and effective and are appropriate to be remade in substantially the same form by the Instrument. Details of this consultation is at **Attachment D**.

Regulatory Assessment

The Authority undertook preliminary regulatory assessment. Advice was received from the Office of Best Practice Regulation confirming that a regulation impact statement was not required (reference number 22715).

The Instrument is a legislative instrument for the purposes of the ***Legislation Act 2003***.

The Instrument commences on the later of 1 April 2019 and the day after the Instrument is registered.

Authority: Subsection 66(1) of the *Great Barrier Reef Marine Park Act 1975*

Details of the *Great Barrier Reef Marine Park Regulations 2019*

Part 1- Preliminary

Section 1 – Name

This section provides that the title of the Instrument is the *Great Barrier Reef Marine Park Regulations 2019*.

Section 2 – Commencement

This section sets out the timetable for the commencement of the provisions of the Instrument. The Instrument commences on the later of the day after registration and 1 April 2019.

The commencement of the Instrument is intended to coincide with the repeal of the sun-setting *Great Barrier Reef Marine Park Regulations 1983* (the old regulations).

Section 3 – Authority

This section provides that the Instrument is made under the *Great Barrier Reef Marine Park Act 1975* (the Act).

Section 4 – Schedule 7

This section provides that each instrument specified in Schedule 7 to the Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Instrument has effect according to its terms.

Division 2 – Interpretation of this instrument

This division now contains most relevant definitions for the Instrument, and at times for the purposes of the Act and Zoning Plan. Definitions from regulation 3 of the old regulations are included in this section along with definitions previously defined in specific provisions throughout the old regulations. The approach is to ensure that one term only has one meaning. There are some definitions which are specific to provisions and these continue to be contained in the relevant provision.

Section 5 – Definitions

This section includes the definitions for the Instrument. The definitions from the Act also apply to the Instrument unless there is a contrary intention expressed. Throughout the Instrument it is at times clarified whether a term has its meaning in accordance with the Act, the Instrument, the Zoning Plan or its ordinary meaning.

A note alerts the reader that a number of expressions used in the Instrument are defined in the Act or the Zoning Plan. The note includes examples of these expressions in a list that is not intended to be exhaustive. These expressions are Authority, dory, Marine Park, prohibited, trapping, vessel and zone.

1 kilometre line, 100 metre line and 500 metre line all have the same meaning as in the Zoning Plan.

1 nautical mile line means the line every point of which is at a distance of 1 nautical mile seaward from the nearest point of the coastline at high water.

The above terms are used in geographical descriptions in the Instrument.

accredited TUMRA means a TUMRA that is accredited under Part 4.

This is a new definition to aid simplified drafting. The old regulations referred to an accredited TUMRA without defining the term. The substantive TUMRA provisions are contained in Part 4. A TUMRA must be accredited or it will have no effect- see section 147.

Act means the *Great Barrier Reef Marine Park Act 1975*

The Instrument is made under the Act- see section 3.

Amalgamated Great Barrier Reef Section means the area to which that name is assigned by the *Great Barrier Reef (Declaration of Amalgamated Marine Park Area) Proclamation 2004*.

This is the area to which the current Zoning Plan applies. Prior to the development of the current plan multiple zoning plans had applied to the Marine Park.

application for a permission means an application that has not been withdrawn or lapsed.

This term is defined to describe a 'live' permission application in Part 3.

authority

- except in section 44 (Species Conservation (Dugong Protection) SMAs) 'authority' means an authority given under section 118 or section 150; or
- in section 44 has the meaning given by the Queensland fisheries legislation.

'Authority' with a capital, is frequently referred to throughout the Instrument in reference to the Great Barrier Reef Marine Park Authority.

bait netting has the meaning given by the *Zoning Plan*.

A note alerts the reader that bait netting means netting using a net declared in the Instrument, and in accordance with any limitations prescribed in the Instrument.

The note refers the reader to see also section 15 which relates to bait netting- limitations on netting.

This definition is relevant to provisions throughout the Instrument including the fishing limitations for the purpose of the Zoning Plan and the Special Management Areas and special management provisions.

bank includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

This definition is relevant for Part 8 (Environmental Management Charges), in particular section 231 provides for collected amounts for the purpose of the EMC to be placed in a bank account until the amount is due.

bareboat means a vessel that is a hire and drive vessel within the meaning of the *Marine Safety (Domestic Commercial Vessel) National Law*; has an overall length of at least 6 metres; and is made available for use without master or crew.

A note indicates that examples of bareboats are cruisers, houseboats and yachts.

bareboat operation means making available a bareboat under a commercial arrangement (including a hiring, timeshare or similar arrangement) for recreational use.

Part 11 of the Instrument relates to bareboat operations. It provides for a register of appropriately accredited bareboat operators and for it to be an offence to display a bareboat identification number in circumstances that would be misleading as to the status of the bareboat operator.

The definitions of bareboat and bareboat operation are also relevant to the *Whitsundays Plan of Management 1998*.

beach equipment includes sailing boats (except boats that have an overall length of at least 6 metres), windsurfing craft, canoes and kayaks and pedal craft.

The term is relevantly used in sections 216 (Visitors who do not have to pay a charge) and in the table in subsection 223(1) (Charges payable by the holder of a chargeable permission).

Buffer Zone means the zone described in the Zoning Plan as the Buffer Zone.

The Buffer Zone provides for the protection and conservation of areas of the Marine Park in their natural state, while allowing the public to appreciate and enjoy the relatively undisturbed nature of the area. It makes up approximately three per cent of the Marine Park.

Provisions applicable to the Buffer Zone are included in sections 39 (Activities Prohibited in zones), 43 (Types of Special Management Areas), 51 (One Dory Detached (Buffer Zone) SMAs), 63 (Multiple dories in Buffer Zone or Conservation Park Zone- offence by master of vessel, or licence or permission holder) and 64 (Multiple dories in Buffer Zone or Conservation Park Zone- offence by person on dory).

business day is defined by reference to section 2B of the *Acts Interpretation Act 1901*.

In 2019, that definition is “a business day means a day that is not a Saturday, a Sunday or a public holiday in the place concerned.”

Cairns Planning Area has the meaning given by the *Cairns Area Plan of Management 1988*.

The Cairns Planning Area extends from the Ribbon Reefs in the North to the Frankland Islands in the south. It includes all reefs and islands offshore from Port Douglas and Cairns and covers approximately six per cent of the Marine Park.

Provisions in the Instrument applicable to the Cairns Planning Area are section 107 (Limit on granting permissions to swim with dwarf minke whales in part of the Cairns Planning Area-maximum number) and Part 2 to Schedule 1 (Designated anchorages).

calf of a cetacean, means an animal not more than half the length of an adult of the species.

The definition is relevant to the provisions in Part 9- Interacting with cetaceans. That Part includes provisions to protect cetaceans and specific provisions tailored to the protection of cetacean calves.

capital dredge spoil material:

- (a) means material excavated as a result of dredging:
 - (i) to create new channels, basins, ports, berths or other areas; or
 - (ii) to enlarge or deepen existing channels, basins, ports, berths or other areas; or
 - (iii) to remove material unsuitable for foundations; or
 - (iv) to create trenches for pipes, cables or tubes; or
 - (v) for any other purpose incidental to creating a void; and
- (b) does not include material excavated as a result of dredging carried out for the sole purpose of:
 - (i) maintaining an existing channel, basin, port, berth or other area for its intended use; or
 - (ii) protecting human life or property.

The definition of capital dredge spoil material is relevant to the definition of prohibited dumping. The definition captures (among other things) materials dredged for the purposes of developing new or existing port facilities, barge ramps and marinas.

The definition excludes material dredged for maintaining existing areas in a usable state. This is intended to capture material from what is commonly referred to in the dredging industry as 'maintenance dredging'. It is also intended to capture relocated material (for example, material relocated as a result of a storm or cyclone) that is dredged in order to maintain a waterway in a navigable state. It also excludes material dredged for protecting human life or property from the definition of capital dredge spoil material. This is intended to allow for dumping to be permitted in emergency situations, such as following a severe storm or cyclone where it may be necessary to replace eroded material in order to protect coastal properties and infrastructure.

The definition is relevant to the definition of prohibited dumping in this subsection of the Instrument.

caution zone, for a cetacean, means an area around the cetacean with a radius of 150 metres for a dolphin and 300 metres for a whale.

This definition relates to Part 9- Interacting with cetaceans and is intended to support the protection and conservation of cetaceans by regulating the area immediately in their vicinity. It is essentially, the area near cetaceans where caution should be exercised not to disturb the cetaceans.

cetacean means an animal of the Suborder Mysticeti or Odontoceti of the Order Cetacea.

Cetaceans are more commonly known as whales and dolphins.

changed company has the meaning given by subsection 125(1).

In subsection 125(1) changed company means where “there is a change in the beneficial ownership of the company.”

The definition is relevant to sections 125 (Change in beneficial ownership of permission holder that is a company), 126 (Further particulars about change in beneficial ownership) and 127 (Modification, suspension or revocation relating to change in beneficial ownership).

charge year means a period of 12 months beginning on 1 April.

The definition is relevant to sections 217 (Full day amount), 219 (Tours that are 3 hours or less) and 220 (Tours that arrive late or depart early).

coastal 1 kilometre line, coastal 100 metre line and **coastal 500 metre line** all have the same meaning as in the *Zoning Plan*.

These definitions are relevant to the geographical descriptors in the Instrument.

collapsible trap has the meaning given by the *Fisheries Regulation*.

In the Fisheries Regulation collapsible trap means a trap made of rigid material, with 1 or more collapsible sides.

The definition is relevant to sections 23 (Limited trapping- limitations) and 35 (Trapping- limitations).

collected amount has the same meaning as in Part VA of the Act.

In Part VA of the Act it means “an amount that is collected by a holder of a chargeable permission from a visitor on account of charge payable by the visitor.”

The definition is relevant to the EMC provisions, specifically sections 131 (Suspension of permission- environmental management charge), 226 (When collected amounts are payable) and 231 (Custody and banking of collected amounts).

commercial fisher has the same meaning as in the Fisheries Regulation.

In 2019, the Fisheries Regulation 2008 defines commercial fisher in section 15. It provides that '(1) generally, a commercial fisher is anyone who holds a commercial fisher licence (2) However, in a fishery provision about a commercial fishery in chapters 7 to 11, a reference to a commercial fisher is a reference to a commercial fisher acting under the commercial fishing boat licence on which is written a fishery symbol for the fishery'.

The definition is relevant to section 15 (Bait netting- limitations on netting), 44 (Species Conservation (Dugong Protection) SMAs) and 183 (No feeding of cetaceans).

Commonwealth Heritage value has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

Commonwealth Heritage value is defined in section 341D of that Act.

It is relevant to the definition of relevant heritage value for the purpose of section 176 which prescribes content for the Outlook Report.

Commonwealth Island means an island that is owned by the Commonwealth and within the Marine Park.

There are 70 Commonwealth Islands that together form the Commonwealth Island Zone. They are the only land component of the Marine Park.

The definition is relevant to sections 110 (Consideration for permissions to camp on Commonwealth Islands), 168 (Certain animals not to be taken onto Commonwealth Islands), 236 (Reviewable decision), 237 (Notice of certain decisions) and the table in subsection 243(1) (Infringement notice offences and infringement notice penalties).

Conservation Park Zone means the zone described in the Zoning Plan as the Conservation Park Zone.

The Conservation Park Zone allows for increased protection and conservation of areas of the Marine Park, while providing opportunities for reasonable use and enjoyment including limited extractive use. Most extractive activities are allowed in a Conservation Park Zone with additional restrictions for most fishing activities.

Provisions applicable to the Conservation Park Zone are sections 15 (Bait netting- limitations on netting), 39 (Activities prohibited in zones), 43 (Types of Special Management Areas), 48 (Public Appreciation SMAs), 50 (One Dory Detached (Conservation Park Zone) SMAs), 60 (Conservation Park Zone- fishing offence), 63 (Multiple dories in Buffer Zone or Conservation Park Zone- offence by master of vessel, or licence or permission holder) and 64 (Multiple dories in Buffer Zone or Conservation Park Zone- offence by person on dory).

continuation application means an application for a permission in which the specified conditions are met. These conditions are that the permission is of the same kind and relates to the same conduct as a permission (the original permission) the applicant holds or held, and either the application is made before the end of the period specified in the original permission as the period for which the permission is in force; or the application is made after the end of that period but the Authority decides under subsection 83(4) to treat the application for the permission as having been made before the end of that period.

It is necessary to define continuation application as there are various provisions which contain special rules for making decisions about these kinds of applications.

The definition is relevant to sections 77 (Authority musts decide whether applications are properly made) and 90 (Application of this Subdivision).

CPI means the All Groups Consumer Price Index number for Brisbane published by the Australian Statistician, using, as a reference base, the financial year ending on 30 June 1990.

CPI is relevant to the calculation of EMC and fees.

crab pot has the meaning given by the *Fisheries Regulation*.

In the Fisheries Regulation, crab pots means “fishing apparatus consisting of a cage with a round opening in the top, or an elongated opening (parallel to the base) in the side, for trapping crabs.”

The definition is relevant to section 23 (Limited trapping- limitations) and section 35 (Trapping- limitations).

cruise ship anchorage has the same meaning as designated anchorage.

The Authority is moving to replace the term cruise ship anchorage with the term designated anchorage, as the latter term more appropriately indicates that the anchorages may be used by other large vessels not only cruise ships. Accordingly, the definition of cruise ship anchorage refers to the definition of designated anchorage. The definition is retained as it continues to be used in the *Cairns Area Plan of Management 1998*.

Defence Force means the Australian *Defence Force*.

The definition is relevant to the section 16 (Definition of defence activities) and the section 32 (Definition of ship).

designated anchorage means an area described in Schedule 1 or if a declaration is in force under paragraph (2)(a) of this section- the declaration, as in force from time to time.

A note, to this definition, alerts the reader a declaration under paragraph (2)(a) may add additional areas to the areas described in Schedule 1. Any declaration made does not limit the area described in Schedule 1.

Designated anchorages are designed for use by large ships (at least 70 metres in length) and large vessels (more than 35 metres, but less than 70 metres in length) that are used as part of a tourism program or for private recreation (e.g. for cruise ships or superyachts). They are designed to offer a range of opportunities in the Marine Park.

dilly has the meaning given by the Fisheries Regulation.

In 2019, dilly means “fishing apparatus consisting of a frame and a net that hangs below the frame’s horizontal plane when the apparatus is in use.”

The definition is relevant to section 23 (Limited trapping- limitations) and section 35 (Trapping- limitations).

dinghy means a small open boat having no designed sleeping accommodation and does not include a boat of the kind commonly known as a half-cabin boat. In order to be a dinghy the vessel must have an overall length of less than 6 metres.

The definition of dinghy is relevant to the EMC provisions, and determining where charge is payable in relation to a particular activity, in particular sections 216 (Visitors who do not have to pay charge) and 223 (Charges payable by the holder of a chargeable permission).

dolphin means a member of the family Delphinidae or the family Phocoenidae.

The definition is relevant to the provisions in Part 9- Interacting with cetaceans. Dolphins and whales are cetaceans and the Part 9 provisions tailor some provisions specifically to dolphins and dolphin calves.

drying reef means an area of reef exposed at low tide.

This definition is relevant to Part 2 of Schedule 1 which relates to the description of areas for designated anchorages.

engage in conduct, when used in relation to an offence, has the meaning given by the *Criminal Code 1995 (Criminal Code)*.

In 2019, the *Criminal Code* defines 'engage in conduct' as "a) do an act or b) omit to perform an act".

The definition is relevant to section 57 (Directions given following notice of proposed conduct) and section 75 (Permissions to which this Part applies).

environmental impact statement (except in item 6 of the table in subsection 202(6)) means an environmental impact statement under Subdivision C of Division 3 of Part 3.

The definition is relevant to Subdivision C, Division 3 of Part 3- Permissions. Requiring the preparation of an environmental impact statement may be considered by the Authority as the most appropriate means to assess proposed conduct in an application for a permission under Part 3.

Item 6 of the table in subsection 202(6) is excluded from the definition as previously environmental impact statements may have been prepared under the EPBC Act and the item would be prevented from operating effectively due to the environmental impact statement not having been prepared under Subdivision C, Division 3 of Part 3.

EOI notice means a notice given under section 84.

Section 84 relates to invitations for expressions of interest. It is also used in sections 85 (Considerations of expressions of interest to determine entitled person), 86 (Ranking expressions of interest) and 87 (Declaration of entitled person) and is an expression of interest notice for a *special permission*.

EPBC referral deemed application means a referral under the *Environment Protection and Biodiversity Conservation Act 1999* of a proposal to take an action that, under section 37AB of the Act, is taken to be an application for a permission.

If a proposal to take an action is referred under the EPBC Act, and it also requires the Authority's permission under the Zoning Plan, the Act deems the EPBC referral to also be an application for all required Authority permissions. This is called an EPBC referral deemed application.

The term is used in sections 80 (Withdrawal of EPBC referral deemed applications), 100 (Alternative procedure for EPBC referral deemed application) and 113 (Decision on EPBC referral deemed applications).

existing permission has the same meaning as in the *Hinchinbrook Plan of Management 2004* as in force from time to time.

A note alerts the reader that, existing permission means a relevant permission (within the meaning of section 11 of the Instrument) in force immediately before 15 April 2004 (which was the day the *Hinchinbrook Plan of Management 2004* commenced). The *Hinchinbrook Plan of Management 2004* was gazetted on 15 April 2004.

facility has the same meaning as it has in subsection 3A(9) of the Act.

A note alerts the reader that a facility includes a building, a structure, a vessel, goods, equipment or services. This is the definition in 2019.

The definition of facility is used in sections 57 (Directions given following notice of proposed conduct), 82 (Meaning of special permission), 106 (Limits on granting permissions to take leader prawn broodstock in Habitat Protection Zone in Mission Beach Leader Prawn Broodstock Capture Area), 202 (Fees for assessable applications) and 211 (Meaning of chargeable permission).

fee-bearing application means an application under Part 3 for a permission, except an application for a permission that is required to carry on an activity in the Marine Park for any of the following purposes in accordance with the Zoning Plan:

- (a) the traditional use of marine resources;
- (b) the taking, in accordance with a program approved by the Authority, of animals or plants that pose a threat to:
 - (i) human life or safety; or
 - (ii) marine or island ecosystems that are part of the Marine Park; or
 - (iii) the use and amenity of an area of the Park or of adjacent areas.

This definition is relevant to Part 12- Fees in determining fees that are incurred as a result of fee-bearing applications. The term is used to denote applications that attract a fee.

Fisheries Regulation means the *Fisheries Regulation 2008* (Qld).

The definition of Fisheries Regulation is referenced in a number of the subsection 5(1) definitions. Fisheries Regulation is also used in sections 15 (Bait netting- limitations on netting), 18 (Harvest fisheries- declaration of fisheries), 27 (Netting- limitations), 44 Species

Conservation (Dugong Protection) SMAs and 108 (Limits on granting permissions to enter or use Princess Charlotte Bay SMA—special management provisions).

Along with the Fisheries Act 1994, it is the principle legislation for Queensland's fisheries. It defines specific regulatory rights and allocation requirements for people and/or entities wishing to disturb and or remove Queensland's fisheries resources. The effect of subsection 6(1) is that the Fisheries Regulation applies as in force from time to time.

fishing or collecting has the meaning given by the Zoning Plan.

Note 1 alerts the reader that fishing or collecting means taking any plant, animal or marine product in accordance with any limitations prescribed by the Instrument. See also section 17 which sets out the limits on fishing or collecting.

Note 2 alerts the reader that fishing or collecting has the meaning given by the Act or its ordinary meaning in some sections of this instrument and gives section 47 as an example. The Instrument makes clear where this is the case.

fix a net (except in paragraph (d) of the definition of minor research aid) has the meaning given by the Fisheries Regulation.

In 2019, the Fisheries Regulation defines fix a net as meaning "attach or anchor the net or part of the net to a place or thing to prevent the net or part of the net from moving away from the position in which it is set".

The definition of fix a net is relevant to subsection 44(6) (Species Conservation (Dugong Protection) SMAs).

floating hotel, means a vessel that:

- (a) has designed sleeping accommodation for persons who are not:
 - (i) crew; or
 - (ii) persons employed on the vessel for the purpose of the maintenance of the vessel or the provision of services; and
- (b) is supplied with visitors by other vessels or by aircraft.

The definition is relevant for the purpose of determining activities that charge is payable for under the EMC provisions in Part 13.

full day amount has the meaning given by subsection 217(2).

This term is defined for the purpose of section 217 to refer to the amount of standard tourist program charge that is payable for a day in a charge year. Relevantly, part day amount is also defined.

Grade A treated sewage means sewage that has been treated and complies with the standard set out in Part 2 of Schedule 5 to the *Transport Operations (Marine Pollution) Regulation 2018 (Qld)*.

Grade B treated sewage means sewage that has been treated and complies with the standard set out in Part 3 of Schedule 5 to the *Transport Operations (Marine Pollution) Regulation 2018 (Qld)*.

Grade C treated sewage means sewage that has been treated and complies with the standard set out in Part 4 of Schedule 55 to the *Transport Operations (Marine Pollution) Regulation 2018 (Qld)*.

The notes to these definitions provide for the standards and levels the sewage needs to adhere to in order to be classified as Grade A, B or C treated sewage.

These definitions are relevant to what is required for the disposal of each kind of sewage and the definitions are relevant to 164 (Discharge of treated sewage from vessels). Grade C is the lowest level of treatment, Grade B is a higher level of treatment and Grade A is the highest form of sewage treatment. These systems allow the greatest flexibility for vessel operators to comply with the various sewage discharge requirements.

haul a net has the meaning given by the Fisheries Regulation.

In 2019 the Fisheries Regulation defines ‘haul, a net,’ as meaning “to gather or retrieve the net or a part of the net, without the use of a boat, for taking fish”.

It is used in section 44 Species Conservation (Dugong Protection) SMAS- special management provisions which relates to netting restrictions.

hazardous goods has the same meaning as dangerous goods has in Chapter VII of the Annex to the International Convention for the Safety of Life at Sea, done at London on 1 November 1974, as in force for Australia from time to time.

A note alerts the reader that the Convention is in Australian Treaty Series 1983 No. 22 ([1983] ATS 22) and could in 2019 be viewed in the Australian Treaties Library on AustLII website (<http://www.austlii.edu.au>).

This replicates the definition from section 14 of the *Navigation Act 2012*. This clause substitutes the current definition of dangerous goods for the broader definition in Chapter VII of the International Convention for the Safety of Life at Sea 1973 (MARPOL).

The definition is relevant to section 193 (Exemption from requirement to navigate with a pilot- prescribed information). Section 59F(2) of the Act provides that the application to the Minister for a compulsory pilotage exemption must contain the prescribed information. The Instrument among other things provides for information about hazardous goods to be part of the prescribed information.

heli-pontoon means a non motorised, permanently moored *facility* that is used solely as a landing area for helicopters.

It is used in section 82 (Meaning of a special permission) in relation to special permissions, that section provides that special permissions means, among other things, a permission to operate a heli-pontoon facility of the kind mentioned in subclause 1.37(2) of the *Cairns Area Plan of Management 1998*. The definition is the same as that provided under subclause 1.37(3) of the *Cairns Area Plan of Management 1998*.

high-speed vessel means a personal watercraft, hovercraft or wing-in-ground-effect craft, or any other vessel if operated faster than 35 knots.

The definition is relevant to the subsection 5(1) definition of motorised water sport.

Hinchinbrook authorisation means an authorisation mentioned in the *Hinchinbrook Plan of Management 2004* and granted under section 69.

The definition is relevant to Division 7 – Authorisations relating to Hinchinbrook Planning Area.

Hinchinbrook Planning Area has the meaning given by the *Hinchinbrook Plan of Management 2004*.

The Area encompasses the area described in Schedule 1 to the Plan.

The Hinchinbrook Planning Area is the area to which the *Hinchinbrook Plan of Management 2004* applies and consists of waters within the Marine Park and lies generally offshore from Cardwell in North Queensland, from the town of Mission Beach in the north to as far south as Ingham. The Hinchinbrook Planning Area does not include internal waters of the State of Queensland, including the Hinchinbrook Channel.

Provisions applicable to the Hinchinbrook Planning Area are contained in Division 7 – Authorisations relating to the Hinchinbrook Planning Area and Part 3 to Schedule 1 (Designated anchorages).

holding company has the same meaning as in the *Corporations Act 2001*.

The definition is relevant to sections 103 (Mandatory considerations in deciding whether to grant a permission), 120 (Mandatory considerations in deciding whether to approve transfer of permission) and 127 (Modification, suspension or revocation in relation to change in beneficial ownership).

hook includes a hook within the ordinary meaning of the expression, any of a single-shanked double or treble hook, a lure (that is, an artificial bait with not more than 3 hooks attached to it), an artificial fly, a jig for taking squid, a ganged hook set, consisting of no more than 6 hooks, each of which is in contact (by the point of 1 hook being threaded through the eye of another, or joined by a swivel or swire) with at least 1 of the other hooks in the set, used to attach 1 piece of bait and intended to catch only 1 fish and a bait jig (that is, a hook or a group of hooks consisting of no more than 6 hooks, each hook being of a size between number 1 and number 12 (both inclusive) or their equivalents).

This is a detailed definition which includes both the ordinary meaning of the term and particular kinds of hooks as described. The definition of hook is relevant to sections 39 (Activities prohibited in zones) and 60 (Conservation Park Zone- fishing offence).

Indigenous heritage value has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

The definition in section 528 of the EPBC Act defines indigenous heritage value of a place as meaning a heritage value of the place that is of significance to indigenous persons in accordance with their practices, observances, customs, traditions, beliefs or history.

It is defined for the purpose of the Outlook Report (see- 176), which is required to include an assessment of heritage values.

INF Code means the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High level Radioactive Wastes on Board Ships done at London on 27 May 1999, as in force from time to time.

A note alerts reader that the INF Code could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

The definition is relevant to section 32 (Definition of ship).

infringement notice offence and **infringement notice penalty** have the meaning given by subsections 243(1) and 243(2).

The table in section 243 sets out the infringement notice offences in the Instrument in column 1 and the associated infringement notice penalty in column 2.

The infringement notice scheme under the Instrument enables a person who is alleged to have contravened a provision of this to pay to the Authority, as an alternative to prosecution, a stated penalty that is not more than one-fifth of the maximum penalty by which a contravention of that provision is otherwise punishable, pursuant to paragraph 66(2)(n) of the Act.

lead core rope means rope which, during manufacture, incorporates lead along the full length of the rope.

This term is relevant to section 44 (Species Conservation (Dugong Protection) SMAs). The definition operates in conjunction with subparagraph 44(5) and 44(6) to impose restrictions on the use of nets and types of nets that may be used.

limited research sampling has the meaning given by subsection 20(2).

The definition of limited research sampling relevantly applies in the subsection 20(1) definition of limited impact research (extractive).

Marine National Park Zone means the zone described in the Zoning Plan as the Marine National Park Zone.

The Marine National Park Zone makes up about 33 per cent of the Marine Park. It is a 'no-take' area and extractive activities like fishing or collecting are not allowed without a permit. Commercial fishing dories must be attached to a mother vessel at all times whilst in a Marine National Park Zone. Anchoring is allowed in a Marine National Park Zone, however in high use and sensitive areas, use of a mooring may be necessary or there may be a no anchoring area defined by buoys.

Anyone can enter a Marine National Park Zone and participate in activities such as boating, swimming, snorkelling and sailing. Travelling through a Marine National Park Zone with fish

on board is also allowed (it is only an offence to fish in a Marine National Park Zone). Fishing gear, such as rods with attached hooks, must be stowed inboard the boat or in rod holders. All fishing apparatus must be out of the water.

mesh net and **mesh size** have the meaning given by the Fisheries Regulation.

In 2019, the Fisheries Regulation defined mesh net to mean a net suspended vertically through a water column that can be used, for example, as a general purpose mesh net, ring net, seine net, set mesh net or net that is neither fixed nor hauled, but does not include a net that is hauled by use of a boat for taking fish. Mesh size of a net, is defined in section 6 of the Schedule and the definition provides the meaning of a mesh size, of a net that is knotted and also the meaning of one that is knotless.

The definitions are relevant to sections 15 (Bait netting- limitations on netting), 27 (Netting- limitations), 44 (Species Conservation (Dugong Protection) SMAs) and Schedule 5, Part 1, clauses (2) and (4).

minor research aid means any of the items listed in subparagraphs (a)(i) to (vi) provided that they are not powered in a way that poses a threat to the environment as well as any of the items in paragraphs (b) to (i).

The definition is relevant to the definition of limited impact research (extractive) (20(1)) and limited research sampling (20(2)) within that definition.

misuse of a public mooring

The definition provides for a non-exhaustive definition of what will constitute misuse of a public mooring. A note specifically includes examples for the purpose of paragraph (j) of the definition.

The methods of attaching vessels to public moorings listed in paragraphs (a) to (d) of the definition of misuse of a public mooring constitute misuse because those methods place additional strain on moorings and can result in damage to moorings and vessels. Those methods are also unsafe.

Paragraphs (c) and (d) of the definition of misuse of a public mooring are intended to prevent a situation where one vessel is attached to a public mooring and one or more other vessels are linked to that vessel in a chain. The only time this type of linking of vessels would be considered appropriate would be where a vessel is attached to a public mooring and a tender vessel is attached to that vessel. This is allowed pursuant to paragraph (c). However, it would not be appropriate for a third vessel to then be attached to either the main vessel or the tender vessel and this type of linking of vessels is prevented by paragraph (d). Paragraph (d) also prevents long chains of vessels being attached to a public mooring.

Tags, known as pick-up tags, are attached to public moorings. Most pick-up tags attached to public moorings specify that a certain time limit applies. Paragraph (e) of the definition of misuse of a public mooring requires a vessel that has been attached for the maximum time limit to detach from the mooring for at least one hour. This will allow other vessels an opportunity to use the mooring and will help to ensure all vessels share the use of public moorings in the Marine Park. Although mooring buoy labels generally do not specify the

time limits, paragraph (e) provides that the time limit may be specified on a pick-up tag or buoy because the Authority may decide to do either or both in the future.

The intention to ensure all vessels share the use of public moorings in the Marine Park is also reflected in paragraph (f) of the definition of misuse of a public mooring, which prevents persons from falsely claiming to own a public mooring or to have a preferential right to use a public mooring.

Paragraphs (g) to (j) of the definition of misuse of a public mooring prevent activities that would damage public moorings and could jeopardize the safety of persons in the Marine Park. Most public mooring pick-up tags contain instructions which apply to users of public moorings in the Marine Park. These instructions specifically state not to take the actions mentioned in paragraphs (h) and (i). Such tags are therefore covered by paragraph (j). Paragraphs (h) and (i) are necessary because not all pick-up tags are consistent and it is possible for mooring tags to become removed from the mooring rope.

Paragraph (j) of the definition of misuse of a public mooring requires users of public moorings to comply with any instructions specified on the pick-up tag or buoy. The example provided in the note for the purposes of paragraph (j) are a vessel attached to the mooring is over the maximum vessel length limit specified on the tag or buoy, a vessel has been attached to the mooring for longer than the maximum period specified on the tag or buoy, or a vessel is attached to the mooring, or remains attached to the mooring, when the wind speed at the location of the mooring, or remains attached to the mooring, when the wind speed at the location of the mooring exceeds the maximum wind speed specified on the tag or buoy.

misuse of public infrastructure includes attaching a vessel to public infrastructure that is not intended for use by the attaching of vessels.

An example of misuse of public infrastructure may be attaching a vessel to a reef protection marker as this infrastructure is not for the purpose of having vessels attached.

The definition is relevant to section 171 (Public mooring and public infrastructure not to be removed, misused or damaged).

modify in relation to a condition, includes vary, add, omit and substitute.

This definition is relevant for the Permissions and *TUMRA* provisions and the ability once made for the permission or *TUMRA* to be modified. It is used throughout Parts 3 and 4 of the Instrument.

mooring reference number for a permitted mooring means:

- (a) the unique number, or alphanumeric code, issued by or for the Authority, the Government of Queensland or an authority of that Government, in relation to the permitted mooring for display on the mooring buoy; or
- (b) if the mooring is also a buoy mooring approved under the Transport Operations (Marine Safety) Regulation 2016 (Qld)—the identifying number for the buoy mooring mentioned in paragraph (a) of that Regulation.

This term is relevant to section 170 (Mooring buoy must display mooring reference number) which prescribes an offence for the circumstance of a mooring reference number not being displayed on a mooring buoy.

motorised water sport means except for in section 26 any of the following activities

- (a) the irregular driving of a motorised vessel other than in a straight line (except for necessary turns or diversions), including:
 - (i) driving in a circle or other pattern; or
 - (ii) weaving or diverting; or
 - (iii) surfing down, or jumping over or across, any wave, swell or wash;
- (b) any activity in which a high-speed vessel or a motorised vessel tows a person on top of the water or in the air (for example, waterskiing or parasailing);
- (c) any activity in which a personal watercraft is used, except:
 - (i) for transiting an area from a place to another place; or
 - (ii) if the personal watercraft can only be operated when fully submerged under the water and is only operated for the primary purpose of viewing the environment.

The subsection 5(1) definition is referred to in section 26 but that section contains the additional requirement of including any activity in which a vessel is operated at a speed greater than 35 knots, except while transiting. The definition is also relevant to section 216 (Visitors who do not have to pay charge) and section 223 (Charges payable by the holder of a chargeable permission). The reference to 'viewing the coral' has been changed from the old regulations to 'viewing the environment' as this is more reflective of what the activity entails.

'N11' fish has the same meaning as in the Fisheries Regulation.

The 'N11' fishery is a bait-fish fishery. When the definition for 'N11' fish from the Fisheries Regulations is applied to section 15 (Bait netting—limitations on netting) it supports the desired intent that fishers may only undertake bait netting.

National Heritage value has the same meaning as in the EPBC Act.

The concept is used but not defined in the EPBC Act. It is relevant to the definition of relevant heritage values in section 176. The intention is that that the EPBC Act concept should be utilised for the purpose of that definition.

netting has the meaning given by the Zoning Plan.

Note 1 alerts the reader that netting means netting in accordance with any limitation prescribed by the Instrument and to also see section 27 (Netting- limitations). Note 2 alerts the reader that netting has its ordinary meaning in some sections of this instrument and

gives section 15 (Bait netting- limitations on netting) as an example. The Instrument makes it clear where this is the case.

This definition is relevant throughout the Instrument in relation to various restrictions and limitations on fishing or collecting which are directed to protecting and conserving the habitat of the Marine Park.

no-anchoring area means an area described in Schedule 3; or if a declaration is in force under paragraph (2)(b) of this section—the declaration, as in force from time to time.

A note alerts the reader that a declaration under paragraph (2)(b) may add additional areas to the areas described in Schedule 1. Any declaration made does not limit the area described in Schedule 3.

No-anchoring areas are provided for when it would be particularly damaging to coral for vessels to anchor.

non-bait fish means a fish of any of the following species:

- (a) bream of the genus *Acanthopagrus* or *Rhabdosargus*;
- (b) flathead of the genus *Platycephalus*;
- (c) whiting of the genus *Sillago*.

Non-bait fish are key recreational food fish. The definition is relevant to section 15 (Bait-netting- limitations on netting). While commercial fishing is permitted in the Conservation Park Zone this section prohibits a commercial fisher from taking or possessing non-bait fish in the specified circumstances.

non- fishing area of the Marine Park means:

- (a) a zone described in the Zoning Plan as:
 - (i) the Marine National Park Zone; or
 - (ii) the Scientific Research Zone; or
 - (iii) the Preservation Zone; or
- (b) any other area of the Marine Park where the taking of fish is not permitted.

This definition is used in the fishing offence in section 62 (Dories not under tow or attached in non-fishing areas).

Offshore Port Douglas Sector has the same meaning as in Schedule 2 to the *Cairns Area Plan of Management 1998*.

In the *Cairns Area Plan of Management 1998*, Offshore Port Douglas Sector means the area described in Item 3 of Schedule 2 of the Plan of Management.

The definition is relevant to section 107 (Limit on granting permissions to swim with dwarf minke whales in part of the Cairns Planning Area- maximum number).

offshore waters has the meaning given by the Fisheries Regulation.

In 2019, the Fisheries Regulation defines offshore waters in section 6A. Offshore waters are tidal waters that are at least 2 metres deep at low water. However, offshore waters do not include waters in a river or creek upstream of a line across its banks at low water or in an inlet.

This definition is relevant to section 44 (Species Conservation (Dugong Protection) SMAs). The intention is that the areas described in clause 2 of Schedule 5 are only captured in subsection 44(3) if they fall within the definition of offshore waters.

oil (except in paragraph (h) of the definition of minor research aid) means an oil or an oily mixture within the meaning of Part II of the Protection of the Sea (Prevention of Pollution from Ships) Act 1983.

This definition is relevant to the criteria in section 193 (Exemption from requirement to navigate with a pilot- prescribed information) for an exemption from compulsory pilotage.

operation of a tourist program:

- (a) has the same meaning as it has in subsection 3A(3) of the Act; and
- (b) includes the construction, maintenance or operation of a building or other facility (or its removal or demolition) in the Marine Park, for a purpose of the tourist program.

The definition is relevant to section 211 (meaning of chargeable permission). A permission which involves the operation of a tourist program will be a chargeable permission.

owner of a vessel means:

- (a) for a vessel that is registered under a law of a State or Territory providing for the registration of vessels—the registered owner; or
- (b) for any other vessel—the person who is legally entitled to possession of the vessel.

The definition is relevant to section 171 (Public mooring and public infrastructure not to be removed, misused or damaged).

part day amount has the meaning given by subsection 219(2).

In subsection 219(2) the part day amount for a charge year is half the full day amount for the charge year. The definition is relevant to sections 219 (Tours that are 3 hours or less) and section 220 (Tours that arrive late or depart early) which relate to EMC.

permission means a permission to which Part 3 applies.

Some commercial and non-commercial (eg research) activities and operations occurring in the Marine Park require a permission. Permissions are issued by the Authority. The permission system contains the legislated methods of regulating activities that require permission or accreditation at law.

The Instrument defines permission and the provisions, most relevantly in Part 3, refer to particular permissions. The term relevant permission is maintained, and defined in section

11, because the Act, Zoning Plan and Plans of Management refer to relevant permissions as a particular type of permission.

permitted mooring means a mooring, other than a public mooring, for which the Authority has granted a permission.

The definition is relevant to section 170 (Mooring buoy must display mooring reference number) which makes it an offence for the holder of a permitted mooring to not display the mooring reference number on the mooring buoy.

personal watercraft means a powered vessel that has a fully enclosed hull that does not take on water if the vessel capsizes and is designed to be operated by a person standing, crouching or kneeling on the vessel or sitting astride the vessel.

The definition is relevant to the subsection 5(1) definitions of high speed vessel and motorised water sport and the section 26 (Definition of motorised watersports).

PIP terms has the meaning given by subsection 94(1).

PIP terms are the written terms of reference (see subsection 94(1) issued by the Authority for an application for a permission where the Authority has decided that the proposed conduct is to be assessed by way of public information package.

They also are relevant to sections 95 (Dealing with response to publication of information and advertisement) and 96 (Applicant to act in accordance with PIP terms).

possess a thing (except in paragraph (b) of the definition of owner in this subsection) means:

- (a) to have custody or control of the thing; or
- (b) to have an ability or right to obtain custody or control of the thing.

The definition is relevant to sections 15 (Bait netting- limitations on bait netting), 17 (Fishing or collecting) and 22 (Limited spearfishing- limitations).

primary commercial fishing vessel means:

- (a) a vessel in relation to which a licence or other permission (however described and whether or not in force) has been granted under a Commonwealth, State or Territory law, permitting the vessel to be used to take fish for commercial purposes; or
- (b) a vessel that is used to take fish for commercial purposes.

The definition is relevant to sections 45 (Seasonal Closure (Offshore Ribbon Reefs) SMAs), 46 (No Dories Detached (Offshore Ribbon Reefs) SMAs), 49 (No Dories Detached (Marine National Park Zone) SMAs), 50 (One Dory Detached (Conservation Park Zone) SMAs), 51 (One Dory Detached (Buffer Zone) SMAs), 62 (Dories not under tow or attached in non-fishing areas), 63 (Multiple dories in Buffer Zone or Conservation Park Zone- offence by master of vessel or licence or permission holder) and 64 (Multiple dories in Buffer Zone or Conservation Park Zone – offence by person on a dory).

primary service means a service that:

- (a) forms part of a tourist program; and
- (b) is not a secondary service.

The definition of primary service is relevant to the EMC provisions in Part 13. It is intended that the EMC apply to primary services and not secondary services so that a person will only need to pay the charge once on the same day.

Princess Charlotte Bay specified area means the area enclosed by the meridians specified in the Instrument.

A note alerts the reader that the area defined is known as the Queensland fisheries logbook areas D11 and E11.

Princess Charlotte Bay is a large bay on the east coast of Far North Queensland at the base of Cape York Peninsula, 350km north northwest of Cairns. Princess Charlotte Bay is part of the Marine Park and is a dugong habitat.

The defined area is relevant to section 108 (Limits on granting permissions to enter or use Princess Charlotte Bay Special Management Area- special management provisions).

private mooring means a mooring other than a *public mooring*.

The definition is used in the Plans of Management. The reason for this definition being located in the Instrument as opposed to the Plan is to ensure consistent use of terminology across Marine Park legislation. Additionally, the Authority may require flexibility to amend the definition in the future through amendments to the Instrument.

The Instrument also defines permitted mooring.

prohibited dumping means dumping an amount of capital dredge spoil material in the Marine Park that prior to its excavation was, in situ, more than 15 000 cubic metres in volume. It does not include burying a pipe, cable or tube with capital dredge spoil material if the material had been excavated to create the trench in which the pipe, cable or tube is laid.

The definition is relevant to section 104 (Limit on granting permission for dumping).

In situ, referred to in the definition, is a well-known term in the dredging industry which means 'in place or on site.' Accordingly, for the purposes of the definition of prohibited dumping, the volume of the capital dredge spoil material proposed to be dumped in the Marine Park is to be determined as it lies on the sea floor prior to it being excavated.

The exclusion of burying a pipe, cable or tube in the circumstances described in the definition is intended to cover things such as critical infrastructure, including pipes and cables for (but not limited to) water, telecommunications and electricity.

prohibited vessel means any of the following:

- (a) a jet ski;
- (b) a parasail;

- (c) a hovercraft;
- (d) a hydrofoil;
- (e) a wing in ground effect craft;
- (f) a motorised diving aid (for example, a motorised underwater scooter).

In Part 9- Interacting with cetaceans- prohibited vessels are regulated more strictly than vessels because of the potential stress prohibited vessels can cause for cetaceans. 'Vessels' is defined in the Act.

The definition is relevant to sections 179 (Requirements relating to prohibited vessels), 180 (Other craft- caution zones near adult cetaceans), 181 (Other craft – caution zones near calves) and section 188 (Exemption from this Part).

proposed conduct, in relation to an application for a permission, means the conduct proposed to be permitted by the permission.

It is necessary to define this term for simplicity, so that it is not necessary to constantly refer to 'the conduct proposed to be permitted by the permission' throughout the Instrument.

The definition is relevant to Part 3, Divisions 3 and 4 and for the purpose of fees and review applications Part 12, Division 2 and Part 15.

proposed conduct advertisement has the meaning given by subparagraph 98(1)(c)(ii).

This definition is relevant to sections 98 (Terms of reference for public environment report or environmental impact statement) and 99 (Publication of proposed conduct advertisement by Authority).

Protocol of 1978 means the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships of 2 November 1973, as amended, done at London on 17 February 1978.

A note to this definition alerts the reader that the Protocol of 1978 is in Australian Treaty Series 1988 No. 29 ([1988] ATS 29) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

public environment report except in item 6 of the table in subsection 202(6) for an activity means a public environment report in accordance with Subdivision C of Division 3 of Part 3.

The definition is relevant for Subdivision C of Division 3, of Part 3 (Assessment by public environment report or environmental impact statement). Public environment reports may be considered by the Authority as the most appropriate means to assess proposed conduct in an application for a permission under Part 3. Item 6 of the table is excluded from the definition as previously public environment reports may have been prepared under the EPBC Act and the item would be prevented from operating effectively due to the report not having been prepared under Subdivision C, Division 3 of Part 3.

public infrastructure:

- (a) means infrastructure that is installed in the Marine Park by or for:
 - (i) the Authority; or
 - (ii) the Government of Queensland; or
 - (iii) an authority of that Government;and relates to the use of the Marine Park by the public; and
- (b) includes infrastructure covered by paragraph (a) that is:
 - (i) a reef protection marker; or
 - (ii) a buoy not attached to a public mooring; or
 - (iii) a sign; or
 - (iv) a boundary-marking rope.

The definition of public infrastructure is relevant to the definition of misuse of public infrastructure and the offence in section 171 (Public mooring and public infrastructure not to be removed, misused or damaged).

public mooring:

- (a) means a mooring that is installed in the Marine Park by or for:
 - (i) the Authority; or
 - (ii) the Government of Queensland; or
 - (iii) an authority of that Government;and is labelled as a public mooring or otherwise intended for public use; and
- (b) includes a mooring covered by paragraph (a) that is:
 - (i) a floating buoy, tag and tackle; or
 - (ii) a structure fixing the mooring to the seabed.

The definition of public mooring is relevant to the definitions of misuse of public mooring, public mooring and private mooring. It is relevant to the offence in section 171 (Public mooring and public infrastructure not to be removed, misused or damaged).

quarter means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October.

The definition is relevant to the definition of floating hotel and sections 223 (Charges payable to the holder of a chargeable permission), 224 (Charges payable by visitors), 225 (When charges under section 223 are payable), 226 (When collected amounts are payable), 227 (Payment on cessation or transfer of permission), 229 (Record-keeping etc.) and 230 (Returns).

Queensland fisheries legislation has the meaning given by the *Zoning Plan*. The note refers the reader to the definition in section 31.

The *Zoning Plan* provides that Queensland fisheries legislation means the laws of Queensland prescribed for the purposes of this definition in the Regulations.

Queensland fisheries legislation applies to and governs fishing in the Marine Park. In many cases it is the appropriate standard to be followed while at times additional regulation will be prescribed by the Instrument, the Zoning Plan and the Act.

The laws prescribed in section 31 appropriately recognise Queensland's statutory responsibilities for the management of fisheries in and around the Marine Park.

Queensland planning legislation means:

- (a) the *Planning Act 2016 (Qld)*; or
- (b) the *Planning Regulation 2017 (Qld)*; or
- (c) the State Planning Policy as defined in Schedule 24 to the *Planning Regulation 2017 (Qld)*.

The definition is relevant to the definition of limited research sampling in section 20 (Definition of limited impact research (extractive)) and is referred to in section 78 (Additional Information).

recreational fisher has the same meaning as in the Fisheries Regulation.

In 2019, the Fisheries Regulation defines 'a recreational fisher is a person who is carrying out recreational fishing' and then goes on to define 'recreational fishing.'

Recreational fishing is one of the most popular activities on the Great Barrier Reef and the Instrument declares nets and limitations on netting specific for recreational fishers in section 15 (Bait netting – limitations on netting).

relevant heritage values has the meaning given by subsection 176(2).

In subsection 176(2) relevant heritage values of the Region include the following values to the extent that they relate to the Region: a) the Commonwealth Heritage values, b) the Indigenous heritage values, c) the National Heritage values, d) the world heritage values, e) any other heritage values (within the ordinary meaning of the term) that the Authority considers relevant.

The definition is relevant to section 176 (Great Barrier Reef Outlook Report) which relates to content prescribed for the purpose of the Outlook Report.

Under section 23 of the *Acts Interpretation Act 1901*, singular includes the plural and vice versa. This means that relevant heritage values can also be read as relevant heritage value where appropriate, as can the values set out in the definition.

relevant impacts of proposed conduct or permitted conduct means:

- (a) the potential direct and indirect impacts of the conduct, and the potential cumulative impacts of the conduct (in conjunction with other conduct, events and circumstances), on the environment, biodiversity, and heritage values, of the Marine Park or a part of the Marine Park; or

- (b) the risk of the proposed conduct restricting reasonable use by the public of a part of the Marine Park and the extent of that restriction (if any).

The definition of relevant impacts is necessary to provide certainty for the public and for the Authority about what sorts of impacts should be considered by the Authority in order to make certain decisions about permissions under the Instrument. For example, the definition clarifies what the Authority should consider in order to decide on the appropriate approach for assessment of an application for a permission (section 92), consider the impacts of proposed conduct to inform a decision on whether to grant a permission (paragraph 92(g)), or consider whether unacceptable impacts are occurring to inform a decision on whether to modify permission conditions or suspend a permission (subparagraph 129(1)(b)).

The reference to ‘indirect impacts of the conduct, and the potential cumulative impacts of the conduct (in conjunction with other conduct, events and circumstances)’ in the definition is intended to support Program Report (the Authority’s 25 year plan for reef management) commitments and align with the EPBC Act to support joint assessments by the Authority and the Minister for the Environment in circumstances where proposed conduct triggers the need for an approval under the EPBC Act as well as a permission under the Instrument (i.e. it is an EPBC referral deemed application). The reference will also confirm that the Authority can consider impacts resulting from one or more impacts, and the interactions between those impacts, added to past, present and reasonably foreseeable future impacts.

representative Aboriginal/Torres Strait Islander body has the same meaning as in the *Native Title Act 1993*.

This is relevant to the TUMRA provisions in Part 4 and the fees set in the table for 205 (Fees for other applications and reports).

research guidelines means written policies about the conduct of research in the Marine Park that are published by the Authority, as they are in existence from time to time.

This is relevant to sections 20 (Definition of Limited impact research (extractive)) and 21 (Definition of Limited impact research (non-extractive)). The Authority makes and publishes research guidelines at www.gbrmpa.gov.au.

research location means:

- (a) a discrete, identified reef; or
- (b) a continuous non reef area of up to 1,000 hectares.

The definition is relevant to section 20 (Definition of limited impact research (extractive)).

research project means a diligent and systematic inquiry or investigation into a subject, in order to discover facts or principles, that has its own objectives, sampling design and outcomes.

It is relevant to the definitions in sections 20 and 21 of limited impact research (extractive) and limited impact research (non-extractive).

Ribbon Reefs Sector has the same meaning as in Schedule 2 to the *Cairns Area Plan of Management 1998*.

To the north of Cairns and Port Douglas lies a 120 kilometre ‘string’ of 10 individual coral reefs that collectively are called the Ribbon Reefs.

The definition of Ribbon Reefs Sector is relevant to section 107 (Limit on granting permissions to swim with dwarf minke whales in part of the Cairns Planning Area—maximum number).

secondary service means a service that:

- (a) forms part of a tourist program; and
- (b) the Authority has determined, under section 212, to be a secondary service.

The definition is relevant to the Part 13 Environment Management Charge, it is intended that EMC is not charged for secondary services.

secondary treatment is defined as sewage which receives secondary treatment if the sewage complies with the standards set out in paragraphs (a) to (e) of the definition.

The definition is relevant to the definition of tertiary treatment.

set mesh net has the meaning given by the *Fisheries Regulation*.

The Fisheries Regulation refers to section 9A (when is a mesh net a set mesh net) of the schedule where set mesh net is defined. It provides that (1) a mesh net is a set mesh net if (a) 2 or more points of the net are each fixed to the ground or a thing to prevent the net from moving from the position in which it is set; or b) a point of the net is fixed to a boat and another point of the net is fixed to the ground or a thing. (2) For subsection (1), the ground includes the bed of a body of water.

This definition is relevant throughout the Instrument in relation to various restrictions and limitations on fishing or collecting which are directed to protecting and sustaining the habitat of the Marine Park.

sewage means drainage and other waste from any form of toilet or urinal (including waste water that includes such drainage or waste).

Grey water is covered only if it is mixed with such drainage or waste.

Under the old regulations, sewage was defined as having the meaning given by Part IIIB of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* however the definition was specific to criminal offence provisions relating to ship based discharges. To meet modern drafting standards it is not appropriate to have provision-specific definitions if this can be avoided.

For this reason the definition has been moved to the front end of the Instrument and as a result applies to other existing provisions which provide for the payment of EMC for land-based discharge of sewage. Under the EMC provisions sewage was undefined. As a result of the definition now applying to both the criminal offence provisions for ship based discharge,

and the EMC provisions for land-based discharge, it has been replaced with a more appropriate definition.

The old definition was also problematic because there is no clear definition of sewage in the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

Shoalwater Bay (Dugong) Plan of Management means the *Shoalwater Bay (Dugong) Plan of Management 1997* prepared under Part VB of the Act, for which notice, under subsection 39ZE(4), was published in the Gazette on 2 April 1997.

Shoalwater Bay is a remote area located 50km north of Rockhampton. An extensive network of creeks and rivers drain into the area, which supports shallow seagrass meadows and mangrove communities. The Shoalwater Bay area is the most important dugong and seagrass habitat in the southern region of the Great Barrier Reef Marine Park. The *Shoalwater Bay (Dugong) Plan of Management 1997* aims to manage activities in the bay that threaten the dugong population or impact on the seagrass meadows.

sightseeing aircraft excursion means an aircraft excursion that:

- (a) is provided under a chargeable permission; and
- (b) returns to, and disembarks passengers at, the place from which the aircraft embarked without landing at any other place; and
- (c) has sightseeing as its sole purpose.

This definition is relevant to determining charges payable by visitors under the EMC provisions in particular section 224 (Charges payable by visitors). The requirement for the aircraft to embark and disembark at the same place and not land at any other place is provided for as there are seaplanes which land on water and conduct such activities as snorkelling and there is no intention that this should be covered by reference to a sight-seeing aircraft excursion. Further, the reference to the 'sole purpose' of sight-seeing importantly distinguishes from other operations such as aerobatics and skydiving.

SMA means Special Management Area.

SMA is an abbreviation for Special Management Area. Special Management Areas provide a responsive and flexible approach to implementing appropriate management strategies at various sites in the Marine Park. Special Management Areas are designated under the provisions of Division 4.2 of the Zoning Plan and prescribed in the Regulations. They are an additional layer of management on top of zoning so that the SMAs within a zone have specific rules applying to them. The objective of the Zoning Plan for Special Management Areas as set out in section 4.2.2 of the Zoning Plan is to provide for restrictions on access to, or use of, specified areas of the Marine Park for conservation or management purposes, including, but not limited to:

- (a) conservation of species;
- (b) conservation of natural resources;
- (c) protection of cultural or heritage values;

- (d) appreciation by the public;
- (e) public safety;
- (f) emergency situations requiring immediate management action;
- (g) restricting access to, or use of, areas of the Marine Park adjoining areas to which access is restricted or prohibited under a law of Queensland or the Commonwealth.

SMAAs are contained in Part 2, Division 4 of the Instrument.

special management provision has the meaning given by subsection 42(1).

Subsection 42(1) provides that for the purposes of subsection 4.2.3(1) of the Zoning Plan, each subsection except subsection (1) in each of sections 44 to 53 is a special management provision.

Subsection 4.2.3(1) of the Zoning Plan provides that a special management provision is a provision of the Regulations that is expressed to be a special management provision for 1 or more Special Management Areas or classes of Special Management Areas.

Special management provisions are contained in Part 2, Division 4 of the Instrument.

special permission has the meaning given by subsections 82(1), (2) and (3).

A special permission allows operators to conduct tourist programs or operate private facilities that have been limited by Plans of Management or the Instrument.

Section 82 provides that the following permissions are special permissions: a special tourism permission; a permission to operate a heli-pontoon facility of the kind mentioned in subclause 1.37(2) of the *Cairns Area Plan of Management 1998*; and a permission to operate a mooring facility that meets the criteria in subsection 82(3).

Only a capped number of special permissions are able to be granted in the Marine Park.

special tourism permission means a permission to conduct a tourist program, or to conduct an activity under a tourist program, if:

- (a) the Instrument or a Plan of Management has imposed a limit on the number of such permissions that may be granted; or
- (b) a Plan of Management declares such permissions to be special tourism permissions for the purposes of the Instrument.

These are a form of permission generally relating to capped activities in the Cairns, Hinchinbrook and Whitsundays Plans of Management and usually allow operators to continue to do something that was permitted before Plans of Management came into effect, but which is no longer permitted under the provisions of the plan or an operation that is capped under a Plan of Management but not yet allocated. Additionally, these permissions also cover swimming with dwarf minke whales tourism activity (see section 107).

standard tourist program charge has the meaning given by subsection 215.

This is the charge payable under Part B of the EMC provisions. It is the charge payable (subject to section 216 and 218) by each visitor who takes part in a tourist program provided under a chargeable permission that is, or includes, a primary service for each day, or part of a day, that the visitor takes part in the program.

stowed or secured means 'in relation to equipment for fishing or collecting has the meaning given by the Zoning Plan'. A note refers the reader to see also section 33 which prescribes requirements for the purposes of the definition of stowed or secured in the Zoning Plan.

The definition is relevant to sections 33 (Stowed or secured- requirements), 47 (Restricted Access SMAs) and 62 (Dories not under tow or attached in non-fishing area).

subsidiary has the same meaning as in the *Corporations Act 2001*. In 2019 section 46 of the *Corporations Act 2001* defines subsidiary.

It is necessary to define subsidiary because it is used in subparagraphs 103(c)(iv), 120(a)(iv) and 127(1)(d) of the Instrument.

superyacht means a high value, luxury sailing or motor vessel in use for sport or pleasure (whether for private or commercial use).

Components of the definition of *superyacht* such as 'high-value' and 'luxury' are subjective, but this is not considered by the Authority to be problematic as under the provisions of the Plan that give superyachts increased access to the Whitsunday Planning Area, the size of the vessel and the manner in which the vessel is operated are the most important factors in determining whether the vessel is eligible for the increased access.

The reference to private or commercial use is intended to clarify that, for example, a vessel used in the conduct of a tourist program is capable of falling within the definition of a superyacht.

The reason for this definition being located in the Instrument as opposed to the *Whitsundays Plan of Management 1998* is to ensure consistent use of terminology across Marine Park legislation.

superyacht anchorage means an area described in Schedule 2 or if a declaration is in force under paragraph (2)(c) of this section- the declaration as in force from time to time.

A note alerts the reader that a declaration under paragraph (2)(c) may add additional areas to the areas described in Schedule 2. Any declaration made does not limit the area described in Schedule 2.

Twenty-one superyacht anchorages were introduced in to the *Whitsundays Plan of Management 1998* on 2 August 2017. These anchorages are available for superyachts less than 70 metres in length and carrying no more than 12 people other than master and crew. They are provided to offer recreational users and commercial operators a range of opportunities in the Marine Park.

swimming with whales activity means an activity for the purpose of enabling tourists to swim, snorkel or scuba dive with cetaceans, or to observe cetaceans while in the water with them, including:

- (a) using an aircraft or vessel to find cetaceans for that purpose; and
- (b) placing tourists in the water for that purpose.

It is relevant to sections 105 (Limits on granting permissions to take protected species), 107 (Limit on granting permissions to swim with dwarf minke whales in part of the Cairns Planning Area—maximum number), 179 (Requirements relating to prohibited vessels), 186 (Conducting swimming-with-whales-activities without permission), 187 (Protection of whales in whale protection area), 188 (Exemption from this Part) and the Part 15 review application provisions.

takes part in a tourist program has the meaning given by section 214.

Section 214 provides that a visitor takes part in a tourist program if the visitor participates (wholly or partly) takes part in the excursions or activities provided in the Marine Park by the permission holder who provides the program.

The definition of takes part is only relevant in relation to a tourist program. The definition is contained in section 214, being the appropriate part of the Instrument to which the term applies.

tertiary treatment: sewage receives tertiary treatment if the sewage has received secondary treatment and the sewage complies with the following standards:

- (a) either:
 - (i) total nitrogen content is less than 4 milligrams per litre and the total phosphorus content is less than 1 milligram per litre; or
 - (ii) if subparagraph (i) does not apply—no more than 5% of the annual volume of effluent generated is discharged into the Marine Park at a land based outfall;
- (b) total oil and grease content is less than 10 mg/litre;
- (c) the effluent does not produce a slick or any other visible evidence of oil or grease;
- (d) if the effluent has been disinfected by chlorination, the effluent does not contain by products of the disinfection that may pollute water in a manner harmful to animals or plants in the Marine Park.

Section 164 provides a defence to section 162 if the sewage has received tertiary treatment. In addition the charge payable by the holder of a chargeable permission is lower under section 223 if the sewage has received tertiary treatment. It is distinguished from sewage that has received secondary treatment.

tourist has the same meaning as it has in subsection 3A(9) of the Act.

Subparagraph 3A(9) of the Act defines tourist as “means a person who is in the marine park purely for recreation (which may include fishing or collecting).”

The definition is relevant throughout the regulations and in particular in relation to the EMC provisions.

Traditional Owner has the same meaning as *traditional owner* in the Act.

The Act defines *traditional owner* as meaning

an Indigenous person:

- (a) who is recognised in the Indigenous community or by a relevant representative Aboriginal or Torres Strait Islander body:
 - (i) as having spiritual or cultural affiliations with a site or area in the Marine Park; or
 - (ii) as holding native title in relation to that site or area; and
- (b) who is entitled to undertake activities under Aboriginal or Torres Strait Islander custom or tradition in that site or area.

Traditional Owner group has the meaning given by subsection 34(2).

Subsection 34(2) provides that *Traditional Owner group* ‘in relation to a site or area of the Marine Park, means the group of Traditional Owners who, in accordance with Aboriginal or Torres Strait Islander custom, speak for the site or area.’

Traditional Owner and Traditional Owner group are relevant to the TUMRA provisions in Part 4 of the Instrument.

transfer passenger means a person who:

- (a) is transported into the Marine Park and disembarked at a place contiguous to, or at a wharf or jetty within or partly within, the Marine Park by a person who holds a permission for a tourist program; and
- (b) is transported by the most direct reasonable route; and
- (c) does not:
 - (i) during the course of travel in the Marine Park—engage in any tourist activity provided by the permission holder; and
 - (ii) at the disembarkation destination, for at least 2 hours after disembarkation—engage in any tourist activity provided by the permission holder under that permission.

The definition is relevant to the subsection 5(1) definition of visitor and also the record keeping requirements in section 229 (Record keeping etc.).

transiting: a vessel or aircraft is transiting an area (however described), or from a place (the origin) to another place (the destination), if the vessel or aircraft is travelling:

- (a) through the area, or from the origin to the destination, by the most direct and reasonable route; and

- (b) in the case of a vessel—in such a manner that, at all times when the vessel is on that route, the vessel is being propelled (whether by engine, sail or human power) through the water in a forward direction and is not adrift.

This definition is relevant to sections 38 (Definition of *vessel or aircraft operation*) and 53 (Maritime Cultural Heritage Protection SMAs).

For this purpose, it does not matter where the origin or the destination is, whether the origin is a point or an area or whether the destination is a point or an area.

A requirement to travel by the most direct and reasonable route has been built into the definition so that there is no need to use these additional words in conjunction with the term. Similarly, a requirement has been included in the definition for a vessel to be propelled in a forward direction and not be adrift, so there is no need to explicitly state this when there is a requirement for a vessel to be transiting.

TUMRA (short for traditional use of marine resources agreement) has the meaning given to traditional use of marine resources agreement by the Zoning Plan.

The TUMRA provisions are contained in Part 4 of the Instrument. They reflect the Zoning Plan's framework for managing traditional use of marine resources for Australian Aboriginals and Torres Strait Islanders.

TUMRA holder, in relation to a TUMRA, is an individual:

- (a) who is a member of the traditional owner group covered by the TUMRA; and
- (b) to whom correspondence may be sent on behalf of the group.

Relevantly, a TUMRA holder is the person who is given the certificate of accreditation, and who may relevantly apply for such things as the accreditation of a modification to the TUMRA.

visitor means a person to whom a service is provided under a chargeable permission, but who is not:

- (a) a transfer passenger; or
- (b) a person of one of the following kinds, in respect of whom the holder of the permission is not paid a fee for the provision of the service:
 - (i) a child aged less than 4 years;
 - (ii) a person visiting the Marine Park as a beneficiary of a charity registered under a law of the Commonwealth, a State or a Territory;
 - (iii) a member of a school supervised school group;
- (iv) a person engaged in the tourism industry who is visiting the Marine Park for trade familiarisation or who is accompanying visitors to the Marine Park as driver, guide, instructor, or for a similar reason;

- (v) a person engaged in the newspaper, broadcasting or other information media who is visiting the Marine Park for the purpose of reporting on a matter in the Marine Park.

The definition of visitor is relevant particularly in relation to the EMC provisions in Part 13.

whale means a *cetacean* other than a dolphin.

The provisions in Part 9 relate to interacting with cetaceans and there are provisions intended to protect whales in the Marine Park.

whale protection area means a whale protection area in Part 2 of Schedule 4.

These areas are designated to minimise disturbance to whales.

whale watching activity means an activity (other than a swimming-with-whales activity) conducted for the purpose of enabling tourists to observe cetaceans, including using a vessel or aircraft to find cetaceans for that purpose.

This is relevant to sections 179 (Requirements relating to prohibited vessels), 187 (Protection of whales in whale protection area) and 188 (Exemption from this Part). These provisions create offence provisions for the conducting of whale watching activities in certain circumstances and also provide for an exception to this, on application under section 189 (Application for exemption), where the person is a permission holder conducting the activity and the Authority has issued an exemption.

Whitsunday Planning Area has the meaning given by the *Whitsundays Plan of Management 1998* as in force from time to time.

The Whitsunday Planning Area covers waters and islands from Cape Gloucester in the north to Repulse and Thomas Islands in the south (see map). This Area represents about 1% of the Great Barrier Reef Marine Park. So that the area can remain a spectacular natural destination supporting a diverse tourism industry, there are special management arrangements in place.

wreck has the meaning given by the Zoning Plan. In 2019, wreck includes jetsam, flotsam, lagan, derelict, and articles or goods of any kind that belonged to or came from a vessel or aircraft wrecked, stranded, sunk or abandoned, or in distress, or any part of the hull machinery or equipment or any such vessel or aircraft.

The definition is relevant to sections 53 (Maritime Cultural Heritage Protection SMAs) and 109 (Limits on granting permissions to enter or use Maritime Cultural Heritage Protection SMAs- special management provisions).

Zoning Plan means the Great Barrier Reef Marine Park Zoning Plan 2003, as in force from time to time.

The Zoning Plan is the primary tool for management of the Marine Park. It provides for a range of ecologically sustainable recreational, commercial and research opportunities and for the continuation of traditional activities.

The current Zoning Plan applies to the Amalgamated Great Barrier Reef Section of the Marine Park. This area is defined in the Instrument.

Subsection 5(2) – Declarations

Subsection 5(2) provides that the Authority may, by notifiable instrument, declare an area described in the declaration to be:

- (a) a designated anchorage for the purposes of the definition of designated anchorage, in subsection (1);
- (b) a no-anchoring area or for the purposes of the definition of no-anchoring area in subsection (1);
- (c) a superyacht anchorage for the purpose of the definitions of those places in subsection (1).

This is a new mechanism that was not included in the old regulations. It allows for future areas to be declared by notifiable instrument. It gives the Authority greater flexibility to designate these areas as appropriate for current circumstances. There are currently no such declarations in force. The intention is that if the Authority makes such a declaration it will be published on its website www.gbrmpa.gov.au in a consolidated form with the relevant geographical descriptors contained in Schedule 1, 2 or 3 for ease of reference.

Subsection 5(3) provides that in making such a declaration under subsection 5(2), the Authority must have regard to the environmental, economic and social values of the area described. This criteria appropriately constrains, and gives guidance to, the Authority's power to determine matters in a notifiable instrument.

Section 6 – References to laws of Queensland

Subsection 6(1) provides that, subject to certain exceptions in subsection 6(2), a reference in the Instrument to a law of Queensland (including an instrument made under the *Fisheries Act 1994 (Qld)*) is a reference to that law as in force from time to time. This subsection is intended to ensure that references to Queensland legislation throughout the Instrument remain up to date and, where appropriate, do not require consequential regulation amendments each time the relevant Queensland laws are amended. This 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 Marine Park.

Subsection 6(2) clarifies that references in the Instrument to the *Transport Operations (Marine Safety) Regulation 2016 (Qld)* or the *Transport Operations (Marine Pollution) Regulation 2018 (Qld)* are references to those laws at the time the Instrument commences. It is not appropriate for references to these laws in the Instrument to be references to such laws 'as in force from time to time' because each time the laws are amended the Authority will need to give specific consideration as to whether consequential amendments to the Instrument should be made.

Section 7 Meaning form Zoning Plan applies in relation to Amalgamated Great Barrier Reef Section

Section 7 provides that a word or expression used in the Instrument that is defined in the Zoning Plan has, in the application of the Instrument to and in relation to the Amalgamated Great Barrier Reef Section, the same meaning as it has in the Zoning Plan.

A note alerts the reader that the Dictionary to the Zoning Plan provides for a number of terms to have the meaning given by the Instrument. This is subject to a contrary intention being expressed in the Instrument as at time the Instrument states that a term is to take its ordinary meaning or the Act meaning.

Section 8 Geographic coordinates

Section 8 provides that the geographic coordinates in the Instrument are expressed in terms of the Geocentric Datum of Australia 1994.

A note informs the reader that the Geocentric Datum of Australia 1994 (also known as GDA94) was published in Gazette No. GN35 of 6 September 1995.

Division 3 Prescribing matters for the purposes of the Act

Section 9 Pilots—prescribed law for the purposes of subsection 3(1)

Pilot is defined in section 3(1) of the Act to mean a person (a) who does not belong to, but has the conduct of, a vessel; and (b) who is licensed or registered under a prescribed law of the Commonwealth, a State or a Territory.

Section 9 provides that for the purpose of paragraph (b) in the definition of pilot, the *Navigation Act 2012* and the *Transport Operations (Marine Safety) Act 1994 (Qld)* are prescribed.

The references to the *Navigation Act 2012* and *Transport Operations (Marine Safety) Act 1994 (Qld)* in section 9 are not intended to amount to an incorporation by reference. Rather, the intention is to prescribe a state of fact for the purpose of the Act definition of pilot. The reference to the *Navigation Act 2012* is a reference to that Act as in force from time to time, which is available from the Federal Register of Legislation at www.legislation.gov.au. The reference to the *Transport Operations (Marine Safety) Act 1994 (Qld)* is a reference to that Act as in force from time to time because of:

- subsection 6(2) of the Regulations, which is supported by subsection 66(13) of the Act, and which allows incorporation of documents as in force from time to time (overriding section 14 of the *Legislation Act 2003*); and
- section 10A of the *Acts Interpretation Act 1901*, which applies because of section 13 of the *Legislation Act 2003*.

Section 10 Protected species—declaration for purposes of the Act

The Act defines protected species to mean, among other things, a species declared by the Regulations to be a protected species or a strictly protected species for the purposes of the

Act definition. These are generally species which are at risk and identified as needing special protection.

There are a number of offences in the Act concerning protected species as defined.

Section 10 defines protected species for the purpose of the Act while section 30 defines protected species for the Zoning Plan.

This section provides that for purposes of paragraph (d) of the definition of protected species in subsection 3(1) of the Act the species in paragraphs (a) to (c) are declared. These are each species mentioned in the table in section 30, each species of marine mammal, bird or reptile that is prescribed as “near threatened wildlife” under the *Nature Conservation Act 1992*(Qld) and each species of the genus *Epinephelus* (other than *E. tukula* or *E.lanceolatus*), but only in relation to individuals in the species that are more than 1,000 millimetres long.

Section 11 Meaning of relevant permission

Section 11 provides the definition of relevant permission. It provides that for the purpose of subsection 39ZC(1) of the Act, the Zoning Plan, and a Plan of Management, relevant permission means a permission mentioned in paragraph 75(1)(b) or (c). It is only the permissions mentioned in paragraphs 75(1)(b) or (c), rather than the other paragraphs of that subsection, because these permissions are directly related to contravention of the Zoning Plan or Plans of Management

The term relevant permission is used in the Act, the Zoning Plan (permission means a relevant permission) and various Plans of Management, in accordance with the meaning given in the Instrument.

Part 2—Definitions and other matters, for the purposes of the Zoning Plan

Division 1—Simplified outline of this Part

Section 12 Simplified outline of this Part

Division 2—Prescribing definitions and limitations for the purposes of the Zoning Plan

Section 13 Accreditation of educational or research institutions

Subsection 13(1) provides that this section applies for the purposes of the definition of accredited educational or research institution in the Zoning Plan.

An educational or research institution may be accredited by the Authority or a managing agency so that certain activities conducted by the institution no longer require individual written permissions. The managing agencies actively encourage institutions to conduct activities under an institutional accreditation where available.

Subsection 13(2) provides that the Authority may in writing, accredit an educational or research institution to conduct one or more of limited impact research (extractive); limited impact research (non-extractive); or a limited educational program provided that it is satisfied that the institution has adopted appropriate environmental practices and standards (including instruction and training of personnel) and has an ongoing commitment to improve those practices and standards relating to research or education undertaken in the Marine Park by the institution or on its behalf.

This is a discretionary decision of the Authority and the section provides an appropriate level of guidance for the Authority to exercise this discretion. In practice, the Authority satisfies itself the institution has appropriate environmental practices and standards and has an ongoing commitment to improving those practices and standards by entering into an agreement, such as a memorandum of understanding, with the institution. The agreement would indicate the institution has adopted appropriate environmental practices and standards and has an ongoing commitment to improve those practices and standards.

Note 1 directs the reader for the meaning of limited impact research (extractive) and limited impact research (non-extractive) to see the Dictionary to the Zoning Plan and sections 20 and 21 of the Instrument. For the meaning of limited educational program, see the Dictionary to the Zoning Plan.

Note 2 directs the reader to Part 15 and sections 64 and 64A of the Act for reconsideration and review of decisions. Decisions under this section are subject to merits review under section 236.

Subsection 13(3) allows the Authority to revoke the accreditation of an accredited educational or research institution issued under subsection 13(2) by notifiable instrument if the Authority is satisfied that the institution has ceased to hold appropriate environmental practices and standards or no longer has an ongoing commitment to improve those practices and standards. The accreditation may also be revoked if it is satisfied that damage to or degradation or disruption of, the physical environment or the living resources of the Marine Park has occurred or there is an imminent threat that it will occur. By nature, extractive limited impact research will cause damage and generally speaking the Authority

will only be likely to consider revoking the accreditation if an unacceptable level of damage was occurring.

Section 14 Accreditation of harvest fisheries

Subsection 14(1) provides that section 14 applies for the purpose of the definition of accredited harvest fishery in the Zoning Plan.

The Zoning Plan sets out where taking in accordance with a harvest fishery is allowed with and without written permission. It also allows for entry into certain zones for the purpose of taking an animal or plant of a protected species or a strictly protected species in accordance with an accredited harvest fishery.

The list of harvest fisheries is contained in section 18.

Subsection 14(2) provides that the Authority may accredit a harvest fishery for the Zoning Plan, in writing, if it is satisfied that the management arrangements for the fishery under Queensland fisheries legislation provide a sound basis for an ecologically sustainable harvest fishery in an area that is part of, or includes part of, the Marine Park. This is a discretionary decision of the Authority and the section provides an appropriate level of guidance for the Authority to exercise this discretion.

Note 1 directs the reader to the definition of harvest fishery. Harvest fishery is defined in the Zoning Plan in part as 'a fishery declared by the Regulations'. Section 18 of the Instrument declares harvest fisheries for the purposes of this Zoning Plan definition.

Note 2 directs the reader to see Part 15 and sections 64 and 64A of the Act for reconsideration and review of decisions. Decisions under this section are subject to merits review under section 236.

Subsection 14(3) provides that the Authority may revoke an accreditation, in writing, if it is satisfied that the management arrangements are no longer a sound basis for an ecologically sustainable fishery in the Marine Park or the compliance arrangements for the fishery are not adequate or are not being adequately enforced.

Section 15 Bait netting—limitations on netting

The Zoning Plan provides that bait netting means netting using a net declared in the Regulation, and in accordance with any limitations prescribed in the Regulations. Section 15 declares the relevant nets and prescribes the relevant limitations for the purposes of this Zoning Plan definition.

Relevant to section 15 are the definitions in subsection 5(1) for N11 'fish', non-bait fish and possess.

Subsection 15(1) describes the purpose of the section, being to declare the nets and specify the limitations on netting (within the ordinary meaning of the expression) for the purposes of the definition of bait netting in the Zoning Plan.

Subsection 15(2) declares the nets for recreational and commercial fishers while subsection 15(3) specifies the limitations.

An important limitation on commercial fishers in paragraph 15(3)(c) is that a commercial fisher must not take a non-bait fish in the Conservation Park Zone using a net mentioned in subsection (2) or possess (whether or not in the Conservation Park Zone) a non-bait fish that was taken in the Conservation Park Zone using a net mentioned in subsection (2). While commercial bait netting is allowed in Conservation Park Zones without a permission, it is not intended to extend to the taking of non-bait fish, which are key recreational food fish. The section prohibits a commercial fisher from taking or possessing non-bait fish in the specified circumstances.

Subsection 15(4) identifies the circumstances in which a commercial fisher is not considered to have taken or to be in possession of non-bait fish. Subsection 15(4) provides that a commercial fisher does not breach paragraph 15(3)(c) where the fish is taken unintentionally and the fisher removes the fish from the net and immediately releases the fish into water deep enough to allow it to escape. This will prevent commercial fishers from committing an offence where they have inadvertently caught non-bait fish.

Section 16 Definition of defence activities

Section 16 defines defence activities for the purpose of the Zoning Plan definition.

The undertaking of defence activities is an exception in the Zoning Plan to the general requirements for permission to use or enter certain zones for certain purposes. There remains a requirement in the Zoning Plan to notify the Authority and to follow the directions of the Authority where undertaking defence activities that would otherwise require a permission.

The Dictionary to the Zoning Plan provides defence activities has the meaning given by the Regulations. Section 16 defines defence activities for the purposes of that definition, as meaning activities for defence purposes which are conducted by the Defence Force, or an arm of the defence forces of another country that is in the Marine Park with the consent of the Commonwealth, or conducted or authorised by a Department whose Minister administers all or part of the *Defence Act 1903*.

Section 17 Fishing or collecting—limitations

The Dictionary to the Zoning Plan defines fishing or collecting as the taking of a plant, animal or marine product in accordance with any limitations prescribed in the Regulations. Section 17 prescribes the limitations on fishing or collecting for the purpose of the definition in the Zoning Plan.

Subject to some exceptions the Zoning Plan provides that the General Use Zone, Habitat Protection Zone and Conservation Park Zone may be entered or used without permission for the purpose of fishing or collecting.

Subsection 17(1) provides that for the purpose of the definition of fishing or collecting in the Zoning Plan the limitations in paragraphs (a) to (d) are prescribed. Subparagraphs 17(1)(b)(i) and 17(1)(c)(i) refer species listed in a table and that table is provided for in subsection 17(2).

Note 1 provides that for paragraph 17(1)(a) section 30 sets out the kinds of species that are protected species. Note 2 alerts the reader that a declaration under paragraph 17(3)(a) or (b) may add additional species to the species specified in the table in subsection (2). The declaration does not displace the table in subsection (2).

Additionally, subsection 17(3) provides that the Authority may make a declaration for the purposes of those subparagraphs. Declarations can only be made if the Authority has had regard to the environmental, economic and social values relevant to the species to be declared. The mechanism of notifiable instruments allows flexibility for the Authority to specify species as relevant without needing to amend the Regulations themselves. The declaration will be additional to the table rather than displacing it. It is the Authority's intention that this will be published on the Authority's website www.gbrmpa.gov.au with a listing of both the limits in the table and the listings in any declaration made. Any declarations made do not limit the table in subsection 17(2).

Under the old regulations the take (as defined in the Zoning Plan) of Crown-of-thorns starfish (COTS) was restricted to no more than 5 COTS being taken at any one time. This restriction is lifted in the Instrument. The reason for this change is because there is currently an outbreak of COTS populations in the Marine Park, which poses a significant risk to the health of the Reef. There are currently programs being run by the Authority to cull the numbers of these starfish therefore it is not logical to restrict the numbers that can be taken as part of fishing or collecting. Placing an exception for COTS in Table 15 allows unlimited collection or culling of COTS by recreational/non-commercial users where take is allowed without a permission. This would be under the purpose of 'limited collecting' for the Zoning Plan, which is a type of fishing and collecting allowed without permission in General Use (refer to 2.2.3(b)(viii) of the Zoning Plan), Habitat Protection (refer to 2.3.3(b)(vii) of the Zoning Plan) and Conservation Park Zones (refer to 2.4.3(b)(vi) of the Zoning Plan).

A permission will still be required to cull COTS by any person, including a recreational person, in no-take zones (e.g. Marine National Park Zones and Buffer Zone). Under the Zoning Plan it would be allowed with permission as 'a program to take animals or plants that pose a threat' collecting' (refer to 2.7.4(k) of the Zoning Plan for an example). It is envisaged that any non-recreational take of the starfish (e.g. by tourism operators, commercial COTS control service providers) would need this permission for all zones (including General Use, Habitat Protection, Conservation Park Zones and Marine National Park Zones). The Reef Blueprint, Great Barrier Reef Blueprint for Resilience, Great Barrier Reef Marine Park Authority publicly identifies the Authority's 'all-out assault on COTS' and included a reference to 'increasing opportunities for engagement and participation in COTS control efforts'.

The Authority's Crown-of-thorns starfish Steering Committee is supportive of this action.

Section 18 Harvest fisheries—declaration of fisheries

Section 18 declares the fisheries to be considered harvest fisheries for the purposes of the Zoning Plan.

Section 18 declares certain fisheries described in chapter 7 and 11 of the Fisheries Regulation to be harvest fisheries for the purpose of the definition in the Zoning Plan. This ensures consistency with Queensland government regulation of fishing.

The section has been updated from the provision in the old regulations to reflect that the Bêche de Mer Fishery (East Coast) is now called the Sea Cucumber Fishery (East Coast).

Relevantly, section 14 covers accreditation of harvest fishery for the purpose of the definition in the Zoning Plan.

Section 19 Limited collecting—limitations

Section 19 prescribes the limitations for the purpose of the definition of limited collecting in the Zoning Plan.

The Zoning Plan provides that fishing or collecting involving limited collecting may be carried out in the General Use Zone, Conservation Zone and Habitat Protection Zone in accordance with the Zoning Plan. The Dictionary to the Zoning Plan defines limited collecting as collecting in accordance with any limitation prescribed in the Regulations.

Section 19 prescribes that collecting (within the ordinary meaning of the expression) plants and animals is to be done by hand or with a hand-held implement that is not motorised nor pneumatically nor hydraulically operated and that marine products are not to be collected. These restrictions are to limit the collection of plants and animals and to protect the environment which would be disturbed by the use of certain tools.

A note directs the reader that limited collecting is a kind of fishing or collecting, and (in addition to the limitations set out in the definition of limited collecting in section 19) there are other limitations on fishing or collecting set out in section 17. The note is to prevent readers from assuming that the only limitations that apply to limited collecting are the limitations set out in section 19.

Sections 20 and 21 Definitions of limited impact research (extractive) and limited impact research (non-extractive)

The Authority recognises the important role that research plays in contributing to understanding of the Great Barrier Reef. Research provides a scientific basis for management decisions, which help in protecting the environmental, biodiversity and heritage values of the Marine Park. The Zoning Plan and the Instrument sets out the way research activities are managed in the Marine Park.

Most research in the Marine Park requires a permission however in most cases both extractive and non-extractive limited impact research may be conducted in the General Use Zone, Habitat Protection Zone, Conservation Park Zone and Scientific Research Zone without permission. A permission is required for limited impact research (extractive) in the Buffer Zone and Marine National Park Zone.

The subsection 5(1) definitions of minor research aid, research guidelines and research location are relevant to these sections. Importantly, take, has the meaning given in the Zoning Plan.

Section 20 contains the definition of limited impact research (extractive) for the purposes of the Zoning Plan.

Limited impact research (extractive) is research that involves either the taking of a plant, animal or marine product by limited research sampling (paragraph 20(1)(i)); or the installation and operation of minor research aids in a way that does not pose a threat to safety or navigation and is in accordance with any research guidelines, as in force from time to time (section 20(1)(ii)). At the time of commencement of the Instrument, the relevant research guidelines were the Guidelines: Managing Research in the Great Barrier Reef Marine Park available at <http://elibrary.gbrmpa.gov.au/jspui/bitstream/11017/3227/1/Managing-Research-in-the-GBRMP.pdf>.

Paragraph 20(1)(b) provides that limited impact research (extractive) is research that is a component of a research project that is conducted by a research institution accredited under section 13.

Paragraph 20(1)(c) provides that where research is being carried out in an area of the Scientific Research Zone, the Authority has approved an environmental management plan in writing for a research station associated with the area and the research is conducted in accordance with the plan, it will fall within the definition of limited impact research (extractive).

Subsection 20(2) defines limited research sampling as sampling in accordance with the conditions set out in paragraphs 20(2)(a) to (f). There is a requirement that the taking must be done in accordance with any research guidelines. This allows requirements to be easily updated on account of any changed research practices and/or advances in technology. At the time of commencement of the instrument, the relevant research guidelines were the Guidelines: Managing Research in the Great Barrier Reef Marine Park available at <http://elibrary.gbrmpa.gov.au/jspui/bitstream/11017/3227/1/Managing-Research-in-the-GBRMP.pdf>.

A note alerts the reader that as all the conditions mentioned in the definition need to be met for sampling to be limited research sampling, if 2 or more conditions potentially relate to the same activity, the activity will be limited research sampling only if all those conditions are met. The purpose of this note is to avoid readers coming to the conclusion that where more than one condition applies, the condition with the least restrictions is the only applicable condition.

Subsection 20(3) provides for conditions on taking animals of certain species in limited research sampling. Paragraph 20(3)(1) provides that a condition on limited research sampling is that the sampling for a research project in a calendar year does not involve the taking of any of the animals of the species listed in subparagraphs 20(3)(a)(i) to (v).

Additionally paragraph 20(3)(b) provides that the sampling for a research project in a calendar year must comply with the limits specified in an item of the table in Schedule 6; or if a declaration is in force under subsection 20(5)- the declaration, as in force from time to time. Any declaration made does not limit the table in Schedule 6. Note 1 alerts the reader that if a species is both a protected species and a species specified in the determination, no

animals of that species can be taken in limited research sampling. Note 2 provides that a declaration under subsection 20(5) may add additional limits to the limits specified in Schedule 6. Any declaration made does not displace the limits specified in Schedule 6.

In addition to the limits specified in the table provision is made to make notifiable instruments specifying the limits on sampling for a research project- see subsection 20(5). By providing for specification via notifiable instrument the Authority will have a mechanism that allows flexibility and for the limits to be changed as appropriate. No notifiable instruments have been made by the Authority for this purpose, at this point in time, the intention is that if one is made it will be published on the Authority's website, www.gbrmpa.gov.au, and consolidated with the requirements contained in the Instrument to ensure ease of access to what is required.

Subsection 20(4) applies as a safety net in the event that limits on the take of a particular species are not covered by subsection 20(3). It provides for conditions on taking animals of other species in limited research sampling. It effectively limits the take per calendar year of all other species to a maximum of 200 animals of a particular species (or species and length) and a maximum of 50 of those animals in a single research location.

Subsection 20(5) provides that the Authority may by notifiable instrument make a declaration for the purposes of subparagraph (3)(b)(ii). This allows the Authority to have the flexibility to provide for limits on taking animals of a species, or a species or length as they become relevant.

Section 21 defines limited impact research (non-extractive) for the purpose of the Zoning Plan.

The definition provides limited impact research (non-extractive) must not involve an activity that would require permission if it were not part of a research activity. It also must not involve physical disturbance of the heritage value of a place (including physical disturbance of an artefact that is part of that value). This includes for example archaeological excavations. It also must generally not involve the 'take' of a plant, animal or marine product.

The reference to heritage value is in the singular in subparagraph (a)(ii) because the provision requires disturbance of only one value.

The reference to 'take' picks up the definition of take in the Dictionary to the Zoning Plan. Under that definition 'take' includes interfering with a plant, animal or marine product. An exception on the prohibition on take has been included in the definition of limited impact research (non-extractive) to allow non-fixed transect tapes, or non-fixed quadrats, that are attended at all times while in use, to be used for conducting visual surveys. This exception is necessary otherwise the use of such tapes and quadrats would be prohibited because they fall within the definition of take in the sense that they interfere with plants, animals and marine products (albeit the interference is minimal).

There is also the requirement in paragraph 21(b) that limited impact research (non-extractive) is research that is a component of a research project that is conducted by an accredited research institution.

As with limited impact research (extractive) there is the requirement in paragraph 21(c) that if the research is conducted in an area of the Scientific Research Zone and the Authority has approved an environmental management plan in writing for a research station associated with the area then it must be conducted in accordance with that plan in order to fall within the definition of limited impact research (non extractive).

Section 22 Limited spearfishing—limitations

Subject to some exceptions the General Use Area, Habitat Protection Zone and Conservation Park Zone may be used or entered without permission for fishing or collecting involving limited spearfishing.

The Zoning Plan defines limited spearfishing as meaning fishing with a spear or speargun, not using a powerhead, a firearm, a light or underwater breathing apparatus other than a snorkel; and in accordance with any limitations prescribed in the Regulations. Section 22 prescribes the limitations on limited spearfishing for the purposes of this definition.

The limitations prescribed in section 22 are that that the person spearfishing must not have a loaded speargun in the person's possession out of the water, and the spearfishing must not be engaged in, in any part of the Marine Park where spearfishing is prohibited under Queensland fisheries legislation.

These limitations are generally directed at supporting the objectives of the Zones. The limitation that a person must not have a loaded speargun in their possession out of the water is for safety reasons.

Limited spearfishing is a kind of fishing or collecting, and in addition to these limitations there are other limitations on fishing or collecting set out in section 17. It should not be assumed that the only limitations that apply to limited spearfishing are those contained in section 22.

Section 23 Limited trapping—limitations

The Zoning Plan generally provides that the Conservation Park Zone may be used or entered without permission for the purpose of fishing or collecting involving limited trapping (crabbing). The Dictionary to the Zoning Plan defines limited trapping as trapping in accordance with any limitations prescribed in the Regulations. Section 23 prescribes the relevant limitations the purposes of this definition.

The section 23 limitations on limited trapping are that trapping (within the ordinary meaning) must be conducted only for the purpose of taking crabs, only crabs may be taken, only crab pots, collapsible traps and dillies may be used and no more than four such crab pots, collapsible traps or dillies may be used, whether alone or in combination. Further, subjects to paragraphs (a), (b) and (c) of this section, the Queensland fisheries legislation must be complied with.

Crab pots, collapsible traps or dillies are defined in subsection 5(1). These definitions adopt the Queensland Fisheries Regulation definitions.

These requirements are prescribed to support species sustainability and to ensure consistency with Queensland fisheries legislation.

Section 35 also relates to trapping but it provides for the limits on trapping rather than limited trapping.

Limited trapping is a kind of fishing or collecting, and in addition to these limitations there are other limitations on fishing or collecting set out in section 17. The note is to prevent readers from assuming that the only limitations that apply to limited trapping are the limitations set out in section 23.

Section 24 Managed vessel or aircraft—declaration of vessels

Under the Zoning Plan permission can be sought to navigate a managed vessel or aircraft in the General Use Zone, Habitat Zone, Conservation Park Zone, Buffer Zone, Scientific Research Zone, Marine National Park Zone and the Commonwealth Islands Zone. The Dictionary to the Zoning Plan provides that managed vessel or aircraft means a vessel, aircraft or other craft that is declared for the purposes of this definition in the Regulations. Section 24 declares the vessels for the purpose of this definition.

Section 24 declares that hovercraft, wing-in-ground-effect craft, and hydrofoils are managed vessels or aircraft for the purposes of the Zoning Plan. These vessels and aircraft are declared because they are considered to require regulation as they are used in the Marine Park as high speed passenger boats and access shallow areas that other vessels are unable to access.

Vessel and aircraft restrictions are in place in the Zoning Plan to protect areas vulnerable to high levels of use. The definition of what is a managed vessel or aircraft facilitates that restriction.

Section 25 Definition of Mission Beach Leader Prawn Broodstock Capture Area

The Zoning Plan provides that written permission is required to use or enter the Habitat Protection Zone for fishing involving the taking of leader prawn broodstock in the Mission Beach Leader Prawn Broodstock Capture area in accordance with the limitations prescribed in these Regulations. The Dictionary to the Zoning Plan defines the Mission Beach Leader Prawn Broodstock Capture Area as the area declared for the purposes of the definition in the Regulations. Section 25 declares the area for the purposes of that definition in the Zoning Plan.

The Mission Beach Leader Prawn Broodstock Capture area is regulated specifically as historically there was conflict with onshore residents (because discarded catch was washing ashore) and sustainability concerns arising from the activity of trawling (not just for prawn broodstock) in the area that is now defined as the Mission Beach Leader Prawn Broodstock Capture area. Trawl industry operators who were supplying the prawn aquaculture industry with broodstock from the area advocated that trawl fishing targeting broodstock in the area should be able to continue. The intention is to ensure that the activity is undertaken in a restricted, and therefore socially acceptable and sustainable, way.

The boundary descriptors in section 25 have been updated from those which were in the old regulations in order to align with the style adopted in 2017 during the review of the *Whitsundays Plan of Management 1998*. These changes included updates to co-ordinates, the inclusion of 'point closest to' and removal of references to geographical features.

Section 26 Definition of motorised watersports

Under section 3.3 of the Zoning Plan the Remote Natural Area may not be used for motorised watersports, which is defined in the Dictionary of the Zoning Plan as having the meaning given by the Regulations.

Section 26 of the Instrument defines motorised watersports for the purposes of the Zoning Plan by stating that it has the same meaning as motorised water sport (noting the minor difference between the two terms) has in subsection 5(1); and includes any activity in which a vessel is operated at a speed greater than 35 knots, except while transiting an area from a place to another place.

The definition of motorised watersports in regulation 25 of the old Regulation is replaced with this short, simple wording which states that in the Zoning Plan motorised watersports has the same meaning as motorised water sport has in section 3 except with an additional requirement that motorised watersports also includes any activity at which a vessel is operated at a speed greater than 35 knots and is not transiting. In making these changes the intention is that the section 26 definition will adopt the subsection 5(1) definition, except it will retain the additional requirement that was in paragraph 26(c)(i) of the old regulations.

The additional requirement in paragraph 26(b) is intended to retain an important distinction between the definition of motorised watersports for the purposes of the Zoning Plan, and the definition of motorised water sport in subsection 5(1) which applies for the purposes of the Plans of Management. In the Plans of Management a vessel can, in some circumstances, be operating at a speed of greater than 35 knots but not be engaged in a motorised water sport. Under the Zoning Plan this would be classed as motorised watersports, as operating vessels at such a high speed in the Remote Natural Area is not a desired use.

Section 27 Netting—limitations

The Zoning Plan generally provides that the General Use Zone and the Habitat Protection Zone may be used or entered without permission for fishing or collecting involving netting (including bait netting); and the Conservation Park Zone may be used or entered without permission for fishing or collecting involving bait netting. In the Princess Charlotte Bay Special Management Area a permission is required for netting (other than bait netting), in accordance with any limitations prescribed by the Regulations. The Dictionary to the Zoning Plan defines netting as netting in accordance with any limitations prescribed in the Regulations. Section 27 of the Instrument declares, for the purposes of the definition of netting in the Zoning Plan, the conditions or limitations that are prescribed for the purposes of that definition.

Paragraph 27(1)(a) provides that set mesh nets used in offshore waters in an area described in clause 2 of Schedule 5 (conditions of set mesh net use in certain offshore waters) must be used only as permitted by subsection 44(3). The intention is that these restrictions, which apply to parts of the Species Conservation (Dugong Protection) Special Management Area, are consistent with Queensland Government restrictions which apply to netting in these areas adjacent to headlands in various Species Conservation (Dugong Protection) Special Management Areas which mirror Queensland's Zone B Dugong Protection Areas.

Paragraph 27(1)(b) provides that the provisions of the Fisheries Regulation must be complied with if those provisions apply in the Marine Park and relate to the use of nets in commercial net fisheries. Again, this is to maintain consistency with Queensland Government restrictions.

Paragraphs 27(1)(c)-(f) provide specific restrictions on netting in the No netting (other than bait netting) area within Bowling Green Bay Species Conservation (Dugong Protection) SMA and Restricted netting area within Bowling Green Bay Species Conservation (Dugong Protection) SMA which are intended to reduce the risks of incidental catch of dugong in commercial mesh nets. The restrictions on net fishing provide that in the 'No Netting Area', no netting activities (other than bait netting- see subsection 27(2)) are allowed and in the 'Restricted Netting Area' larger dimension nets are prohibited, but limited lower-risk netting activities are allowed. In the Restricted netting area only set mesh nets and mesh nets may be used. Further to this, set mesh nets must only be used in these areas in compliance with subsection 44(5) and mesh nets (except set mesh nets) must be used in compliance with subsection 44(6).

Additional restrictions in section 27, over and above what is required by Queensland legislation, are targeted to meet concerns about environmental sustainability and the conservation of species in the zones.

Subsection 27(2) provides that paragraph (1)(b), (c) or (d) of this section does not apply to bait netting, or to section 475 or Part 5 of Chapter 9 of the Fisheries Regulation, to the extent that those provisions relate to bait netting. This is because the restrictions on bait netting that already apply pursuant to section 15 are more appropriate.

A note refers the reader to the see section 15 for the nets specified for the definition of bait netting in the Zoning Plan and the prescribed limitations on the use of those nets. This is intended to alert readers to the fact that there are restrictions on bait netting that are additional to the restrictions in section 27.

Section 28 Pelagic species—declaration

Pelagic species refers to those species which live in the pelagic zone- being neither close to the bottom nor near the shore. They are distinct from demersal fish which live on or near the bottom. The fishing method of trolling is used to capture pelagic species. The Zoning Plan provides opportunities for trolling for pelagic species in the Buffer Zone and the Seasonal Closure (Offshore Ribbon Reef) SMA prohibits trolling for pelagic species during the seasonal closure.

One of the objectives of the Buffer Zone (subject to the providing for the protection of the natural integrity and values of areas of the Marine Park, generally free from extractive activities) is to provide for trolling for pelagic species. Subject to some exceptions, the Zoning Plan provides that the Buffer Zone may be used or entered without permission for the purpose of fishing involving the taking of pelagic species by trolling. The Dictionary to the Zoning Plan provides that pelagic species is a species declared for the purposes of this definition in the Regulations. Section 28 of the Instrument declares the pelagic species for the definition in the Zoning Plan.

The list of pelagic species declared in section 28 is comprehensive and intended to encompass the pelagic fish species that might be trolled for.

Section 29 Definition of photography, filming or sound recording

Section 29 defines photography, filming or sound recording for the Zoning Plan.

Subject to some exceptions, the Zoning Plan provides that the General Use Zone, Habitat Protection Zone, Conservation Park Zone, Buffer Zone, Scientific Research Zone, Marine National Park Zone and Commonwealth Islands Zone may be entered without permission for the purpose of photography, filming or sound recording.

The Dictionary to the Zoning Plan defines photography, filming or sound recording as having the meaning given by the Regulations (including any limitations prescribed in the Regulations). Section 29 defines photography, filming or sound recording as the recording of images or sounds in a way that is of negligible impact to the environment.

It will often be the case that photography, filming or sound recording is of cetaceans and the requirement that this is conducted with negligible impact on the environment should be read in conjunction with the approach distance provisions in Part 9 - Interacting with cetaceans.

Section 30 Protected species—declaration for purposes of the Zoning Plan

Paragraph 5.3 of the Zoning Plan regulates entry to zones for the purpose of taking protected species. The Zoning Plan defines protected species as meaning a species declared for the purposes of this definition in the Regulations, and subject to any limitation prescribed in the Regulations.

Section 30 declares for the purpose of the Zoning Plan each species of cetacean; each species that is a listed marine species, a listed migratory species, a listed threatened ecological community, or a listed threatened species (within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999*); each species of mammal, bird or reptile that is prescribed as “endangered wildlife”, “near threatened wildlife” or “vulnerable wildlife” under the *Nature Conservation Act (Qld)*; each species of the genus *Epinephelus* (other than *E.tukula* or *E.lanceolatus*), but only in relation to individuals of the species that are more than 1,000 millimetres long; each species that is at risk, or in need of special protection, and is specified in the table in this section.

A note alerts the reader that the table may not list all species, as other species may be protected species because of paragraph (1)(b) or (c) which cover certain species listed or prescribed under other Commonwealth and Queensland laws.

There are additional species included in the Zoning Plan definition to the section 10 definition because the Act already covers those things. The reference to ‘rare wildlife’ has been deleted from section 30 as it is no longer in Queensland legislation.

Section 31 Queensland fisheries legislation

Section 1.8 of the Zoning Plan provides that a reference to the use of a vessel, or a net, hand-held implement or other apparatus, for the taking of animals, plants or marine

products, is a reference to the lawful use of that vessel, net, hand-held implement or apparatus in accordance with Queensland fisheries legislation. The Dictionary to the Zoning Plan defines Queensland fisheries legislation as meaning the laws of Queensland prescribed in the Regulations. Section 31 prescribes the relevant laws of Queensland for the purposes of this definition.

Section 31 provides that the following laws of Queensland, as in force from time to time, are prescribed: the *Fisheries Act 1994 (Qld)*, the *Fisheries Regulation 2008 (Qld)*, and both of a fishery management plan made under paragraph 32(1)(a) of the *Fisheries Act 1994 (Qld)* and a declaration made by the Chief Executive under that Act (to the extent that plan or declaration applies in the Marine Park).

Declarations made by the Chief Executive under the Act are now listed as prescribed as it is understood that, the Queensland Government will be ceasing the use of fishery management plans and increasing the use of declarations made by the Chief Executive under the *Fisheries Act 1994*.

Queensland fisheries legislation applies and governs fishing in the Marine Park. In many cases it is the appropriate standard to be followed while at times additional regulation will be prescribed by the Instruments, the Zoning Plan and the Act.

Section 32 Definition of ship

The Zoning Plan restricts the kinds of vessels that may navigate through shipping areas and other areas. The dictionary to the Zoning Plan defines ship for this purpose. There are offences in the Act for where there is a breach of the requirement to navigate only through shipping areas or to have a permission to navigate in a zone.

The Zoning Plan defines ship as having the meaning given by the Regulations. Section 32 of the Instrument sets out the definition of ship for the purposes of that definition.

The list of ships in section 32 is based on the Torres Strait and Great Barrier Reef Ship Reporting System which is managed by the Australian Maritime Safety Authority and is intended to capture larger vessels that would damage the reef if they were to come into contact with it or that may carry hazardous cargo that poses a risk to the Marine Park. The vessels not included in the definition are considered to have either less potential impact due to their design and nature of use as recreational vessels, or are vessels that are closely managed by the Australian Defence Force.

Section 33 Stowed or secured—requirements

Subject to some exceptions, the General Use Zone, Habitat Protection Zone, Conservation Park Zone, Buffer Zone, Scientific Research Zone, Marine National Park Zone, Preservation Zone, Commonwealth Islands Zone and the Shipping Areas may be used or entered without permission for the purpose of navigating a vessel or aircraft (except a managed vessel or aircraft) if any equipment that is normally used for fishing or collecting is stowed or secured when the vessel or aircraft is in a part of the Zone in which the use of the equipment is not relevant (in some cases this may be all of the zone or may not be relevant).

The Dictionary to the Zoning Plan defines stowed or secured as meaning, in relation to equipment for fishing or collecting, such equipment being rendered inoperative and stowed or secured and otherwise in accordance with any requirements prescribed in the Regulations.

Section 33 of the Instrument prescribes the relevant requirements for the purposes of this definition with respect to trawl fishing apparatus.

The requirements are that all nets are out of the water or the fore end of the nets are drawn up to the booms, all other boards are drawn up to the trawl blocks on the booms or are inboard the vessel, all lazy lines are through the blocks and the cod ends are open.

Section 34 Definitions of traditional owner and traditional owner group

The Zoning Plan provides that a zone may be used or entered without permission or notification to the Authority by a traditional owner for an activity not involving the taking of plants, animals or marine products, for the purposes of Aboriginal or Torres Strait Islander custom or tradition. The Zoning Plan also provides that a traditional use of marine resources agreement means an agreement, developed in accordance with the Regulations, by a traditional owner group for the traditional use of marine resources in a site or area of the Marine Park.

The Dictionary to the Zoning Plan defines traditional owner group and traditional owner as having the meaning given by the Regulations. Section 34 defines traditional owner group for the purposes of these definitions.

Section 34 defines traditional owner for the purposes of the Zoning Plan as having the same meaning as in the Act. Previously it had been defined in the old regulations in a manner that was essentially the same as the definition in the Act. The Act definition has therefore been adopted.

Section 34 defines traditional owner group for the purposes of the Zoning Plan as, in relation to a site or area of the Marine Park, the group of Traditional Owners who, in accordance with Aboriginal or Torres Strait Islander custom, speak for the site or area.

Section 35 Trapping—limitations

Section 35 prescribes, for the purposes of the definition in the Zoning Plan, the conditions or limitations that are prescribed for this activity.

Subject to some exceptions the Zoning Plan provides that the General Use Zone and the Habitat Protection Zone may be used or entered without permission for fishing or collecting involving trapping. This is distinct from limited trapping which is allowed in the Conservation Park Zone without permission.

At the time the Instrument commenced, the Dictionary to the Zoning Plan defined trapping as trapping in accordance with any limitations prescribed in the Regulations.

The limitations are that trapping is restricted to only being for the taking of crabs; only crab pots, collapsible traps or dillies may be used; and subject to those limitations the apparatus used to trap crabs, and to take crabs, must be in accordance with the relevant Queensland

fisheries legislation. These limitations are intended to ensure consistency with the objectives for relevant Zones and that trapping of crabs is conducted sustainably.

Section 23 (Limited trapping- limitations) also relates to trapping but is directed to limited trapping rather than trapping.

Section 36 Trawling—limitations

Subject to some exceptions the Zoning Plan provides that the General Use Zone may be used or entered without permission for fishing or collecting involving trawling. The Dictionary to the Zoning Plan defines trawling as trawling in accordance with any limitation prescribed in the Regulations.

Section 36 of the Instrument prescribes limitations for the purposes of this definition.

The limitations prescribed are that the *Fisheries Regulation* and the *Fisheries (East Coast Trawl) Management Plan 2010 (Qld)* must be complied with. These laws are prescribed to promote compliance with Queensland fisheries legislation and in recognition of these laws as the appropriate limitations on trawling.

Section 37 Trolling—limitation

Subject to some exceptions the Zoning Plan provides that the General Use Zone, Habitat Protection Zone and Conservation Park Zone may be used or entered without permission for the purpose of fishing or collecting involving trolling. Additionally the Zoning Plan provides that the Buffer Zone may be used or entered without permission for the purpose of fishing involving the taking of pelagic species by trolling. The Dictionary to the Zoning Plan defines trolling as fishing by means of a line or lines trailed behind a vessel that is under way:

- (a) using no more than 3 lines per person; and
- (b) with no more than 6 hooks (in total); and
- (c) in accordance with any limitations prescribed in the Principal Regulations.

Section 37 of the Instrument prescribes a limitation for the purpose of paragraph (c) of the Zoning Plan definition. The limitation prescribed is that the vessel that is underway must be propelled through the water in a forward direction (whether by engine, sail or human power) and must not be adrift.

This limitation reflects what the movement of the vessels needs to be in order for a person to be trolling. It facilitates enforcement as it prevents people from asserting that they are trolling when they are carrying out some other form of fishing.

Section 38 Definition of vessel or aircraft charter operation

Subject to Part 3 (Remote Natural Area), Part 4 (Designated Areas) and Part 5 (Additional purposes for use or entry), the written permission of the Authority is required to use or enter the General Use Zone, Habitat Protection Zone, Conservation Park Zone, Buffer Zone, Scientific Research Zone, Marine National Park Zone and the Commonwealth Islands Zone for the purpose of conducting a vessel or aircraft charter operation.

The Dictionary to the Zoning Plan defines vessel or aircraft charter operation as having the meaning given by the Regulations. Section 38 of the Instrument defines vessel or aircraft charter operation for the purposes of this definition.

Section 38 provides that a vessel or aircraft charter operation means an activity (whether consisting of a single act or a series of acts) that involves a vessel or aircraft that is available for charter or hire; that is used in the course of carrying on a business that is, or includes, the provision of accommodation, transport, or services for a purpose other than a tourist program or an educational program; and that travels in or into the Marine Park. However, a person is not conducting a vessel or aircraft charter operation (and therefore in most cases does not require permission to use or enter most zones pursuant to the zoning plan) if they would otherwise meet the elements of the definition but the vessel or aircraft is merely transiting through the Marine Park. This is because the vessel will be spending only a minimal amount of time in the area.

Division 3—Prescribing other matters for the purposes of the Zoning Plan

Section 39 Activities prohibited in zones

Under the Zoning Plan certain activities may be declared in the Regulations for the purposes of the listed paragraphs 2.2.4(o) (General Use Zone), paragraph 2.3.4(o) (Habitat Protection Zone), paragraph 2.4.4(n) (Conservation Park Zone), paragraph 2.5.4(k) (Buffer Zone), paragraph 2.6.4(l) (Scientific Research Zone), paragraph 2.7.4(l) (Marine National Park Zone) and paragraph 2.8.4(b) (Preservation Zone) of the Zoning Plan. The effect of declaring these activities in the Regulations is that the activities are effectively prohibited in the relevant zones (refer to the definition of ‘prohibited’ in the Act). Section 39 prescribes certain activities for the purposes of the abovementioned paragraphs, which the effect that such activities are effectively prohibited in the relevant zones.

Subsection 39(1) sets out that this section applies for the purposes of the listed paragraphs of the Zoning Plan which has the effect of applying this section to the General Use Zone, Habitat Protection Zone, Conservation Park Zone, Buffer Zone, Scientific Research Zone, Marine National Park Zone and the Preservation Zone.

Subsection 39(2) declares the activities of fishing or collecting involving line fishing using more than 6 hooks per line (other than for the purposes of research management of the Marine Park) involving line fishing using more than 6 hooks per line and in relation to paragraph 2.3.4(o) of the Zoning Plan - aquaculture operations that involve the addition of feed.

Paragraph 39(2)(c) declares an activity that results in a contravention of a special management provision.

These activities are prohibited to support the objectives of the Zones.

The Authority considers all fishing or collecting activities (other than for the purposes of research or management of the Marine Park) in the Marine National Park Zone and Preservation Zones to be inconsistent with the objectives set out in the Zoning Plans for those zones, but fishing with more than 6 hooks is expressly prohibited by this section for every zone because it is considered an unacceptable activity anywhere in the Marine Park

A note alerts the reader that the effect of section 39 is that these activities are prohibited in the Zones mentioned in subsection (1) and refers the reader to the definition of prohibited in s 3(1) of the Act, which provides that conduct in a zone is 'prohibited' if the conduct is neither (a) for a purpose for which, under the zoning plan for the zone, the zone may be used or entered without permission; nor (b) for a purpose that, under the zoning plan for the zone, requires permission. Under subsection 38BA(1) of the Act a person commits an offence if they engage in conduct in a zone of the Marine Park, the conduct is prohibited under the zoning plan or requires permission, and no such permission is held. Under section 38BB of the Act, a person must not engage in conduct in a zone of the Marine Park that is prohibited under a zoning plan, or requires permission and no such permission is held.

Section 40 Remote Natural Area—purposes for which the area may not be used or entered

Part 3 (Remote Natural Area) of the Zoning Plan provides for the establishment of the Remote Natural Area to ensure that the Area is recognised and managed for its natural and undeveloped character. The Remote Natural Area consists of the area described in Part 9 of Schedule 1 and any other area designated by the Regulations as part of the Remote Natural Area.

The provisions of the Zoning Plan for the Remote Natural Area are primarily concerned with recreational and tourism use or amenity, and are intended to encourage recognition of the value of the area as remote destinations for low levels of nature-based tourism and private recreation. The Remote Natural Area is also intended to be largely free from structures and permanently moored facilities, and to restrict certain works such as dredging and spoil disposal.

Paragraph 3.3(b) of the Zoning Plan provides, among other things, that despite anything in Part 2 (Zones), but subject to Part 4 (Designated Areas) and Part 5 (Additional purposes for use or entry), the Remote Natural Area may not be used or entered for motorised water sports or for any other purpose declared, for the purposes of this paragraph, in the Regulations.

Section 40 declares, for the purposes of paragraph 3.3(b) of the Zoning Plan, additional purposes for which the Remote Natural Area may not be used or entered. Subsection 40(a) declares carrying out works (other than works relating to navigational aids) involving dumping spoil, or reclamation, beach protection works or harbour works. Subsection 40(b) declares constructing or operating a structure other than a vessel mooring or a navigational aid.

These purposes are additionally declared in support of the objectives of the Zoning Plan for the Remote Natural Area.

Division 4—Special Management Areas and special management provisions

Special Management Areas (SMAs) are areas where specific management may be provided for to restrict use of or entry to a specific area of the Marine Park. The Authority designates SMAs and specifies special management provisions for SMAs through the Instrument. The power to designate SMAs and the power to make special management provisions stems from Part 4 of the Zoning Plan. Special Management Areas are designated under the

provisions of Division 4.2 of the Zoning Plan and prescribed in the Regulations. The objective of the Zoning Plan for Special Management Areas as set out in section 4.2.2 of the Zoning Plan is to provide for restrictions on access to, or use of, specified areas of the Marine Park for conservation or management purposes, including, but not limited to:

- (a) conservation of species;
- (b) conservation of natural resources;
- (c) protection of cultural or heritage values;
- (d) appreciation by the public;
- (e) public safety;
- (f) emergency situations requiring immediate management action;
- (g) restricting access to, or use of, areas of the Marine Park adjoining areas to which access is restricted or prohibited under a law of Queensland or the Commonwealth.

Users of the Marine Park are expected to comply with the special management provisions in the Instrument every time they use or enter a SMA.

Section 41 Purpose of this Division

Section 41 sets out the purpose of Division 4- Special Management Areas and special management provisions. The Division designates SMAs for the purposes of paragraph 4.2.1(1)(b) of the Zoning Plan and special management provisions for the purposes of section 4.2.3 of the Zoning Plan.

Section 42 Interpretation

Section 42 provides direction on the interpretation of Special Management Areas and special management provisions.

It provides that for the purposes of subsection 4.2.3(1) of the Zoning Plan each subsection, except subsection 42(1) in sections 44 to 53 is expressed to be a special management provision.

A note alerts the reader to see sections 38BA and 38BB of the Act for an offence and a civil penalty provision that apply to a person who engaged in conduct that contravenes a special management provision. Paragraph 39(2)(c) declares an activity in breach of a special management provision to be prohibited in the Zones.

Subsection 42(2) provides that a reference in this Division to a particular SMA is a reference to the area of that name as declared in Schedule 5 while subsection (3) provides that a reference in this Division to a particular kind of SMA is a reference to the areas of that kind as declared in Schedule 5.

In the old regulations the descriptions of SMAs are contained within the body of the Regulations, with each individual SMA description being followed by the special management provisions (i.e. the rules) that apply to the relevant SMA. The SMA

descriptions contain geographical co-ordinates and are presented in a tabular format. Some of these descriptions are lengthy, and it was difficult for readers to locate the rules that apply to a particular SMA, as these rules are 'buried' in between the various SMA descriptions.

In the Instrument the SMA descriptions are in a separate Schedule at the end of the Regulations, and combine each SMA declaration and the associated special management provisions in the same section. This improves readability by making the special management provisions easier to locate.

Section 43 Types of Special Management Areas

Paragraph 4.2.1(b) of the Zoning Plan provides, among other things, that the Regulations may designate an area (being part or parts of a Zone, or of more than one zone) as a Special Management Area. Section 43 declares, for section 4.2.1 of the Zoning Plan, the areas designated as Special Management Areas. A SMA may be designated for a number of reasons consistent with the objectives for SMAs contained in 4.2.2 of the Zoning Plan including:

- conservation of a particular species or natural resource, e.g. turtle, bird nesting sites or fish spawning aggregation sites;
- restricting access due to public safety;
- amenity reasons; and
- response to an emergency (e.g. a ship grounding, oil spill or marine pest outbreak).

Section 43 specifies ten different Special Management Areas:

- Species Conservation (Dugong Protection) SMA
- Seasonal Closure (Offshore Ribbon Reefs) SMA
- No Dories Detached (Offshore Ribbon Reefs) SMA;
- Restricted Access SMA;
- Public Appreciation SMA;
- No Dories Detached (Marine National Park Zone) SMA;
- One Dory Detached (Conservation Park Zone) SMA;
- One Dory Detached (Buffer Zone) SMA;
- Natural Resources Conservation SMA;
- Maritime Cultural Heritage Protection SMA.

Section 44 Species Conservation (Dugong Protection) SMAs

Dugong are marine animals which can grow to about 3 metres in length and weigh as much as 400 kilograms. The Marine Park supports globally significant populations of dugong. They are a protected species and while they are threatened on a world wide scale, Australia has a large proportion of the remaining population. This makes Australia the largest, and globally the most important, refuge for dugong. The sensitive ecological status of these animals globally highlights the need for effective management strategies to protect and conserve the Australian population.

Subsection 44(1) designates each area described in clause 1 of Schedule 5 to be a Species Conservation (Dugong Protection) SMA in accordance with that clause. Subsections 44(2) to 44(6) specify the special management provisions that are to apply to the Species Conservation (Dugong Protection) SMAs for the purposes of section 4.2.3 of the Zoning Plan.

The special management provisions target a threat to dugong of capture in commercial fishing nets.

The special management provisions for these SMAs in subsection 44(2) are for the conservation of species (dugong) and reflect the requirements of Dugong Protection Areas under Queensland Fisheries legislation to the extent to which those areas are located within the Marine Park.

Subsection 44(3) reflects a technical amendment introduced into the old regulations in November 2009 to clarify long-standing existing netting rules, by prescribing precise boundaries around coastal headlands where the use of offshore set nets is further restricted to reduce the risk of incidental capture of dugong. This subsection provides that a set mesh net must not be used in an area of waters described in clause 2 of Schedule 5 that are offshore waters (i.e. waters greater than two metres deep at any stage of the tide) unless the net is not longer than 50 metres and is used in accordance with section 121 (Using Set Mesh Nets on a Headland) of the Fisheries Regulation. The intention is that these restrictions, which apply to parts of the Species Conservation (Dugong Protection) Special Management Area, are consistent with Queensland Government restrictions and provide clear definitions of the areas around headlands where these restrictions apply in various Species Conservation (Dugong Protection) Special Management Areas which mirror Queensland's Zone B Dugong Protection Areas (declared under the *Fisheries Act 1994* and the Queensland *Nature Conservation Act 1992*).

Subsections 44(4) to 44(6) reflect amendments to commercial netting rules in the Bowling Green Bay Species Conservation (Dugong Protection) SMA which were introduced into the old regulations in December 2011 to increase protection to dugong within the Bowling Green Bay Species Conservation (Dugong Protection) SMA. The rule changes further restricted commercial net fishing within the existing Species Conservation (Dugong Protection) SMA. A 'No netting (other than bait netting) area' is described in clause 3 of Schedule 5 and in this area no netting activities (other than bait netting) are allowed. A 'Restricted Netting Area' is described in clause 4 of Schedule 5 and in this area larger dimension nets are prohibited, but limited lower-risk netting activities are allowed as provided for in 44(5) and 44(6). These requirements are more restrictive than the Queensland fisheries legislation. Netting is referred to in subsection 44(4) and 44(5) within the ordinary meaning of the word.

The changes were initiated and developed in consultation with local fishers who recognised the need to increase protection to dugong following unsustainable levels of dugong mortalities in the area.

Section 45 Seasonal Closure (Offshore Ribbon Reefs) SMAs

The Ribbon Reefs and adjacent areas are unique, as they are located at a particular part of the continental shelf which drops sharply away from the reef edge. These important areas of reef support diverse species, including large pelagic fish such as marlin.

To support the protection of this unique environment subsection 45(1) designates each area described in clause 5 of Schedule 5 to be a Seasonal Closure (Offshore Ribbon Reefs) SMA in accordance with that clause. Subparagraph 4.2.3(2)(b) provides for Regulations to specify a particular period to which the special management provisions apply.

Subsections 45(2) and 45(3) specify the special management provisions that are to apply to the Seasonal Closure (Offshore Ribbon Reefs) SMAs. Fishing involving the taking of pelagic species by trolling (within the ordinary meaning of the expression) is prohibited during the seasonal closure as is commercial fishing boats having detached dories in the area. The seasonal closure is from 1 January to 31 August each year. Effectively during this period the area becomes a green (no-fishing) zone. It then returns to a Buffer Zone for the remainder of the year. This allows for game fishing to be conducted in the peak periods for this activity. The seasonal closure is intended to achieve a balance between broader biodiversity protection and recreational and charter fishing for game fish during peak periods.

The SMAs and special management provisions designated in these areas provide additional protection to the Ribbon Reefs and adjacent habitats. By restricting the time period for fishing the human impact on fish and their habitats is reduced.

Section 46 No Dories Detached (Offshore Ribbon Reefs) SMAs

Subsection 46(1) designates each area described in clause 6 of Schedule 5 to be a No Dories Detached (Offshore Ribbon Reefs) SMA.

Subsection 46(2) specifies the special management provision that is to apply to the No Dories Detached (Offshore Ribbon Reefs) SMAs, which is that a dory must be physically attached to its primary commercial fishing vessel at all times.

This requirement recognises the unique areas these SMAs cover, as discussed for section 45, and that it is therefore not appropriate for commercial fishing to be conducted in these areas.

Section 47 Restricted Access SMAs

Restricted Access SMAs must not be used or entered without the permission of the Authority. This is in recognition of the critical importance of these areas and and/or the vulnerability of the species that rely on it.

Subsection 47(1) designates each area described in clause 7 of Schedule 5 as a Restricted Access SMA in accordance with that clause.

Subsection 47(2) specifies the special management provision that is to apply to a Restricted Access SMA, which is that a Restricted Access SMA must not be used or entered without permission unless authorised by Part 5 of the Zoning Plan or in accordance with subsections 47(3) to 47(5).

Subsections 47(3) to 47(5) set out exceptions to the special management provision.

Subsection 47(3) provides that the Raine Island, Moulter Cay Reef or the MacLennan Cay Reef Restricted Access SMAs may be entered to navigate a vessel (except a ship, or a managed vessel or aircraft) for access to areas that form part of Queensland subject to certain conditions. These conditions are if any equipment normally used for fishing (within the ordinary meaning of the Act) or collecting (within the ordinary meaning of the expression) is stowed or secured and that access is in accordance with all relevant laws of Queensland as in force from time to time. The intention is that these SMAs are managed in a way that is complementary to Queensland regulation of these areas.

Subsection 47(4) provides that the Australian Institute of Marine Science, or a person acting with its written approval, may enter the Australian Institute of Marine Science Restricted Access SMA for the purpose of an activity associated with the operation of the research station used by the Institute if permission for the activity would not, but for subsection (2), be required under Part 2 of the Zoning Plan or the Institute already holds the written permission of the Authority for the activity. Similarly subsection 47(5) provides that the University of Sydney, or a person acting with its written approval, may enter the One Tree Island Reef (23 055) Restricted Access SMA in similar circumstances as prescribed in subsection 47(4). These exceptions are to allow for important research activities to be conducted in the areas by the relevant institutions.

Section 48 Public Appreciation SMAs

Subsection 48(1) designates that each area described in clause 8 of Schedule 5 is designated to be a Public Appreciation SMA in accordance with that clause.

Subsections 48(2) and 48(3) specify the special management provisions that apply to any Public Appreciation SMA (other than the Whitsunday Public Appreciation SMA that is not in the Conservation Park Zone).

The special management provisions provide that the area must not be used or entered for limited spearfishing, or the conduct of a harvest fishery or aquaculture operations (except in the Fitzroy Island Reef (CP-16-4039) Public Appreciation SMA), unless authorised by Part 5 of the Zoning Plan (additional purposes for use or entry). These provisions are targeted at ensuring the protection and conservation of these areas.

Section 49 No Dories Detached (Marine National Park Zone) SMAs

Subsection 49(1) designates each area mentioned or referred to in Part 6 (Marine National Park Zone) of Schedule 1 to the Zoning Plan to be a No Dories Detached (Marine National Park Zone) SMA.

Dories are vessels used in association with a primary commercial fishing vessel that is either licensed, permitted, or used, to fish on a commercial basis under a Commonwealth, State or Territory law. Dory is a defined term in the Act. The purpose of the SMAs related to dories is both to manage the take of natural resources and to accordingly facilitate compliance.

Subsection 49(2) specifies the special management provision that is to apply to the No Dories Detached (Marine National Park Zone) SMAs. Generally a dory must be attached to

its primary commercial fishing vessel at all times but there are exceptions to this. These exceptions ensure that the provisions do not operate in an overly restrictive or impractical way.

The exceptions are provided for in paragraphs 49(2)(a) to (d). These are where the dory was used to engage in the rescue or attempted rescue of an endangered person, was used to provide assistance to an endangered aircraft, vessel or structure to prevent or mitigate damage to the environment or to the aircraft, vessel or structure, or was used to convey a person on a direct journey from land to its primary commercial fishing vessel or vice versa, and throughout that journey the primary vessel remained within 1 nautical mile of both the dory and the land (not including any coral reefs). It is also an exception where the dory was in the Night Island area specified in the Zoning Plan and stayed within 500 metres of a fishing industry service vessel for which a permission is in force.

Section 50 One Dory Detached (Conservation Park Zone) SMAs

Subsection 50(1) designates each area mentioned or referred to in Part 3 (Conservation Park Zone) of Schedule 1 to the *Zoning Plan* as a One Dory Detached (Conservation Park Zone) SMA.

Subsection 50(2) specifies the special management provision that is to apply to the One Dory Detached (Conservation Park Zone) SMAs, which is that no more than 1 dory is to be detached from its primary commercial fishing vessel in a One Dory Detached (Conservation Park Zone) SMA at any time.

The intention is that commercial fishing is prevented by the prohibition on more than one dory being detached and that it might be reasonable for one dory to be detached in the Conservation Park Zone for example for transportation purposes.

Section 51 One Dory Detached (Buffer Zone) SMAs

The Buffer Zone provides for the protection and conservation of areas of the Marine Park in their natural state, while allowing the public to appreciate and enjoy the relatively undisturbed nature of the area.

Subsection 51(1) designates each area mentioned or referred to in Part 4 of Schedule 1 to the Zoning Plan (i.e. all areas of the Buffer Zone) to be a One Dory Detached (Buffer Zone) SMA, except for the areas described in clause 6 of Schedule 5 (No Dories Detached (Offshore Ribbon Reefs) SMAs).

Subsection 51(2) specifies the special management provisions that are to apply to the One Dory Detached (Buffer Zone) SMAs, which is that no more than one dory is to be detached from its primary commercial fishing vessel in a One Dory Detached (Buffer Zone) SMA either at any time of the year, except cases where a One Dory Detached (Buffer Zone) SMA overlaps with a Seasonal Closure (Offshore Ribbon Reefs) SMA, in which case no more than one dory is to be detached from its primary commercial fishing vessel at any time during the period from September to December (inclusive). The effect of section 45(3) when read in conjunction with section 51(2) is that where a One Dory Detached (Buffer Zone) SMA overlaps with a Seasonal Closure (Offshore Ribbon Reefs) SMA, dories must be attached

during the months of January to August, and only one dory may be detached during the months of September to December.

The Seasonal Closure (Offshore Ribbon Reefs) SMAs and the No Dories Detached (Offshore Ribbon Reefs) SMAs also fall in the Buffer Zone and they have their own special management provisions applying- refer section 45 (Seasonal Closure (Offshore Ribbon Reefs) SMAs and section 46 (No Dories Detached (Offshore Ribbon Reefs) SMAs which should be considered additionally to section 51.

Section 52 Natural Resources Conservation (Mermaid Cove, Lizard Island) SMA

Subsection 52(1) designates the area described in clause 9 of Schedule 5 to be the Natural Resources Conservation (Mermaid Cove, Lizard Island) SMA.

Lizard Island is a high continental island surrounded by fringing reef. Mermaid Cove is at the north end of Lizard Island. The area at Mermaid Cove, Lizard Island is designated as a *SMA* to enable effective restrictions on fishing or collecting activities in that area.

Subsection 52(2) specifies the special management provision that is to apply to the *SMA*. For the purpose of conserving the area's natural resources, and limiting the impacts that may affect scientific values at Lizard Island, a person must not undertake fishing (within the meaning of the Act) or collecting (within the ordinary meaning of the expression) within the *SMA* except if the person is trolling or bait netting for pelagic species, conducting limited impact research (extractive) or conducting research in accordance with a permission.

Section 53 Maritime Cultural Heritage Protection SMAs

Subsection 53(1) designates each area described in clause 10 of Schedule 5 to be a Maritime Cultural Heritage Protection (MCHP) SMA in accordance with that clause. The designated MCHP SMAs comprise two 100 hectare sites in separate areas of the Marine Park, with each site containing the wreck of a Royal Australian Air Force (RAAF) Catalina aircraft (RAAF Catalina A24-24 and RAAF Catalina A24-25).

The definitions for fishing or collecting, underway and wreck, which are relevant to subsections 53(2) and 53(3) are contained in subsection 5(1).

Subsections 53(2) and 53(3) prohibit certain conduct in MCHP SMAs. The effect of 4.2.3(4) of the Zoning Plan is that these prohibitions are subject to the exceptions in Part 5 of the Zoning Plan, which allows zones in the Marine Park to be used or entered in certain circumstances.

Subsection 53(2) sets out that a person must not do the things listed in paragraphs 53(2)(a) to 53(2)(d) unless they have the written permission of the Authority. Under subsections 53(2)(a) and 53(2)(b), persons are prohibited from entering a wreck or approaching within 100 metres of a wreck (other than in a non-submersible vessel or aircraft) in an MCHP SMA without the written permission of the Authority. The reason for this prohibition is to protect any human remains contained in the wrecks and prevent damage to the archaeological fabric of the wrecks. A non-submersible vessel must comply with the other requirements of this section if approaching within 100 metres of a wreck and the purpose must consistent with subsection 53(2)(c) i.e. they must be transiting the SMA.

Paragraph 53(2)(c) provides a person must not operate a vessel in an MCHP SMA without the permission of the Authority other than for the purpose of transiting through the area to a place outside the area. This requirement has the effect of prohibiting vessels from stopping in the area. It is intended to prevent illegal fishers from avoiding prosecution by simply stowing fishing equipment when they see a vessel approaching and claiming to only be stopped in the area.

Paragraph 53(2)(d) provides that a person must also not anchor or attempt to anchor a vessel, or deploy the vessel's anchoring equipment without the Authority's written permission. This provision is intended to prevent damage to wrecks caused by anchoring.

Subsection 53(3) further provides that a person must not engage in fishing (within the meaning of the Act) or collecting (within the ordinary meaning of the expression) in a MCHP SMA.

These special management provisions are intended to protect the historic significance of the Catalina aircraft *wrecks* and to ensure the area is appropriately protected and conserved as a site of cultural heritage.

Section 54 Emergency Special Management Areas

Subsection 54(1) provides the Authority with a mechanism to designate Emergency Special Management Areas for the purposes of subsection 4.2.1(2) of the Zoning Plan. This may be done by legislative instrument without public consultation if the designation is required for a purpose referred to in section 4.2.2 of the Zoning Plan, except paragraph 4.2.2(d) or (g) of the Plan. Emergency Special Management Areas allow the Authority to deal with situations requiring immediate management action.

The examples provided in the Zoning Plan of such possible situations are to restrict access to a site following an oil spill or ship grounding, or the discovery of a living specimen of a species thought to be extinct.

This is a discretionary decision of the Authority and the section provides an appropriate level of guidance for the Authority to exercise this discretion.

Subsection 54(2) provides the designation may be of a part or parts of a zone, or of more than one zone. Subsection 54(3) provides the designation must specify the area to be designated, state the special management provisions that will apply to the area and state the period during which those provisions will apply to the area.

There are public notice requirements contained in subsection 54(4) which require the Authority to as soon as practicable publish a notice of the designation in one or more of the ways set out. These are in a newspaper circulating generally in Queensland, in a local newspaper circulating in the part of Queensland adjacent to the part of the Marine Park that is designated and/or on the Authority's website.

Subsection 54(5) provides that a notice referred to in subsection 54(4) must also state that it is an offence to fail to comply with the special management provisions that apply to the area.

Subsection 54(6) provides that the designation will cease to have effect at the end of the period of 120 days after it commences, unless it has been extended by the Authority under subsection 55(2) in which case it will cease to have effect at the end of the period determined by the Authority. As noted below a designation cannot be extended for more than 60 days so the maximum time for the Emergency SMA to be in place is 180 days.

Section 55 Extension and revocation of designation

Subsection 55(1) allows the Authority to revoke a designation of an Emergency Special Management Area at any time by legislative instrument. Subsection 55(2) allows the Authority to reduce or extend the period of a designation of an Emergency Special Management Area by legislative instrument.

A note alerts the reader that a designation cannot be extended for a period of more than 60 days and refers the reader to see subsection 4.2.1(2) of the Zoning Plan.

Subdivision D—Additional purposes for use or entry

Section 56 Entry to zones for purpose of taking certain protected species

Paragraph 5.3(c) of the Zoning Plan provides that a zone may be used or entered for the purposes of taking animal or plant of a protected species or a strictly protected species only in accordance with a permission, TUMRA, an accredited harvest fishery or for any other purpose prescribed in the Regulations for this paragraph, and in accordance with any limitation prescribed in the Regulations.

Section 56 prescribes the purposes and limitations for which a zone may be used or entered to take an animal or plant of a protected species for paragraph 5.3(c) of the Zoning Plan. It provides an exemption to allow certain protected species to be taken in certain circumstances.

The purposes prescribed are that use or entry can be for the taking of an animal of the species *Solegnathus hardwickii*, *S. dunckeri* or *Sphyrna lewini* (scalloped hammerhead shark). The limitation prescribed is that use or entry for the purposes of taking such species must be in accordance with the Queensland fisheries legislation, as in force from time to time.

A note alerts the reader that the first 2 species mentioned are pipefish, of the family *Syngnathidae*. All other species of that family are otherwise protected (see section 30).

Pipefish are unavoidable bycatch and their continued take is considered sustainable.

The taking of the scalloped hammerhead shark is intended to ensure that their take is not at unsustainable levels and to prevent their being listed as an endangered species in the future. The effect of including the 2 species of pipe fish and scalloped hammerhead sharks in this section is that it allows for the continued take of 2 species of pipe fish and scalloped hammerhead shark in accordance with Queensland fisheries legislation.

Section 57 Directions given following notice of proposed conduct

Subsection 57(1) provides that the section applies for the purposes of paragraph 66(2)(b), (f) and (i) of the Act which are the relevant heads of power for the provision.

Subsection 57(2) provides that the Authority may give a direction to a person, who notifies the Authority in accordance with section 38BC of the Act that they propose to engage in conduct in the zone (including to use or enter the zone), in respect of the person's conduct in the zone. Section 38BC of the Act is an offence provision that applies in circumstances where a person has failed to give a notice required to be given under the Zoning Plan before certain conduct is engaged in. In this regard, section 5.2 of the Zoning Plan is relevant as it provides that a zone may be used or entered for any of the purposes listed in section 5.2(a) to (g) without permission after notification to the Authority, and subject to any directions given by the Authority.

Subsection 57(3) provides the direction may be any direction that is reasonably necessary for the protection or preservation of the Marine Park or property or thing in the Marine Park and must not require a person to remove a structure, landing area, farming facility, vessel, aircraft or other thing that is in the Marine Park. The effect of this is that where a person notifies the Authority in accordance with section 5.2 of the Zoning Plan that the person intends to use or enter a zone for a purpose listed in section 5.2, the content of the directions that may be given under that section of the Zoning Plan are limited by subsection 57(3) of the Instrument. The reason for limiting directions in this way is because directions that are not reasonably necessary for protection or preservation are not considered appropriate, and directions to remove property are already dealt with under section 167 of the Instrument.

An example of a circumstance where such a direction might be issued is where Maritime Safety Queensland notifies the Authority under paragraph 5.2(b) of the Zoning Plan of work to be conducted on navigational aids in the Marine Park. The Authority could then issue directions to Maritime Safety Queensland, for example, about their entry to the Marine Park.

Subsection 57(4) provides that a direction given under subsection 57(2) is declared to be a direction to which section 38DC of the Act applies. Section 38DC of the Act makes it an offence for a person to contravene a direction given to the person by the Authority under the Regulations.

Section 58 Commercial activities on Low Island

Low Island is an island located in the Marine Park approximately 25 kilometres north-east of Port Douglas. It is categorised as a 'Sensitive Location' under the *Cairns Area Plan of Management 1998* and is in the Commonwealth Islands Zone. Eleven Locations or Localities in the Cairns Planning Area are particularly sensitive because they have unique conservation, cultural or scientific values or because of the intensity of existing use. There are special management arrangements in place to protect these values.

Section 58 provides that for the purposes of paragraph 66(2)(b) and (j) and subsection 66(1) of the Act it is an offence for a person to carry on a business on Low Island, if the business involves an activity that is not the selling of materials or services of an educational nature

that relate to the Marine Park or providing guided tours of the island. This in recognition of the area being a Sensitive Location and ensures that any operations on the Island are low key.

Under the old regulations, this section provided that a person must not carry on a business at Low Island except a business that involves (a) selling materials of an educational nature that relate to the Marine Park; or (b) providing guided tours of the island. The unintended effect of this was that a person could potentially carry on a business involving other additional activities as long as the business also involved an activity described in (a) or (b). This section has now been changed to clarify that an offence is committed if a person carries on a business involving any other activity.

The penalty is 50 penalty units.

The provision is drafted to be consistent with A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers (the Guide to Framing Commonwealth Offences). It is appropriately a strict liability offence as it supports the integrity of the regulatory scheme for the environment. It is also important for the offence to be a strict liability offence so that is appropriate to bring it within the infringement notice scheme that is created by the Instrument. It is reasonable for persons, in particular business operators, who use or enter the Marine Park to expect there will be rules that apply and that they need to be familiar with the rules. Business operators can therefore be considered to be placed on notice to guard against the possibility of a contravention. The penalty does not include imprisonment and the fine does not exceed 60 penalty units for an individual.

Division 6- Fishing and related offences

The offences set out in Division 3 have been drafted to be consistent with the Guide to Framing Commonwealth Offences. The provision of strict liability offences supports the integrity of the regulatory regime. Potential offenders are placed on notice to guard against the possibility of contravention by the wide range of notices and information highlighting what is and is not allowed in the various zones of the Marine Park. Notably the offence in section 64 appropriately applies the fault element of recklessness and this is discussed in the notes below on that section.

It is intended that these strict liability offences will have a general deterrent effect which will enhance the effectiveness of the enforcement regime behind the Zoning Plan. The Act and the Instrument each contain offence provisions relating to breaches of provisions contained within the Zoning Plan.

It is important that sections 60 and 61 are classified as offences of strict liability so that they can be infringement notice offences (see Part 16, Division 3). The penalties are up to 50 penalty units which is appropriate for strict liability offences (the Guide suggests they should not exceed 60 penalty units) and also for offence provisions that are included in Regulations. There is no possibility of imprisonment.

Section 59 Purposes of this Division

Section 59 provides that this Division is made for the purposes of paragraphs 66(2)(b) and (i) and subsection 66(11) of the Act. These are the heads of power which support these offence provisions.

Section 60 Conservation Park Zone—fishing offence

Subject to some exceptions the Zoning Plan provides that the Conservation Park Zone may be used or entered for the purpose of fishing or collecting involving limited line fishing.

Section 60 provides that it is a strict liability offence for a person to fish in a Conservation Park Zone using more than 1 hand-held rod or handline or more than 1 hook attached to a line without the written permission of the Authority.

A person therefore commits an offence if they use more than one rod or handline. A person also commits an offence if they use only one rod or handline and there is more than one hook attached to that line.

The penalty is 50 penalty units.

This offence is intended to support the limited opportunity to line fish in the Conservation Park Zone by making it an offence to exceed the limits set out in section 60. It aids in meeting the objective for the Conservation Park Zone, specifically the objectives in relation to 'limited extractive use'. 'Limited line fishing' (1 line and 1 hook) is allowed in Conservation Park Zone without permission while 'line fishing' (3 lines and 6 hooks) is not. This offence provision aids the conservation and management objectives of the Zoning Plan.

Section 61 Marine National Park Zone—fishing or collecting offence

Section 61 provides that it is an offence for a person to engage in fishing (within the meaning of the Act) or collecting (within the ordinary meaning of the expression) in the Marine National Park Zone, where the fishing or collecting is not for a purpose set out in paragraph 2.7.3(b) of the Zoning Plan and the person does not hold a permission authorising the fishing or collecting.

At times through the Instrument clarification is made that the meaning of fishing or collecting is within the meaning of the Act rather than the subsection 5(1) definition in the Instrument. This is to avoid an unintended consequence in that fishing which is not in accordance with the limitations prescribed for the purpose of the Zoning Plan definition of fishing or collecting could have potentially been allowed.

A note alerts the reader that paragraph 2.7.3(b) of the Zoning Plan allows the Marine National Park Zone to be used, without the written permission of the Authority, for activities otherwise permitted by the section or in accordance with an accredited TUMRA and any requirements relating to the operation of that agreement prescribed in the Instrument.

The equivalent regulation 73BA of the old regulations contained an exemption from the restriction on fishing or collecting in circumstances where the fishing or collecting was for a purpose set out in section 2.7.3 of the Zoning Plan, as opposed to just paragraph 2.7.3(b). It was never intended that a person could be exempt from the restriction on fishing or

collecting (within the meaning of the Act) for any of the purposes set out in s 2.7.3 of the Zoning Plan. For example, a person should not be allowed to carry out fishing or collecting in the Marine National Park Zone for purpose of photography, filming or sound recording (under subparagraph 2.7.3(d) of the Zoning Plan) merely because that person happened to be filming or photographing the fishing or collecting (for example, the filming of the take of dugong). The intention is that the only time fishing or collecting should be allowed under paragraph 2.7.3 is under subparagraph (b) which relates to TUMRAs. Accordingly, the exemption in paragraph 61(b) of the Instrument is changed from the old Regulation to clarify this intention. The Instrument now only captures subparagraph 2.7.3(b) of the Zoning Plan, and not any other purpose listed in paragraph 2.7.3.

The penalty for contravening section 61 is 50 penalty units.

Section 62 Dories not under tow or attached in non-fishing areas

The Zoning Plan provides that fishing is not permitted in certain zones of the Marine Park. These include the Scientific Research Zone, Marine National Park Zone and the Preservation Zone. Section 62 adds a further restriction so that in these zones dories are not allowed to be detached from their primary commercial fishing vessel except in circumstances such as an emergency. This restriction is necessary because if dories were allowed to be detached in these areas it would increase the chances of persons on dories engaging in illegal fishing without being detected.

Subsection 62(1) provides that the master of a primary commercial fishing vessel, or a person who holds a licence or other permission permitting a primary commercial fishing vessel to be used to take fish, commits an offence of strict liability if a dory is used in association with the primary vessel and when the dory is in a non-fishing area of the Marine Park, the person does not have the dory under tow by, or attached to, the primary vessel with which the dory is licensed or used.

Subsection 62(2) provides that a person commits an offence of strict liability if the person is in, or on, a dory that is in a non-fishing area of the Marine Park and the dory is not under tow by, or otherwise attached to, the primary commercial fishing vessel with which the dory is licensed or used.

A note alerts the reader that defences to subsections 62(1) and 62(2) are contained in subsection 62(3).

Subsection 62(3) sets out the exceptions where subsections 1 and 2 do not apply. These include where under paragraph 62(3)(a) the dory was in the area described in Part 6 of Schedule 1 to the Zoning Plan as MNP – 13 – 1015 (Night Island) and the dory stayed within 500 metres of a fishing industry service vessel for which a permission is in force. This exception is necessary for logistical and safety reasons in recognition of the fishing industry refuelling barge shelters in the Night Island area.

Additionally, under paragraph 62(3)(b) there is an exception for emergency situations where the dory was engaged in rescuing, or attempting to rescue an endangered person, or was providing assistance to an endangered aircraft, vessel or other structure to prevent or mitigate the occurrence of damage to the environment or to the aircraft, vessel or structure. Any equipment normally used for fishing (within the meaning of the Act) or

collecting (within the ordinary meaning of the expression) must have been stowed or secured for the exemption for rescue/assistance to apply.

It is also a defence to prosecution under paragraph 62(3)(c) where the dory was engaged in transporting a person on a direct journey from land to the primary vessel, or from the primary vessel to land, and at all times the primary vessel remained within 1 nautical mile of both the dory and the land (not including any coral reefs), and any equipment normally used for fishing (within the meaning of the Act) or collecting (within the ordinary meaning of the word) was stowed or secured.

A note alerts the reader that a defendant bears an evidential burden in relation to a matter mentioned in subsection 62(3). Consistent with the Guide to Framing Commonwealth Offences, generally a person seeking to rely on defences and exemptions will bear an evidential burden in proving that the factual circumstances outlined exist. The defences and exemptions are necessary to ensure that certain persons within the regulatory community are not inadvertently captured by the offence provisions in the Instrument, particularly as the exception applies to a strict liability offence where fault is not required to be proven. The burden is appropriately placed on the defendant as it is an offence-specific defence. It is expected that it would not be unreasonably difficult for a defendant to discharge the evidentiary burden in those circumstances whereas it would be costly for the prosecution. The defendant is best placed to raise evidence in support of the defences and this information (such as the event of an emergency coming about or the vessels purpose is staying at Night Island) is likely to be peculiar to the knowledge of the defendant.

It should also be noted that these are minor offences, with a penalty of 50 penalty units or less and with no possibility for imprisonment.

Section 63 Multiple dories in Buffer Zone or Conservation Park Zone – offence by master of vessel, or licence or permission holder, and

Section 64 Multiple dories in Buffer Zone or Conservation Park Zone—offence by person on dory

The Zoning Plan provides, subject to Part 3 (Remote Natural Area) and Part 4 (Designated Areas), for the Conservation Park Zone and the Buffer Zone to be used or entered without permission for certain types of fishing activities. Sections 63 and 64 further restrict the activity of fishing so that in these Zones only one dory can be detached from its primary commercial fishing vessel.

Section 63 provides that a person commits an offence of strict liability if a person is a master, or a licence or permission holder, for a primary commercial fishing vessel and has 2 or more dories in the Buffer Zone, or 2 or more dories in the Conservation Park Zone, detached from the primary vessel.

The offence is directed at limiting commercial fishing in the Buffer Zone and Conservation Park Zone by only allowing one dory to be detached.

The penalty is 50 penalty units.

Section 64 provides that if 2 or more dories licensed, or used, in association with a primary commercial fishing vessel are in the Buffer Zone or 2 or more of the dories are in the Conservation Park Zone, and are detached from the primary vessel, a person on the dory commits an offence if they are reckless as to the fact that the person is in, or on, the dory in the circumstances mentioned in the section.

Recklessness is the appropriate fault element applied to the circumstance of the person being in or on one of the dories that is detached from the primary vessel and is consistent with the Guide to Framing Commonwealth Offences. It is considered that unfairness could arise if the fault element of strict liability was applied as the person on the dory could be unaware that another dory was detached.

The conduct element of the offence is set out in subparagraph 64(b)(iii) being that the person is in or on the dory. This is intended to constitute a 'state of affairs' under the Criminal Code definition of 'conduct'.

The penalty is 50 penalty units.

Division 7—Authorisations relating to Hinchinbrook Planning Area

The Hinchinbrook Planning Area extends from Dunk Island in the north to Halifax Bay in the south and generally about 10 to 20 kilometres offshore. So that the area can remain a spectacular low-key natural destination, there are important management arrangements in place.

Plans of Management complement Marine Park zoning by addressing issues specific to an area, species or community in greater detail than can be accomplished by the broader reef-wide zoning plans. The objectives of Plans of Management are set out in the Act (section 39Y).

The *Hinchinbrook Plan of Management 2004* (the Hinchinbrook Plan) regulates activities in the Hinchinbrook area based on the type and intensity of activity (mostly regulating tourism, and a variety of tour operations) and the specific location in which the activity is undertaken.

Clause 1.28 of the Hinchinbrook Plan sets out the general access rights for tourism operations, with the level of restriction dependent on the type of operation. This is split in to cruise ship, crewed vessel, crewed large vessel and aircraft operations which are classified as either open tour operations or limited tour operations and other operations. There are additional types of operations within the open tour category. If a person does not hold a permission to operate in the Hinchinbrook Planning Area but wishes to, there are a range of types of permissions which may be applied for.

Section 65 Purpose of this Division

Section 65 states that Division 4 provides, for the purposes of paragraph 66(2)(u) of the Act, for authorisations to do something in the Hinchinbrook Planning Area that was permitted by an existing permission in force immediately before 15 April 2004, but is not permitted by the Hinchinbrook Plan. These are referred to as Hinchinbrook Authorisations.

The Authority aims to have complementary management across both Commonwealth and State Marine Parks and Queensland Marine Park waters which form a significant part of Hinchinbrook. The Division allows the Authority to consider if an applicant has met the eligibility criteria under the *Hinchinbrook Plan of Management 2004* and to issue a Hinchinbrook authorisation allowing the permittee to continue to undertake activities, after the *Hinchinbrook Plan of Management 2004* was introduced, instead of issuing a new joint Marine Parks permit. The Hinchinbrook authorisation forms part of the existing permit. This would not fetter any Queensland delegate permit decision in relation to the Queensland Marine Park which may occur at a different time.

A note alerts the reader to the significance of the 15 April 2004, being the date on which Part 2 of the Hinchinbrook Plan commenced.

Section 66 Application for Hinchinbrook authorisation

The purpose of a Hinchinbrook Authorisation is, in effect, to grant a permission holder an exemption from complying with certain provisions of the Hinchinbrook Plan. These authorisations are intended to be used as transitional tools to give people who use the Marine Park time to adjust to the new management arrangements introduced by the Hinchinbrook Plan.

Subsection 66(1) provides that the holder of an existing permission may apply to the Authority for a Hinchinbrook Authorisation to do a thing in the Hinchinbrook Planning Area if, but for clause 2.5, 2.6, 2.9 or 2.18 of the Hinchinbrook Plan, the existing permission would authorise the holder to do the activity in the area on more than 50 days in each year.

Subsection 66(2) sets out the requirements for an application which must be in writing.

Section 67 Asking for more information about application

Subsection 67(1) provides that the Authority may ask an applicant to provide further information that the Authority reasonably needs to consider the application. Subsection 67(2) specifies the time period in which the application will lapse if further information is not provided.

Section 68 Consideration of application

Section 68 sets out what the Authority must take into account in considering an application for a Hinchinbrook Authorisation.

One criterion under paragraph 68(c) is whether the applicant owes any fee or other amount payable under the Act, the Instrument or any other instrument made for the purposes of the Act. In relation to this criterion the relevant instrument does not need to be in force. For example, a fee that is overdue pursuant to the old regulations must be taken into account by the Authority in considering the application for the Hinchinbrook Authorisation.

Section 69 Grant or refusal of Hinchinbrook Authorisation

Section 69 relates to the Authority granting or refusing Hinchinbrook Authorisations. There are mandatory and discretionary aspects in this decision. An appropriate level of statutory criteria to guide the decision maker is included so that the Authority must take into account

a number of considerations in considering an application, including the relevant eligibility criteria set out in the Plan of Management.

Subsection 69(1) provides that the Authority must grant, or refuse to grant a Hinchinbrook authorisation where a person has applied for one and complied with any request for further information about the application.

However, subsection 69(2) prevents the Authority from granting an authorisation to do an activity except to a person who holds an existing permission that would, but for a section of the POM authorise the holder to do the activity.

Subsection 69(3) provides that except in special circumstances, a Hinchinbrook authorisation may be granted only if the application is made before the end of 3 months after the eligibility process commencement day (within the meaning of that expression in the Plan of Management). An authorisation under subsection 69(4) may be granted subject to the conditions in paragraphs 69(4)(a) to (c) including such things as a condition indemnifying the Authority in respect of costs to the Authority that the authorisation holder's activities might incur. Subsections 69(5) and 69(6) require the Authority to give written notice of the decision and set out what that notice must include. A note alerts the reader to see part 15, and sections 64 and 64A of the Act for reconsideration and review rights. The reconsideration and review rights are highlighted to the applicant in the notice in accordance with subsection 69(6) where the application is refused.

Section 70 When condition or refusal has effect

Section 70 sets out when a condition or refusal has effect.

Subsection 70(1) provides that a decision to grant a Hinchinbrook authorisation unconditionally has effect immediately after the holder of the existing permission is told in writing of the decision.

Subsection 70(2) provides that a decision to refuse to grant an authorisation, or to grant an authorisation subject to a condition, has effect 6 months after the holder of the existing permission is told in writing of the decision.

Subsection 70(3) provides that the permission holder may continue to carry on the relevant activity in accordance with the permission until a decision to which subsection 70(2) applies has effect. This gives operators time to adjust their business arrangements if the Authority imposes new conditions on an authorisation or decides to not let the business continue to operate. Additionally, it allows relevant review rights to be exhausted.

Section 71 Hinchinbrook Authorisation is part of permission

Section 71 makes clear that except as otherwise provided in the Instrument, a Hinchinbrook Authorisation is part of the existing permission mentioned in the notice under subsection 71(5) to which it is attached.

This section is not intended to have the effect of additional requirements applying to Hinchinbrook Authorisations because they apply to a permission. For example, the mandatory considerations that the Authority must consider in deciding whether to grant a permission on an application in section 103 are not intended to apply.

Section 72 How long Hinchinbrook Authorisation remains in force

Section 72 provides for how long a Hinchinbrook Authorisation remains in force.

Subsection 72(1) provides that a Hinchinbrook Authorisation remains in force while the existing permission to which it is attached remains in force, or until the authorisation is surrendered or revoked.

Subsection 72(2) provides that a permission holder may surrender a Hinchinbrook Authorisation without surrendering the existing permission to which it is attached. This ensures that surrendering the Hinchinbrook Authorisation does not involve needing to reapply for a permission that relates to other matters.

Section 73 Variation of Hinchinbrook Authorisation in certain circumstances

Subsection 73(1) provides that the Authority may vary a condition to which a Hinchinbrook Authorisation is subject at any time (with the written consent of the holder of the existing permission to which the authorisation is attached) to ensure that the condition is appropriate to achieving the objects of the Act. This ensures that the management of the Hinchinbrook Planning Area is able to respond to emerging issues and the changing management needs for the Marine Park.

Subsection 73(2) provides that the power to vary instruments under subsection 33(3) of the *Acts Interpretation Act 1901* does not apply in relation to a condition to which a Hinchinbrook authorisation is subject. A note alerts the reader that the Hinchinbrook authorisation may be varied under section 129 in certain circumstances. Subsection 73(3) provides that the section does not otherwise affect the power to vary a Hinchinbrook authorisation under subsection 33(3) of that Act. This means that if you vary an instrument other than by varying a condition, subsection 33(3) of the *Acts Interpretation Act 1901* still applies.

Part 3- Permissions

Part 2 of the Zoning Plan provides that some activities and operations involving the use of, or entry into, the Marine Park may only be carried out with a permission. Permissions are granted by the Authority pursuant to the provisions of the Instrument.

Throughout the Instrument, reference is sometimes made to the 'conduct' which is permitted, or proposed to be permitted, by a permission. It is acknowledged that the Zoning Plan uses different language to the Instrument, in that the Zoning Plan refers to use or entry rather than conduct. In the Instrument 'conduct' is used in a way that is intended to include use of, or entry into, a zone therefore references in the Instrument to conduct are still considered to be compatible with the language used in the Zoning Plan.

When a permission is granted by the Authority, the permission is generally documented in a 'permit', which is a document prepared by the Authority detailing the permission(s) granted, any conditions to which the permission is subject, the person to whom the permission is granted (the permission holder or 'permittee'), the area(s) of the Marine Park to which the permission applies and the period during which the permission is in force. A permit document may include one or more permissions.

The primary purpose of the permission provisions contained in the Instrument is to ensure activities requiring permission can be carried out in an ecologically sustainable manner and consistently with the objectives of relevant zones and multiple use principles. The Instrument provides an administrative framework for the permission processing system including provisions governing application, fees, assessment, decision and appeal processes. The Instrument provides that an application for a permission must be assessed against stated criteria.

Division 1- Introduction

Section 74 Simplified outline of this Part

Section 75 Permissions to which this Part applies

Section 75 identifies the permissions to which Part 3 applies. Paragraph 75(1) sets out the permissions that the Part applies to. These are all permissions available under the Act, Instrument and Zoning Plan. Paragraph 75(1)(g) additionally includes a permission for the purpose of subsection 53(2) of this Instrument in relation to a Maritime Cultural Heritage Protection SMA mentioned in subsection 53(1) which is consistent with the intent of the section.

Subsection 75(2) provides that for the avoidance of doubt, a permission referred to in paragraph 75(1)(b) includes a special permission.

Division 2 Applications for permissions

Subdivision A Making applications for permissions

Section 76 How applications for permissions must be made

Subsection 76(1) provides that a person may apply to the Authority for a permission by lodging a written application in accordance with subsection 76(2) or by making an application (whether or not in writing) in the circumstances and manner approved by the Authority. It is expected that generally applications will be in writing however this provision allows the flexibility for the Authority to approve another manner for making an application in certain circumstances. For example, there may be an urgent situation requiring immediate action whereby the Authority may decide it is appropriate to accept the making of an application for a permission verbally over the telephone.

Subsection 76(1) is subject to section 83 (Only certain persons may apply for a special permission) and a note to this subsection alerts the reader that section 83 sets out a process for selecting entitled persons for special permissions and that generally, only entitled persons may apply for special permissions.

Subsection 76(2) details the requirements for written lodgement. Applications are required to be made in a specified form approved by the Authority, include the information required by the form, be accompanied by any documents required by the form, and be lodged at a place or by a means specified in the form.

Subdivision B- Deciding whether applications are properly made

Section 77 Authority must decide whether applications are properly made

It is appropriate for the Authority to firstly determine whether an application has been 'properly made' before taking any further steps to determine what assessment approach should apply to the application.

Subsection 77(1) provides that after receiving an application for a permission the Authority will need to decide if the application was properly made in accordance with section 76 (How applications for permissions must be made). Subsection 77(2) provides the Authority must give notice of its decision to the applicant. The notice must be in writing for an application made under paragraph 76(1)(a). The notice need not be in writing in cases where the application was made in the circumstances and the manner approved by the Authority under paragraph 76(1)(b). For example, where the Authority approved the making of a verbal application over the telephone in urgent circumstances the Authority could give a verbal notice under subsection 77(2) of its decision about whether the application was properly made.

Subsection 77(3) provides that if the Authority decides that the application was not made in accordance with section 76 it generally must not deal any further with the application. This is the case unless it is a continuation application and the matters that caused the application not to be made in accordance with section 76 are rectified within 30 business days from the day stated in the notice of the decision. In such circumstances the Authority may still deal with the application.

Section 77 allows for a permission to continue in force beyond the end of the period specified in the permission if a continuation application is made in certain circumstances. It is appropriate to allow 30 business days for the matters to be rectified in cases of continuation applications because there may be detriment to an applicant if the applicant is not given an opportunity to address the matters and their existing permission is unable to continue in force under section 77 as a result.

There are no review rights in relation to the Authority's decision that an application was not properly made (see section 236). It is reasonable for review rights to be limited in this manner because applicants are well informed through policies and guidelines available on the Authority's website of what is required to make a properly made application and what can be expected in terms of the likely assessment approach. Where an application is rejected as not properly made no fee will have been paid at that stage and the application is easily able to be amended to address defects and resubmitted to the Authority.

The 30 day rectification period for continuation applications is provided for to address the Authority's concern that the lack of review rights could potentially prejudice an applicant in circumstances where there is an existing permission approaching expiry and a continuation application is made. For example, where there is a technical problem in submitting the application. It is not intended that persons are denied the ability to apply to continue an activity due to an oversight or technicality.

Under subsection 77(4), there are specific matters which must be stated in a notice of a decision that an application was not made in accordance with section 76. Of particular importance, the notice must indicate generally the matters that caused the application not to be made in accordance with section 76. This is intended to allow an applicant to gain an understanding of what is needed in order to rectify the defects in their application and either submit a new properly made application or, if the application is a continuation application, rectify the defects within 30 days so that the Authority may deal further with the application.

Subdivision C- Additional information

Section 78 Additional information

Depending on the type of assessment approach adopted the Authority may need to request additional information from the applicant in order to adequately assess the impacts of the activity proposed.

Subsection 78(1) provides that specified additional information or a specified additional document may be requested in writing by the Authority from the applicant for the purpose of making a decision, or decisions, under Part 3. The Authority will often request further information when conducting a tailored assessment as some aspects of the application are likely to require detailed consideration.

Subsection 78(2) provides that the applicant may provide the information or document as part of a report or assessment prepared for the purposes of the EPBC Act, *Environmental Protection Act 1994 (Qld)*, *Queensland planning legislation* or the *State Development and Public Works Organisation Act 1971 (Qld)*. This is intended to apply where there are multiple approval processes underway under different legislation in order to save the applicant of

having to prepare a separate document in cases where the information is already contained in an existing document.

Subsection 78(3) 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 in accordance with section 253, the application is taken to have been withdrawn.

Subsection 78(4) prevents the Authority from requesting additional information after deciding that the assessment approach of routine assessment must be used for assessing the relevant impacts of the proposed conduct unless the Authority has revoked that decision. The expectation with a routine assessment is that the applicant will only need to provide the Authority with the information requested on the application form and that that information will allow the Authority to predict the impacts of the activity with a high level of confidence.

Subdivision D Withdrawal of applications

Section 79 Withdrawal of applications, and

Section 80 Withdrawals of EPBC referral deemed applications

Sections 79 and 80 relate to withdrawal of applications for permissions.

Section 79 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. This is subject to section 80.

Section 80 relates to the withdrawal of EPBC referral deemed applications. The term EPBC referral deemed application is defined in subsection 5(1).

Subsection 80(1) sets out the events that will lead to EPBC referral deemed applications being taken to be withdrawn and the point in time at which such applications will be taken to be withdrawn. This subsection essentially links to events in the EPBC Act resulting in the corresponding referral no longer proceeding. Subsection 80(2) sets out the circumstances in which an EPBC referral deemed application will be reinstated, which are generally linked to the reinstatement of the corresponding referral under the EPBC Act. Subsection 80(3) ensures that an application is not inadvertently reinstated under subsection 80(2) in circumstances where the application has been taken to be withdrawn for reasons not related to the EPBC Act under sections 101 (withdrawal of application for failure to advertise an application for public comment) or 102 (Authority may require action on assessment process and declare application withdrawn for failure to comply) or where the application lapsed under section 204 (lapsing of application for permission).

A note to the table in subsection 80(1) alerts the reader that subdivision D of Division 4 also treats an application as withdrawn if the Authority decides the application is to be assessed by public information package, public environment report or environmental impact statement and the applicant does not promptly follow the processes for that assessment. This is in support of the efficient treatment of applications for assessment.

Subdivision E Applications for special permissions

Section 81 Purpose of Subdivision

Section 81 describes the purpose of Subdivision E as being to provide for the process of seeking expressions of interest in relation to applications for special permissions, and to set out how expressions of interest are to be ranked in order for the person submitting the expression of interest to be declared an entitled person.

Prior to the introduction of this Subdivision, applications were assessed by default on a first-come, first-served basis. When permissions were first capped through Plans of Management and then the old regulations, permittees usually had to meet eligibility criteria to retain the capped permission. This process allows for a more equitable way to offer any unallocated capped permissions. These can be new permissions or permissions returned to the Authority due to the permission not being continued because it was revoked or the application was withdrawn or refused.

A note alerts the reader that generally, only entitled persons can apply under section 76 for a special permission. This assists the reader to understand the significance of a person being declared an entitled person and therefore eligible to apply for a special permission.

Section 82 Meaning of special permission

Section 82 sets out the permissions that are special permissions. Relevantly, subsection 5(1) defines special permission and special tourism permission.

Special permissions allow operators to conduct tourist programs or operate private facilities that have been limited under Plans of Management or the Instrument. Special tourism permissions are a form of special permission generally relating to capped activities in the Cairns, Hinchinbrook and Whitsunday Planning Areas and usually allow operators to continue to do something that was permitted before Plans of Management came into effect, but which is no longer generally permitted under the provisions of the Plan. These also include the special tourism permissions that were capped but not allocated through the Plan of Management (e.g. new Regional Tour Operations for Traditional Owners). The tourism activity of swimming with dwarf minke whales is also a special tourism permission as it is limited by section 107.

Permit holders can apply to continue or transfer existing special permissions, all other special permissions are only available through an allocation process initiated by the Authority.

Section 82 provides that the following permissions are special permissions: a special tourism permission (82(1)); a permission to operate a heli-pontoon facility of the kind mentioned in subclause 1.37(2) of the *Cairns Area Plan of Management 1998* (82(2)); a permission to operate a private mooring if the private mooring meets the criteria set out in paragraphs 82(3)(a) to (c).

As a consequence of being special permissions these permissions will be subject to the expression of interest process under Subdivision E.

Section 83 Only certain persons may apply for special permission

Subsection 83(1) provides that, despite subsection 76(1), a person may apply for a special permission if they are either an entitled person or covered by subsection 83(3), in relation to the special permission in question, as a person not required to be an entitled person.

The permission applied for in this subsection 83(1) must be the same as the one referred to in section 83(3). The intention is to allow for an application for continuation of a special permission to be made by the existing permittee for the same permission, or to allow for an application for a special permission to be transferred from one party to another, without the need for the applicant seeking renewal, or proposed transferor or transferee, to first be declared an entitled person.

Subsection 83(2) provides that the Authority may declare a person to be an entitled person for a special permission only if the permission is available to be granted under a Plan of Management or the Instrument, and either has not been granted previously or if granted previously- will not be in force at the time the entitled person is granted the applied-for permission under section 111 (Grant or refusal of permission).

Note 1 alerts the reader that a permission might no longer be in force because the period specified in the permission has ended or the permission has been surrendered or revoked. This assists the reader to understand the circumstances where a special permission may have been granted previously but is no longer in force and can therefore still potentially be reallocated by the Authority to a new permittee.

Note 2 alerts the reader that the process of seeking expressions of interest must occur before the granting of the special permission, except if subsection 83(3) applies, and to see section 84 (Invitations for expressions of interest). This assists the reader to understand the processes in relation to the granting of special permissions.

Subsection 83(3) provides that a person is not required to be declared an entitled person under this Subdivision for a special permission in certain circumstances. These include where the person holds a special permission and, before the end of the permission as specified in the permission, the person applies under section 76 (How applications for permissions must be made) to replace the permission with a permission of the same kind. Alternatively, a person may apply without being an entitled person if they held a special permission and after the end of the specified period the person applied under section 76 to replace the permission with a permission of the same kind and the Authority decides to treat the application as having been made before the end of the specified period. A person may also not be required to be declared an entitled person where the permission is transferred to the person under section 123 (Approval of transfer).

Subsection 83(4) provides that the Authority has the discretion to treat a late application by a permittee for continuation of their special permission as having been made before the special permission ends if the Authority considers that special circumstances specified in writing by the applicant justify its doing so. For example, there may be occasions where unforeseen circumstances arise which prevent a permittee from making a renewal application in time.

Section 84 Invitations for expressions of interest

Section 84 provides the process for the inviting expressions of interest for special permissions.

Subsection 84(1) provides that before a special permission is granted under section 111 the Authority must publish a notice, defined as an EOI notice, inviting expressions of interest in the permission. This does not apply if the special permission is to be granted to a person covered by section 83(3) as those persons are exempt from the requirement to be declared an entitled person.

Subsection 84(2) provides where the EOI notice must be published. It must be published on the Authority's website as well as in a newspaper circulating in an area of Queensland adjacent to the part of the Marine Park in which the conduct, for which permission is sought, is to occur. This later requirement aims to raise local awareness of the Authority's intention to grant a special permission and encourage local operators to submit expressions of interest.

Subsection 84(3) provides what must be set out in the EOI notice. The list includes such things as the procedure for expressing an interest, the closing date for the expression of interest and the criteria to be applied by the Authority in assessing an expression of interest. This is intended to ensure that persons who may be interested in submitting an expression of interest are able to gain a clear understanding of how they should go about drafting and submitting an expression of interest.

In accordance with subsection 84(4) the EOI notice must be published at least 10 business days before the closing date for the expressions of interest. This is to allow sufficient time for interested persons to prepare their expressions of interest.

Section 85 Consideration of expressions of interest to determine entitled person

Subsection 85(1) provides that in deciding if a person is an entitled person for a special permission under section 87 (Declaration of entitled person) the Authority must only consider expressions of interest lodged in the correct form and time frame, and accompanied by the lodgement fee.

Subsection 85(2) provides that in considering an expression of interest the Authority must have regard to the criteria mentioned in paragraph 84(3)(e) being the criteria set out in the *EOI notice* to be applied by the Authority in assessing the expression of interest.

Section 86 Ranking expression of interest

Section 86 provides for the process of ranking expressions of interest for special permissions.

Discretion is given to the Authority to develop its own criteria for assessing applications however the criteria is required to be published in the notice inviting expressions of interest under section 84 (Invitations for expressions of interest). Once criteria is published, the

Authority is then required to base its decisions on the criteria. The Authority has approved and published generic criteria of this nature available at www.gbrmpa.gov.au.

Subsection 86(1) provides that for each kind of special permission that has more than one expression of interest relating to it the Authority must rank each expression of interest that satisfies all the criteria mentioned in the EOI notice in order of merit on the basis of those criteria; and may rank by ballot any expressions of interest that are of equal merit; and must not rank any expression of interest that does not satisfied all of the criteria mentioned in the EOI notice.

Subsection 86(2) provides for the circumstance of there being only one expression of interest that satisfies all the criteria in relation to an EOI notice and provides that that expression of interest will be the highest ranked expression of interest.

Subsection 86(3) provides that for expressions of interest that are not the highest ranked or that are not ranked, the Authority, on completion of the ranking process, must give notice to the person of this. Subsection 86(4) provides that the notice must set out the reasons for the Authority's decision in relation to the expression of interest and subsection 86(5) provides that the Authority must give the notice to the person within 20 business days after making the decision.

Section 87 Declaration of entitled person

Section 87 provides that the Authority must as soon as practicable after ranking expressions of interest declare in writing the entitled person for the special permission to be the person who lodged the highest ranked expression of interest.

A note alerts the reader that the Authority might declare more than one person to be the entitled person if a person previously declared to be the entitled person ceases to be an entitled person under section 89 (Ceasing to be an entitled person). This assists the reader to understand the process that will apply in the event that the first declared entitled person ceases to be the entitled person.

Section 88 Giving declaration to entitled person

Section 88 sets out requirements for the Authority giving to the entitled person a declaration under section 87 (Declaration of an entitled person) that they are the entitled person for a special permission.

Subsection 88(1) provides that the declaration is to be given to the person as soon as practicable after the Authority ranks the person's expression of interest as the highest ranked or the person's expression of interest becomes the highest ranked expression for the permission as a result of another person ceasing to be an entitled person under section 89.

Subsection 88(2) sets out information that the declaration must include such as the date that the declaration takes effect and the timeframe within which the entitled person must make an application for the special permission in order to remain the entitled person. Subsection 88(3) provides that this day must not be before the day the declaration is given to the person.

Section 89 Ceasing to be an entitled person

Subsection 89(1) sets out the circumstances in which a person declared to be an entitled person under section 87 (Declaration of an entitled person) will cease to be an entitled person. This includes, among other things, such circumstances as where the person fails to apply for the special permission within 15 business days after the date they were declared an entitled person, the person withdraws an application made for the special permission under section 76 (How applications for a special permission must be made) or an application made for the special permission is refused under section 111 (Grant or refusal of permission).

Subsection 89(2) provides that if a person, being the previously entitled person, ceases to be an entitled person under subsection 89(1) then the person whose application for a special permission was ranked immediately after for section 87 will be taken to have lodged the most highly ranked expression of interest. It is intended that the process set out in sections 87 and 88 (Giving declaration to entitled person) would then be repeated for the new most highly ranked person, so that they are declared to be the new entitled person and notified accordingly.

Division 3 Assessment of impacts of proposed conduct

Subdivision A Deciding on approach for assessment

Section 90 Application of this Subdivision

Section 90 sets out the application of Subdivision A.

Subdivision A applies in circumstances where the Authority has received an application for permission and has either decided that the application was properly made or, if the application is a continuation application and the Authority decided it was not a properly made application, the applicant rectified the deficiencies in the application within 30 business days.

Generally speaking this means that the Subdivision only applies to applications that are properly made and are able to be further considered for assessment.

Section 91 Authority must decide on approach for assessment

Section 91 provides that the Authority must, before considering whether to grant or refuse the permission, decide on the assessment approach to be used for assessing the impacts of the proposed conduct. The section also allows the Authority to revoke a decision on the applicable assessment approach and to substitute it with a new decision to apply a different assessment approach in certain circumstances.

Subsection 91(1) requires the Authority to decide on one of five possible assessment approaches for assessing an application for a permission, being either routine assessment, tailored assessment, assessment by public information package, assessment by public environment report or assessment by environmental impact statement.

These approaches are intended to be in harmony with the EPBC Act approaches. The detail and rigour of the assessment process will be commensurate with the scale, risk level,

complexity and potential impacts of the proposed activity. There is a Memorandum of Understanding in place between the Authority and the Department of Environment and Energy which sets out how the two agencies will work together to assess activities which require assessment under both the EPBC Act and the Act. Further information about these assessment approaches is provided in guidelines and policies made publicly available on the Authority's website at www.gbrmpa.gov.au.

The routine assessment approach, in conjunction with section 252 (Use of computer programs to make decisions etc.) allows the Authority to streamline the assessment of low risk applications by arranging for the use of computer programs to make decisions on certain types of applications which will automatically attract the routine assessment approach. Other low risk applications that do not qualify for routine assessment are assessed by way of tailored assessment, with the difference being that the Authority will have the ability to request further information from an applicant pursuant to section 78 when conducting a tailored assessment but not in relation to a routine assessment. A note alerts the reader to the ability to do this for tailored assessments or assessments under Subdivision B or C.

Detailed procedural steps apply under the Instrument to assessment by public information package, public environment report and environmental impact statement under Division 3. Public comment is required to be sought for these approaches. The Authority may decide on an assessment approach that requires an applicant to seek public comment on their proposal if the Authority considers that the granting of the permission may restrict the reasonable use by the public of a part of the Marine Park. For example, the installation of a new facility within the Marine Park may restrict the public's reasonable use of an area and as such these applications will generally attract an assessment approach that requires the applicant to seek public comment.

Subsection 91(2) allows the Authority to revoke a decision on the applicable assessment approach and substitute it with a new decision to apply a different assessment approach in circumstances where new information becomes available to the Authority which justify the making of a new decision. For example, responses to a native title notification given pursuant to the *Native Title Act 1993* may indicate the proposed conduct is likely to have a higher risk to the cultural heritage values of the Marine Park than what was initially apparent. In such circumstances the Authority would be able to revoke its original decision and substitute it with a new decision to apply a more stringent assessment approach.

Section 92 Considerations in deciding on approach for assessment

Section 92 sets out the matters that must be taken into account by the Authority in deciding on the applicable assessment approach.

Under paragraph 92(a) the Authority must consider information the Authority has about the relevant impacts of the proposed conduct (including information about the scale and complexity of those impacts). The Authority does not need to consider this information in detail, as that will be done once the assessment is underway.

Under paragraph 92(b) the Authority must consider whether provisions of the Instrument require consideration of matters other than those set out in section 103 (Mandatory

considerations in deciding whether to grant permission) in deciding whether to grant the permission or may limit the circumstances in which the permission may be granted. For example, it may be apparent that matters such as those mentioned in sections 104 to 109 will need to be considered, which would make the assessment of the application likely to be more than just 'routine'.

Under paragraph 92(c) the Authority must consider any relevant policies published by the Authority under subsection 7(4) of the Act. The Authority has published a range of policy documents on its website at www.gbrmpa.gov.au which include guidance on determining the appropriate assessment approach.

Under paragraph 92(d), if the application is an EPBC referral deemed application, the Authority must consider any decision that has been made by the Minister under subsection 87(1) of the EPBC Act on the applicable assessment approach under that Act. Generally, the Authority conducts assessments of applications that attract an assessment under the EPBC Act jointly with the Minister and the Department of the Environment and Energy.

A note explains to the reader the reasons why the Authority may have information about the relevant impacts of the proposed conduct. This note highlights that the Authority is open to use the information available to it when deciding on an approach for assessment.

Subdivision B Assessment by public information package

Subdivision B relates to assessment by public information package and subdivision C relates to assessment by public environment report or environmental impact statement. There is no subdivision relating to routine assessment and tailored assessment. This is because it is not considered that there is a need for a set process for these type of assessments. It is expected that they will be more routine and will not require the same level of analysis prior to a decision being made.

The Authority's intention is to assess applications by public information package where:

- the proposed activity may have a moderate impact on the values of the Marine Park, or on the public's reasonable use of the Marine Park, which may occur at a local scale; or
- the applicant may have matters related to their suitability to hold a permission for the proposed conduct which require detailed consideration.

Section 93 Application of this Subdivision

Section 93 confirms that Subdivision B only applies in circumstances where the Authority has decided that assessment by public information package applies to an application for a permission for the purpose of assessing the relevant impacts of the proposed conduct. However, the Subdivision does not apply where the Authority made such a decision initially, but subsequently revoked that decision and substituted it with a new decision to apply a different assessment approach.

Section 94 Publication of information and advertisement

Consistent with the permissions process being transparent and taking account of the views of interested parties in the assessment of the application there are requirements for the advertising of the application to provide opportunity for public comment.

Subsection 94(1) requires the Authority to give an applicant written terms of reference (the PIP Terms) for publishing, within a specified period, specified information relating to the application and an advertisement inviting interested persons to make written comments about the application to the Authority. The period for comment must not be less than 20 business days. There are requirements setting out the manner in which comments are to be given and publication requirements for the advertisement.

Paragraph 94(1)(b) allows the Authority to additionally decide to include in the PIP terms other steps that must be taken by the applicant to seek comments about the application, and under subsection 94(2) the Authority may require the publication of the public advertisement in other ways. For example, where a project is likely to impact on Traditional Owner heritage values of the Marine Park, the Authority would be likely to specify additional consultation and advertising requirements in the PIP terms pursuant to paragraph 94(1)(b), in order to ensure that relevant Traditional Owners are adequately consulted, as this may not be achieved by the minimum requirements for the PIP terms set out in subsection 94(2).

Subsection 94(3) provides the applicant must give the Authority a copy of the advertisement before they publish it and subsection 94(4) provides the Authority must publish the advertisement on its website. This is to maximise the chances that relevant stakeholders will see the advertisement.

Section 95 Dealing with response to publication of information and advertisement

Section 95 provides what the PIP terms may require the applicant do after the public advertisement process is complete in response to any public comments received.

Subsection 95(1) states that PIP Terms can provide for dealing with any public comments received or for dealing with circumstances where no such comments are received. Otherwise, the default position under subsection 95(2) is that the applicant must deal with any comments received in a document that must be given to the Authority or, if no comments are received, give a document to the Authority stating this fact.

Section 96 Applicant to act in accordance with PIP terms

Section 96 provides that the applicant must act in accordance with the PIP Terms.

The likely consequences of failing to act in accordance with the PIP Terms is that the application for the permission will be taken to have been withdrawn. A note has been included to alert the reader that this can occur under section 101 (if the applicant does not publish the advertisement within the period specified in the PIP Terms), or under section 102 if the applicant has delayed in complying with the PIP Terms and subsequently does not comply with a notice given by the Authority to satisfy the Authority that assessment of the application should continue. See the discussion of sections 101 and 102 below.

Subdivision C Assessment by public environment report or environmental impact statement

Under the old regulations there were two subdivisions which dealt separately with assessment by public environment report or by environmental impact statement. To avoid unnecessary duplication the two old subdivisions have been combined to form the new Subdivision C.

The Authority may consider assessment by public environment report to be appropriate where the activity is characterised by

- Not meeting the criteria for a routine activity
- May have a moderate to major impact on the values of the Marine Park and or the public's reasonable use of the Marine Park
- Significant impacts are likely to occur at a local scale or may occur at a regional scale

The Authority may consider assessment by environmental impact statement to be appropriate where the activity is characterised by

- Not meeting the criteria for a routine activity
- May have a major to extreme impact on the values of the Marine Park and/or on the public's reasonable use of the Marine Park.
- Significant impacts are likely to occur at a regional scale and may occur across multiple regions.

Section 97 Application of this Subdivision

Section 97 provides that Subdivision C applies in circumstances where the Authority has decided under section 91 (Authority must decide on approach for assessment) that if assessment by public environment report or environmental impact statement applies to an application for a permission, that assessment by public environment report or environmental impact statement must be used for assessing the relevant impacts of the proposed conduct. However, the Subdivision does not apply where the Authority made such a decision initially, but subsequently revoked that decision.

Section 98 Terms of reference for public environment report or environmental impact statement

The requirements set out in section 98 are generally based on the relevant provisions of the EPBC Act that relate to terms of reference for public environment reports and environmental impact statements, with the intention that this is an equivalent process that is capable of operating in harmony with the EPBC Act in cases where both pieces of legislation apply to proposed conduct.

Subsection 98(1) requires the Authority to give an applicant written terms of reference. At a minimum, under paragraphs 98(a) - (c) the terms of reference must be, for preparing a draft public environment report or draft environmental impact statement, about the relevant impacts of the proposed conduct (the draft document), obtaining the Authority's approval to publish the draft document, and the publishing and advertisement of the draft document. The public comment period specified in the terms of reference must not be less

than 20 business days, which is consistent with the public environment report and environmental impact statement assessment processes under the EPBC Act.

Additionally, under paragraph 98(1)(d) the Authority may decide to include in the terms of reference other steps that must be taken by the applicant to seek comments about the draft document or the proposed conduct. For example, where a project is likely to impact on Traditional Owner heritage values of the Marine Park, the Authority would be likely to specify additional consultation and advertising requirements in order to ensure that relevant Traditional Owners are adequately consulted.

Under paragraphs 98(1)(e) - (g) the terms of reference must address how public comments are to be dealt with and include certain requirements for finalising and publishing the draft document.

A note alerts the reader that this section and section 99 (Publication of proposed conduct advertisement by the Authority) do not apply if the application is an EPBC referral deemed application and under section 100 (Alternative procedure for EPBC referral deemed application), the Authority notifies the applicant that guidelines given to the applicant under section 96A or 101A of the EPBC Act also apply for the purposes of assessing the relevant impacts of the proposed conduct. The intention is that in such cases the relevant guidelines will effectively replace the terms of reference and publication requirements which would have otherwise applied pursuant to sections 98 and 99.

Under subsection 98(2) the terms of reference must set out requirements for the content and presentation of the draft document. This subparagraph is not intended to require the terms of reference to be highly prescriptive about the format of the draft document however it should allow the terms of reference to ensure that the format of the draft document meets an adequate standard.

Subsection 98(3) imposes a requirement on the Authority in preparing the terms of reference to seek to ensure that the draft report will contain enough information to allow readers to sufficiently understand what is being proposed and make informed comments, as well as allowing the Authority to make an informed decision pursuant to section 111 about whether or not to grant the permission sought.

Subsection 98(4) states that the terms of reference must require the advertisement to be published in a newspaper circulating in an area of Queensland adjacent to the part of the Marine Park in which the proposed conduct is to occur. Additionally, the terms of reference may also require publication in other ways. For example, in relation to the example above about Traditional Owners heritage values above this may trigger further publication requirements to ensure all relevant people are aware of the proposed conduct.

Subsection 98(5) provides that the applicant must act in accordance with the terms of reference. A note alerts the reader to the likely consequence of failing to act in accordance with the terms of reference, being that the application for the permission will be taken to have been withdrawn. This can occur under section 101 (if the applicant does not publish the advertisement within the period specified in the terms of reference), or under section 102 if the applicant has delayed in complying with the terms of reference and subsequently does not comply with a notice given by the Authority to satisfy the Authority that

assessment of the application should continue. See the discussion of sections 101 and 102 below.

Section 99 Publication of proposed conduct advertisement by Authority

Subsection 99(1) requires the applicant to give the Authority a copy of the proposed conduct advertisement before the applicant publishes it.

Subsection 99(2) states that the Authority must publish the advertisement on its website. This is to maximise the chances that relevant stakeholders will see the advertisement.

A note alerts the reader that this section does not apply where the application is an EPBC referral deemed application and under section 100 (Alternative procedure for EPBC referral deemed application), the Authority notifies the applicant that guidelines given to the applicant under the EPBC Act provisions also apply for the purposes of assessing the relevant impacts of the proposed conduct. Additionally, section 98 (Terms of reference for public environment report or environmental impact statement) also does not apply in this circumstance.

Section 100- Alternative procedure for EPBC referral deemed application

Section 100 provides for where an application is an EPBC referral deemed application and the Authority has decided that either assessment by public environment report (PER) or environmental impact statement (EIS) is appropriate and guidelines have been issued under the relevant provisions of the EPBC Act. This may be appropriate in most cases, as it is likely the Authority would be consulted by the Minister or the Department of the Environment and Energy on the preparation of the guidelines under the EPBC Act and therefore those guidelines are likely to address matters that are relevant to the application under these Regulations.

The Authority may give the applicant written notice of this under subsection 100(2) and subsection 100(3) provides that if such notice is given, sections 98 (Terms of reference for public environment report or environmental impact statement) and 99 (Publication of proposed conduct advertisement by Authority) do not apply and the applicant must act in accordance with the guidelines.

Irrespective of whether or not PER or EIS Guidelines under the EPBC Act are adopted, the public environment report or environmental impact statement prepared under the Instrument must deal with the proposed conduct and the relevant impacts of the proposed conduct that is to occur in the Marine Park, separately to any other proposed conduct that is the subject of the EPBC referral. This is because it can be difficult for the public to make informed comments about the application, and the Authority to make an informed decision about whether or not to grant the permission sought, in circumstances where the public environment report or environmental impact statement does not distinguish between the conduct that is to be carried out in the Marine Park and any other conduct that may form part of the EPBC referral.

A note alerts the reader that the Authority may declare that the application is taken to be withdrawn if the applicant delays acting in accordance with the guidelines (see section 102).

Subdivision D Application treated as withdrawn for delay in following assessment processes

Section 101 Withdrawal of applications for failure to advertise for public comment

Section 101 provides that an application is taken to have been withdrawn if an applicant is required under this Division to publish an advertisement inviting public comment and does not do so within the required timeframe.

Section 102 Authority may require action on assessment process and declare application withdrawn for failure to comply

Section 102 applies if the Authority has decided on one of the assessment processes and the applicant does not comply with it in a reasonable period. It is based on section 155 of the EPBC Act. In this circumstance, the Authority may give a written notice to the applicant inviting them to satisfy the Authority that the assessment should continue. If the applicant fails to do this the Authority may declare the application to be withdrawn and must provide the applicant with a copy of this declaration.

Under Subdivisions A-C there are a number of steps that an applicant will be required to take as part of the applicable assessment process which will not have a particular timeframe attached. For example, where an assessment is to be carried out by way of public environment report or environmental impact statement it may be that following public advertising there may not be a specific timeframe within which an applicant is required to deal with public comments (or the fact that no comments are received), and finalise and publish the final report. It is anticipated that applicants will carry out such steps within a reasonable timeframe and will not unduly delay progressing an application. In the event that there appears to be an unreasonable delay by an applicant, section 102 is intended to apply.

Under subsection 102(1), section 102 applies where an assessment is being carried out by way of public information package, public environment report or environmental impact statement; and the applicant does not comply with the relevant Subdivision (either Subdivision B or C) within a period that the Authority believes is reasonable.

What is reasonable will depend on the circumstances. Subparagraph 102(1)(b) requires the Authority to have regard to the nature and relevant impacts of the proposed conduct and any comments about the application or the proposed conduct that have been received in response to any action taken under Subdivision B (Assessment by public information package) or Subdivision C (Assessment by public environment report or environmental impact statement).

If the proposed conduct is, for example, for the construction and operation of a large facility, the relevant impacts are likely to require significant investigation by the applicant. In addition, there may be significant public comments and the proposal is likely to be a controlled action under the EPBC Act. It is possible that a reasonable timeframe for certain action on the assessment process could exceed one year. On the other hand, if the proposed conduct is for installation of a small, uncontroversial facility (such as a mooring) in

the Marine Park, then certain actions on the assessment process could only take a few months. The Authority upon commencement of the Instrument will provide guidance to applicants about what is reasonable in policy documents published on the Authority's website www.gbrmpa.gov.au.

If section 102 applies, subsection 102(2) allows the Authority to give the applicant a written notice inviting the applicant to satisfy the Authority within a specific reasonable period that the assessment of the application should continue. For example, where the applicant has not for a number of years taken any steps to progress an application following public advertising, the Authority might decide to write to the applicant inviting the applicant to satisfy the Authority that the assessment should continue by finalising and publishing the report within a specified reasonable period. If the applicant does not then subsequently finalise and publish the report within that period, or satisfy the Authority that the assessment should continue notwithstanding the fact that the report has not been finalised and published within that period, the Authority may not be satisfied that the application should continue. It may be that the applicant is able to provide good reasons why it is not reasonable to expect the applicant to finalise and publish the report within the period, such as evidence of circumstances that are beyond the applicant's control.

Subsection 102(3) provides that if, by the end of the specified period, the applicant fails to satisfy the Authority that assessment of the application should continue, the Authority may declare in writing that the application is taken to be withdrawn on a day specified in the declaration (which must not be earlier than the day the declaration is made).

Subsection 102(4) confirms that the declaration has effect for the purposes of this Part according to its terms and subsection 102(5) confirms that the Authority is required to give a copy of the declaration to the applicant.

Division 4 Consideration of applications

Section 103 Mandatory considerations in deciding whether to grant permission

Section 103 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. The content requirements for an application are explicit. 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.

Paragraph 103(a) states that if the proposed conduct will take place in a zone, the Authority must consider the objectives (if any) of the Zoning Plan for the zone.

Paragraph 103(b) requires the Authority to consider any legislative instrument (or a provision of a legislative instrument) that applies to a specific area of the Marine Park where the proposed conduct is to take place.

A note provides the reader with examples of legislative instruments under the Act other than the Instrument, being a zoning plan and a Plan of Management. Examples of provisions

are special management provisions of the Instrument for SMAs and section 187 (Protection of whales in whale protection areas).

Paragraph 103(c) sets out the suitable person requirements. It requires the Authority to consider whether the applicant is a suitable person to hold a permission for the proposed conduct and sets out the matters the Authority must have regard to in order to determine this. Among other things, the Authority must consider the applicant's capacity to engage in and manage the proposed conduct to the satisfaction of the Authority.

Subparagraph 103(c)(v) requires that the Authority should have regard to whether the applicant owes any fee or other amount payable under the Act, the Instrument or any other instrument made for the purposes of the Act in determining whether the application is a suitable person to hold a permission for the proposed conduct. The instrument that the fee is payable under does not need to be in force and would include the old regulations. In addition to the specified matters, under 103(c)(vi) the Authority may consider any other relevant matter. The Authority therefore has certainty that it can consider other matters, such as evidence that an applicant has previously engaged in unsafe practices relevant to the proposed conduct.

Paragraph 103(d) requires the Authority to consider the requirement in section 37AA of the Act for users of the Marine Park to take all reasonable steps to prevent or minimise harm to the environment in the Marine Park that might or will be caused by the user's use or entry.

Paragraph 103(e) requires the Authority to consider whether there are feasible and prudent alternatives to the proposed conduct. This is intended to entail consideration of whether there is a completely different alternative to the proposed conduct.

Paragraph 103(f) requires the Authority to consider any written comments received under Division 4 in connection to the application. Paragraph 103(g) requires the Authority to consider the relevant impacts of the proposed conduct. Paragraph 103(h) requires the Authority to consider options for avoiding, mitigating and offsetting the relevant impacts of the proposed conduct.

Paragraph 103(h) requires the Authority, to when considering relevant impacts of proposed conduct, to consider options for avoiding, mitigating and offsetting those relevant impacts. If relevant impacts cannot be avoided they should be mitigated. Offsetting may be considered as an option for reparation or compensation measures where there are significant residual impacts. The Authority's intention, in considering this criterion, is to first consider avoidance options, then if necessary consider mitigation options and then finally, if necessary, options for offsetting.

Paragraph 103(i) requires the Authority to consider options for monitoring and managing the relevant impacts of the proposed conduct.

Paragraph 103(j) requires the Authority to consider a law of the Commonwealth or of Queensland as in force from time to time, or a relevant plan (as in force from time to time) made under such a law, that relates to the management of the environment or to an area in the Marine Park; and is relevant to the proposed conduct; except so far as that law or plan is covered by paragraph (b). This paragraph is effectively intended to cover the matters that were previously mentioned in old paragraphs 88R(g), (h) and (i).

If the proposed conduct requires an approval under the EPBC Act, paragraph 103(k) requires the Authority to consider whether the approval has been, or is likely to be, granted and, if granted, the terms and conditions of it being granted; and any relevant assessment documentation (within the meaning of subsection 133(8) of that Act, which contains a definition of assessment documentation) in relation to the approval.

If the proposed conduct also requires an approval or a permission (however described) under a law of Queensland, paragraph 103(l) requires the Authority to consider whether the approval or permission has been, or is likely to be, granted and, if granted, the terms and conditions of it being granted.

Paragraph 103(m) requires the Authority to consider any recovery plan, wildlife conservation plan, threat abatement plan or approved conservation advice, that is relevant to the proposed conduct. Subsection 3(1) of the Act defines recovery plan, wildlife conservation plan, threat abatement plan and approved conservation advice as having the same meaning as in the EPBC Act.

Paragraph 103(n) requires the Authority to consider any international agreement to which Australia is a party, or any agreement between the Commonwealth and a State or Territory, that is relevant to the proposed conduct.

Paragraph 103(o) requires the Authority to consider any policies that are relevant to the proposed conduct and the management of the Marine Park or of its environment, biodiversity or heritage values and are published by the Authority under paragraph 7(4)(a) of the Act; or adopted by the Department administered by the Minister administering the EPBC Act. Paragraph 103(o) captures policies about the management of the Marine Park as well as policies about the environment, biodiversity or heritage values of the Marine Park. The reason for this is that often a relevant policy will relate to a specific value of the Marine Park (for example, a policy about seabirds) rather than specifically to the management of the Marine Park.

Paragraph 103(p) requires the Authority to consider any other matters relevant to the proposed conduct and either achievement of the objects of the Act; or orderly and proper management of the Marine Park.

The matters listed in this section 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 section 110 as note 2 alerts).

Note 1 alerts the reader that some other provisions of the Instrument (such as subsection 105(2), 106(2) and 108(5)) require consideration of additional matters for applications for particular permissions. This note makes it clear to the reader that these will not be the only considerations for all applications. Subsection 105(2) requires consideration of the impact on cetaceans where the application for permission relates to research, photograph, filming or sound recording involving cetaceans or a tourist program involving whale watching or a swimming-with-whales activity. Subsection 106(1) sets out additional considerations for a permission to take leader prawn broodstock in the Habitat Protection Zone in Mission Beach Leader Prawn Broodstock Capture Area that subsection 106(2) requires are additional to section 103 and subsection 108(1) sets out additional considerations for the granting of

permissions to enter or use Princess Charlotte Bay SMA which subsection 108(5) requires are additional to section 103.

Section 104 Limit on granting permission for dumping

Subsection 104(1) provides that the Authority must not grant a permission for an activity if it is satisfied that the activity would constitute or involve prohibited dumping.

One identified risk to the Great Barrier Reef is the disposal and re-suspension of dredge spoil material, which can potentially impact water quality, hydrodynamics and benthic fauna and flora. The purpose of this section is to improve water quality in the Marine Park increase protection and conservation of the plants and animals of the Marine Park, including protected species; and therefore, improve the Great Barrier Reef's overall World Heritage values by decreasing the potential impacts of dumping of capital dredge spoil material.

Pursuant to paragraphs 104(2)(a) and 104(2)(b), the Authority will be prevented from granting a new permission for prohibited dumping regardless of whether the application for the permission was received before or after the commencement of the *Great Barrier Reef Marine Park Amendment (Capital Dredge Spoil Dumping) Regulation 2015*. A note alerts the reader that that Regulation commenced on 2 June 2015. Those Regulations are no longer in force.

There are currently two EPBC referral deemed applications that were made before commencement of the dredge spoil dumping amendments and have not yet been decided. For this reason paragraph 104(2)(a) continues to be required.

Section 105 Limits on granting permissions to take protected species

Section 105 deals with additional considerations to which the Authority must have regard when assessing applications for permissions to engage in conduct involving the take of protected species.

Subsection 105(1) provides that the Authority must not issue a permission for the taking of a protected species, within the meaning of the Zoning Plan, unless the Authority is satisfied that the conduct is not inconsistent with an relevant recovery plan, wildlife conservation plan, threat abatement plan or approved conservation advice under the EPBC Act and the Authority is satisfied that one or more of the following set out in subparagraphs 105(1)(b)(i) to (iv) apply. These are the extent that the conduct relates to an areas or areas outside the Marine Park - the conduct is not prohibited under the EPBC Act; that the conduct is of particular significance to the traditions of Traditional Owners and will not adversely affect the survival or recovery in nature of the protected species; that the conduct will contribute to the conservation of the protected species; and/or that the taking of the protected species is not the main purpose of the conduct but is merely incidental to the conduct and will not adversely affect the conservation status of the species.

Subsection 105(2) provides that if the application relates to research, photograph, filming or sound recording involving cetaceans or a tourist program involving whale watching or a swimming-with-whales activity the Authority must also consider whether the conduct will adversely affect one or more cetaceans, the conservation status of a population of a species

of cetacean, or the conservation status of a species of cetacean. This subsection specifically tailors the consideration requirement to where these activities will be relevant to cetaceans.

Subsection 105(3) clarifies that the considerations set out in this section are additional to the matters the Authority must consider under section 103 (Mandatory considerations in deciding whether to grant permission).

Section 106- Limits on granting permissions to take leader prawn broodstock in Habitat Protection Zone in Mission Beach Leader Prawn Broodstock Capture Area

Section 106 limits 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.

The area is defined in section 25 (Definition of Mission Beach Leader Prawn Broodstock Capture Area).

The person applying for the permission must demonstrate (or have previously demonstrated) that they have taken leader prawn broodstock in the Area in at least three of the calendar years from 1998 to 2002. Subparagraph 106(1)(a)(i) includes the words 'or has previously demonstrated' so that where an applicant has already demonstrated that they meet the criteria in that subparagraph they do not need to demonstrate this again. By contrast, the criteria in subparagraphs 106(1)(a)(iii) and 106(1)(a)(iv) are required to be proven on every occasion as it is possible a permittee who met these criteria at the time a permission was granted may no longer meet the criteria at a later stage when the permission is renewed.

The Authority, as provided in paragraph 106(1) (b) must not grant a permission if it would result in there being 5 such permissions in force at any one time. This ensures that the number of permissions is kept at a level that will ensure sustainable take and activity in this area.

Subsection 106(2) makes it clear that the matters in subsection 106(1) are additional to the matters that the Authority must consider under section 103 (Mandatory considerations on deciding whether to grant permission).

Section 107 Limit on granting permissions to swim with dwarf minke whales in part of the Cairns Planning Area—maximum number

Tourist programs may only conduct whale watching and swimming-with-whales in the Marine Park if specifically given permission from the Authority to do so. Swimming-with-whales is defined in subsection 5(1) of the Instrument as 'an activity for the purpose of enabling tourists to swim, snorkel or scuba dive with cetaceans, or to observe cetaceans while in the water with them, including:

- using an aircraft or vessel to find cetaceans for that purpose
- placing tourists in the water for that purpose'.

In the Marine Park, swimming-with-whales activity can only be permitted as part of a tourist program for dwarf minke whales, and only in certain areas of the Marine Park.

Section 107 limits the number of permissions 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. Specifically subsection 107(1) provides the Authority must not grant an application for a permission if it would result in there being more than 9 permissions of that kind in force at one time.

Subsection 107(2) provides that the matters mentioned in subsection 107(1) are additional to the matters the Authority must consider under section 103 (Mandatory considerations in deciding whether to grant permission).

The tourism activity of swimming with dwarf minke whales is also a special tourism permission and any unallocated permissions would be allocated through Division 2, Subdivision E.

Section 108 Limits on granting permissions to enter or use Princess Charlotte Bay SMA—special management provisions

This SMA has been designated to protect dugong within Princess Charlotte Bay in the Far Northern Management Area of the Marine Park. The Special Management Area requires commercial net fishers to obtain a permit to operate within Princess Charlotte Bay.

Section 108 limits the circumstances in which the Authority may grant a permission to a person to enter or use Princess Charlotte Bay Special Management Area (PCB SMA) for netting purposes.

Subsection 108(1) provides that the Authority must not grant a permission to a person to use or enter the PCB SMA for netting (within the ordinary meaning of the expression) (other than for bait netting) unless the criteria in paragraphs 108(1)(a) to (c) are met. This includes such things as the person needs to be the holder of a primary commercial fishing boat licence issued under a law of Queensland that authorises netting to be carried out in the PCB specified area.

The effect of this change is that an applicant for a renewal will now need to establish they hold the relevant licence under Queensland laws and that under that licence:

- netting was carried out at any time between 1 January 1996 and 31 December 1999 (inclusive) and at any time in 3 or more calendar years between 1 January 1988 and 31 December 1999 (inclusive); and
- in accordance with the licence, at least 5 tonnes of catch were taken while netting was being carried out in the 3 or more calendar years between 1 January 1988 and 31 December 1999 (inclusive).

Subsection 108(2) sets out the evidence required for the application for a permission that is additional to the information required by Division 2. Subsections 108(3) and 108(4) support those evidence requirements by providing for evidence that will satisfy subsection 108(2). The application must additionally be accompanied by evidence of the kind mentioned in subsection 108(3) showing that the applicant satisfies the conditions in subsection 108(1); or for a continuation application be accompanied by evidence that the primary commercial fishing boat licence is the same licence as existed when the original

permission was first given. This is the case regardless of whether or not that permission was originally given to that person.

Subsection 108(5) makes clear that the matters mentioned in subsection 108(1) are additional to the matters that the Authority is required to consider under section 103 (Mandatory considerations in deciding whether to grant permission).

Section 109 Limits on granting permissions to enter or use Maritime Cultural Heritage Protection SMAs—special management provisions

Two nationally significant RAAF Second World War aircraft wrecks are protected in the Great Barrier Reef Marine Park. Special management areas, each one kilometre square, are in place around a Catalina wreck off Bowen and a Catalina that crashed near the Frankland Islands south of Cairns.

Section 109 provides that the Authority must not grant a permission to a person to use or enter a Maritime Cultural Heritage Protection SMA except for the purposes set out in paragraphs 109(a) to (f).

Paragraph 109(f) makes reference to ‘activities incidental to an activity covered by paragraphs (a) to (e)’. An example of incidental activities to those listed is anchoring a vessel near the wrecks and diving in the wrecks in order to carry out one of the listed activities, such as cultural heritage research.

Section 110 Considerations for permissions to camp on Commonwealth Islands

Section 110 deals with consideration of permissions to camp on these Commonwealth Islands.

There are 70 islands that together form the Commonwealth Islands zone. They are the only land component of the Marine Park. Twenty one of these islands are held and managed by the Authority.

In assessing an application for such a permission, subsection 110(1) provides, the only consideration is the reasonable requirements for the orderly and proper management of the Marine Park and the camping site. Subsection 110(2) provides that the assessment considerations set out under section 103 do not apply to the assessment of applications for permissions to camp on Commonwealth Islands. A large number of applications to camp on Commonwealth Islands are received by the Authority and this consideration enables applications to be quickly and effectively assessed.

A note alerts the reader that subsection 7(3) of the Act provides that the Authority must, in managing the Marine Park and performing its other functions, have regard to, and seek to act in a way that is consistent with, the objects of the Act, the principles of ecologically sustainable use and the protection of the world heritage values of the Great Barrier Reef World Heritage Area.

Division 5 Granting and refusing permissions

Section 111 Grant or refusal of permission

Subsection 111(1) 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 the Regulations, provided the application has been made in accordance with this Part and the applicant has complied with any requirement or request by the Authority about the application. Paragraph 111(1)(b) makes it clear that the applicant must comply with any requirement or request by the Authority about the application and where relevant, with Subdivision B or C of Division 4. This effectively means that an applicant must comply with terms or reference or guidelines for assessment of the relevant impacts of the proposed conduct as contained in the relevant provisions.

The decision involves mandatory and discretionary considerations. An appropriate level of statutory criteria to guide the decision maker is included so that the Authority must take into account all matters under the Act and Part.

Subsection 111(2) provides that in making the decision, the Authority must take into account the matters that the Authority is required or permitted to take into account under the Act and this Part.

Section 112 Application to be decided within reasonable time

Section 112 requires the Authority to, subject to section 113 (Decisions on EPBC referral deemed applications), 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.

Note 1 alerts the reader that section 113 deals with EPBC referral deemed applications.

Note 2 alerts the reader that the Authority is able to notify its decision by electronic communication under the *Electronic Transactions Act 1999*. An email would be an example of an electronic communication.

Section 113 Decision on EPBC referral deemed applications

Subsection 113(1) provides the Authority must not make a decision in relation to an EPBC referral deemed application involving an action unless the Minister has determined under section 75 of the EPBC Act that the action is not a controlled action or if the Minister has determined that the action is a controlled action; the Minister has made a decision under section 133 of that Act to approve the action in the referral.

Paragraph 113(2)(a) provides that if the Minister has determined that the action is not a controlled action under section 75 then the Minister must make a decision in relation to the application within a reasonable period after making that determination.

Paragraph 113(2)(b) provides that if the Minister has determined that the action is a controlled action and has made a decision under section 133 of the EPBC Act to approve the action in the referral, then the Authority must make a decision within the period of 10 business days after approving the action as mentioned in that paragraph, or if before the

end of that period the Authority gives the applicant a written notice specifying a longer period in accordance with section 253, then that that extended period.

Division 6 Form, term and conditions of permissions

Section 114 Form of permission

Section 114 specifies that a permission issued by the Authority must be in writing and sets out the matters in paragraphs 114(a) to (g) that the permission must specify.

Among other things, the permission must specify the conduct that the person to whom the permission is issued is authorised to engage in and the conditions subject to which the permission is granted.

Section 115 Term of permission

Subsection 115(1) specifies that a permission remains in force, subject to subsection 115, for the period specified in the permission unless it is revoked or surrendered before the end of that period. Subsection 115(2) 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. It is the responsibility of a permission holder to know when their permission is nearing expiry.

When granting a permission, the Authority has discretion in deciding on the term of a permission. While there is no statutory criteria to guide this decision, the Authority has developed its own internal policies to guide decision makers in making decisions on the term of a permission.

Section 116 Certain permissions to continue in force

Section 116 sets out the circumstances in which certain permissions are to continue in force beyond their specified date of expiry. The section applies, in accordance with subsection 116(1), where a person has applied for a continuation application in relation to an original permission; and for a continuation application made before the end of the period specified in the original permission- the application has not been granted, refused or withdrawn before the expiry of the original permission.

Subsection 116(2) provides that in those circumstances, the original permission is taken to have been in force, and remains in force, until the first of the following events occurs: the application for a new permission is taken to be withdrawn; the Authority makes a decision on the application; the original permission is suspended or revoked; or the application lapses under section 204 (Lapsing of application for permission) for non-payment of the application fee.

Subsection 116(3) provides that any Hinchinbrook authorisation attached to the original permission that remains in force under subsection 116(2) is taken to remain in force as long as the original permission is in force.

Section 117 Conditions of permission

Subsection 117(1) specifies that the Authority may grant a permission subject to any conditions appropriate to the attainment of the objects of the Act.

If permission is granted, the applicant will receive a permit with conditions on how the activity is to be conducted. When setting conditions the Authority currently applies the principles contained in the Authority's – Environmental Impact Management Permission System Policy which is on the Authority's website www.gbrmpa.gov.au.

An appropriate level of statutory criteria to guide the decision maker is included so that conditions must be appropriate to the attainment of the objects of the Act and, without limiting this, there is a specific list of types of conditions which may be applied to a permission. Additionally, the Authority is also required to have regard to a number of mandatory and discretionary considerations when deciding on whether to impose conditions on a permission.

Subsection 117(2) 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 such things as a condition relating to the manner in which conduct (including the use or, or entry to, a zone) that is the subject of the permission is to be carried out and a condition requiring specified monitoring and audit activities to be carried out.

This section 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, subsection 117(3) provides that 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.

Section 118 Authorities under permissions

Subsections 118(1) and 118(2) 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.

Authorities were introduced as a way for the Authority to recognise that some tourism operators were subleasing/sublicensing all or part of their tourism operation. Authorisations give the permit holder more flexibility to run their business while the permit holder remains at all times responsible to ensure that any operation under their permission is conducted in line with that permission.

In circumstances where an authority is given to another person subsection 118(3) provides that the permission is therefore taken to authorise the 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, the permission holder may still carry out the activity despite giving an authority, and providing that a particular activity can only be done by the

permittee or the authorised person, not both. The permission and the authority does not authorise the permission holder to carry out the activity at the same time as the person.

When granting a permission, the Authority has discretion in deciding whether the permit holder can grant authorities under the permission. It is not considered necessary to provide statutory criteria for this purpose but the agency has its own internal policies to guide decision makers in making decisions on the ability of a permittee to grant authorities under a permission.

Division 7 Transfer of permissions and changes in beneficial ownership

Subdivision A- Transfer of permissions

Section 119 Applications to transfer permission

Section 119 sets out the circumstances in which the holder of a permission may apply to the Authority to transfer the permission to another person and the requirements for the application, including form and lodgement.

Subsection 119(1) provides that the holder of a permission may apply to the Authority to transfer the permission unless the permission is suspended or the period specified in the permission would have ended no later than 20 business days before the day on which the transfer is intended to occur.

The Authority may decide not to accept the application if the requirements in subsection 119(2) are not met. If the Authority decides not to consider an application because of failure to meet the requirements, the Authority must give the applicant within 10 business days of making this decision notice that the application is incomplete and the matters that must be dealt with to complete the application. If the applicant does not deal with the matters within 30 business days (or a longer period specified in the notice), the application is taken to have been withdrawn.

Subsections 119(3) to (5) relate to the Authority not being required to consider the application where it does not comply with subsection 119(2). Where this is considered to be the case under subsection 119(3), then subsection 119(4) requires the Authority to give the applicant written notice within 10 business days after the Authority makes the decision specifying that the application is incomplete and the matters that must be dealt with to complete the application. Subsection 119(5) provides that the application is taken to have been withdrawn if the matters have not been dealt with before the end of 30 business days after the notice is given or where the Authority extends the period in accordance with section 253, then that extended period.

Subsection 119(6) provides that the Authority is not required to consider or further consider the application while the permission is, or is taken to be, in force under section 116 (Certain permissions to continue in force) (which allows for the continuation of expired permissions while an application for renewal is under assessment) and subsection 119(7) provides that if the permission ceases to be in force because the Authority grants a new permission under section 111 (Grant or refusal of permission), the Authority may further consider the application as if the application were an application to transfer the new permission.

This provision clarifies that if a permission reaches its expiry date during the processing of a transfer application and the permission is allowed to continue in force due to section 116, the transfer application is effectively 'paused' until such time as the renewal application is decided. If a decision is made to grant a renewal of the permission, the processing of the transfer application can then resume.

Section 120 Mandatory considerations in deciding whether to approve transfer of permission

Section 120 sets out the mandatory considerations in deciding whether to approve the transfer of a permission. The Authority must consider whether the proposed transferee is a suitable person to hold the permission in accordance with paragraphs 120(a)(i) to (vi), having regard to such things as the proposed transferees history in relation to environmental matters.

The Authority must also consider under paragraph 120(b) whether the transferor owes any fee or other amount payable under this Act or the Instrument or any other instrument made for the purpose of this Act. The fee owed would not need to be in relation to an instrument which is in force, for example the fee could be owed in relation to the old regulations.

Further, the Authority must consider under paragraph 120(c) any other matters relevant to the proposed transfer and either achieving the objects of the Act or orderly and proper management of the Marine Park.

Section 121 Further information required to consider application

Section 121 provides that additional information may be requested by the Authority for the purpose of assessing an application to transfer a permission (see section 119), and such request may be made to the transferor or transferee (being the notice recipient).

Subsection 121(2) provides that if the transferor or transferee does not provide the additional information or document to the Authority within 20 business days after the request, or where the Authority extends the period in accordance with section 253- that extended period.

Section 122 Transfer of permissions related to approval under *Environmental Protection and Biodiversity Act 1999*

Section 122 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 is 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.

Section 123 Approval of transfer

Subsection 123(1) 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 the application is incomplete and a notice was given to the transferor under subsection 119(4) - the matters in the notice have been dealt with before the end of the extended period; or if the Authority has requested additional information – the Authority receives the additional information or documents in accordance with that section.

Subsection 123(2) stipulates that the Authority cannot approve a transfer unless the transfer application fee under section 205 (Fees for other applications and requests) has been paid.

If the Authority approves the transfer, subsection 123(3) provides it must issue a new permission to the same effect and with the same conditions as the original permission, unless the transferee agrees otherwise. However, despite this, subsection 123(4) allows the new permission given to the transferee to 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. Subsection 123(5) provides that the permission held by the transferor is cancelled at the time the transferee is granted the new permission.

Section 124 Transfer of Hinchinbrook authorisation attached to, or authority given under, permission

Subsection 124(1) provides that any Hinchinbrook authorisations that are attached to, or authority given under, a permission are transferred with the permission.

Subsection 124(2) clarifies that a Hinchinbrook authorisation or authority cannot be transferred separately from the permissions to which they attach or under which they were given.

A note alerts the reader to see sections 71 (Hinchinbrook authorisation is part of permission) and 118 (Authorities under permissions) for Hinchinbrook authorisations and authorities. These provisions would give effect to the authorisations and authorities being part of the permission.

Subdivision B Change in beneficial ownership of company

Section 125 Change in beneficial ownership of permission holder that is a company

Subsections 125(1) and 125(2) require a permission holder that is a company to notify the Authority in writing if there is a change in the beneficial ownership of the company within 20 business days after the change occurs.

A note alerts the reader that it is an offence under section 136 (Notification of change in beneficial ownership) not to alert the Authority of the change.

Subsection 125(3) 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.

Section 126 Further particulars about changes in beneficial ownership

Subsection 126(1) 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 section 127 to suspend, revoke, or modify the conditions of, the permission.

Subsection 126(2) provides that if the company does not provide the additional information within 20 business days (or such longer period allowed by the Authority under section 253) after the Authority gives the request, the Authority may suspend or revoke, or modify the conditions of, the company's permission.

However, subsection 126(3) provides that before suspending, revoking or modifying the permission, 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. Subsection 126(4) provides that 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.

Section 127 Modification, revocation or suspension relating to change in beneficial ownership

Section 127 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. This will be subject to the conditions to which it was subject before a change in beneficial ownership of the company.

The relevant grounds, which focus on whether the changed company is a suitable person to hold the permission, 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, or an executive officer of the changed company, owes a fee, fine or other amount payable under the Act or Regulations (the instrument does not need to be in force and could include the old regulations); or the changed company is not a suitable person to hold the permission in view of their history (including the “company” and the “changed company’s” history so that the Authority can also consider the company’s history before the change in ownership) 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 subsection 127(1), subsection 127(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 8 Modification, suspension and revocation

Section 128 Modification of permission conditions

Subsection 128(1) provides that the Authority may, by written notice to a permission holder, modify the conditions of the permission (including any Hinchinbrook authorisation attached to the permission) to ensure it remains appropriate to the attainment of the objects of the Act. Subsection 128(2) provides that such modification may be either with the consent of the permission holder or, in certain limited circumstances, without consent. Those limited circumstances are set out in subparagraphs 128(2)(b)(i) to (v).

Before taking action to modify a condition of a permission without the permission holder's consent, subsections 128(3) and 128(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 by the permission holder in accordance with the notice.

Section 129 Modification of conditions or suspension of permission- pending investigation

Subsection 129(1) provides that the Authority may suspend a permission (including any Hinchinbrook authorisation attached to the 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. It is not possible to request reconsideration of such a decision as this is essentially an interim decision.

The section 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.

Subsection 129(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.

Subsections 129(4) and 129(5) require the Authority to investigate the matter and consider any reasons provided by the permission holder in accordance with the notice, 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 accordance with the notice, whichever occurs later.

Section 130 Action following investigation

Section 130 prescribes the action to be taken by the Authority following an investigation under section 129. Subsection 130(2) provides that if the Authority finds there are no reasonable grounds for modifying the condition or suspending the permission (including any

Hinchinbrook authorisation attached to the permission), it must immediately remove the modification or suspension and then notify the permission holder in writing.

Subsection 130(3) provides that 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, take any of the following actions: continue the modification, continue the suspension, or revoke the permission. Subsection 130(4) provides that 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.

Subsection 130(3) 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.

Subsection 130(5) provides that 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.

Subsection 130(6) provides that where the Authority decides to revoke the permission, the revocation takes effect on the day the Authority gives the notice to the permission holder.

Section 131 Suspension of permission – environmental management charge

The EMC is a charge associated with most commercial activities, including tourism operations, non-tourist charter operations, and facilities, operated under a permit issued by the Authority. For most tourism operations, Marine Park visitors participating in a tourist activity are liable to pay the charge to the permittee, who then remits the charge to the Authority. The role of the permittee is to collect and remit the EMC to the Authority by the due date in accordance with the Regulations.

Section 131 sets out the circumstances in which the Authority may, by written notice to the holder of a chargeable permission, suspend the permission due to circumstances relating to non-compliance in relation to the EMC such as failing to pay the charge or failing to collect the charge. The section specifies the duration of the suspension and the requirements before suspending the permission.

Before the permission is suspended there is a requirement to give written notice to the holder of the facts and circumstances that, in the Authority's opinion, justify suspension. The Authority must then consider any reasons provided by the holder in accordance with the notice.

Section 132 Revocation of permission - general

Subsection 132(1) provides that the Authority may give notice, to the holder of a permission (including any Hinchinbrook authorisation attached to the permission) to revoke the permission, in such circumstances, where they are satisfied the permission holder consents or the holder has been found guilty of an offence against the Act or the Instrument, or certain provisions of the Criminal Code relating to provision of false or misleading information to the Commonwealth.

Subsection 132(2) provides that the revocation takes effect on the day the Authority gives the notice to the holder, or if a later day is specified in the notice- on that later day.

The Authority must meet the requirements specified in subsection 132(3) before taking action to revoke a permission on a ground mentioned in any of the paragraphs 132(1)(b) to (g). In deciding whether to revoke the permission the Authority must consider under section 132(4) any reasons provided by the holder in accordance with the notice.

Subsection 132(5) provides that the Authority may suspend the permission while considering the possibility of revoking the permission. Subsection 132 (6) provides for when the suspension is to begin and end.

Section 133 Revoked permission to be reinstated in particular circumstances

Subsection 133(1) applies if the Authority has revoked a permission because 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, and the revoked approval has been subsequently reinstated under section 145A of that Act.

Subsection 133(2) provides that the Authority must reinstate the revoked permission as soon as practicable after the revoked approval has been reinstated and notify the permission holder in writing that the permission has been reinstated.

Division 9 Offence provisions

Section 134 Purpose of Division

Section 134 provides that this Division applies for the purpose of paragraph 66(2)(u) and subsection 66(11) of the Act.

The offences in sections 135 and 136 are appropriately offences of strict liability and are framed to be consistent with the Guide to Framing Commonwealth Offences. The use of strict liability offences in the Instrument is for the legitimate objective of regulating conduct for the protection of the Marine Park environment and supporting the integrity of this regulation. The Offence provisions are in general crucial as they provide a deterrent to potentially environmentally harmful, damaging, or physically unsafe conduct in the Marine Park environment. Further, the conduct that strict liability offences apply to is such that the fault element – i.e. a person's intention, knowledge, recklessness or negligence – would be difficult to prove. The strict liability offence provisions support the primary object of the Act being to provide for the long term protection and conservation of the environment, biodiversity and heritage values of the Reef. There is detailed information available on the Authority's website www.gbrmpa.gov.au as well as the Permits Online system which ensures that the potential offenders have the necessary information about what is required and therefore are placed on notice to guard against the possibility of contravention.

Further they are appropriately strict liability offences as the penalties for all offences in the Instrument do not include imprisonment, and do not exceed 60 penalty units. An infringement notice may be issued for the contravention of specified strict liability offences under the instrument and consistent with the Guide to Framing Commonwealth Offences, strict liability is appropriate for infringement notice offences.

Section 135 Requirement to produce permission etc. for inspection

Section 135 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, an authority under the permission or a Hinchinbrook authorisation attached to the permission, engages in conduct in the Marine Park, the Authority or an inspector requests the person to produce a copy of the permission, authority or authorisation, and the person fails to comply with the request.

The penalty is 50 penalty units.

Section 136 Notification of change in beneficial ownership

Section 136 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.

The penalty is 50 penalty units.

Section 137 Conviction after permission etc. is suspended or revoked

Section 137 provides that a person who held a permission, an authority given under a permission or a Hinchinbrook authorisation attached to 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, authority or authorisation has been revoked or has otherwise ceased to be in force. This section importantly ensures that action can be taken to suspend or revoke the permission without affecting compliance proceedings.

Division 10- Miscellaneous

Section 138 Prescribed circumstances

Section 138 prescribes circumstances for the purpose of subsection 38BA(5) of the Act which provides a defence to offences under subsections 38BA(1) and (3) of the Act in prescribed circumstances.

The provisions relate to the period of 120 days following commencement of amendments to the Zoning Plan. It would similarly apply to the commencement of a new Zoning Plan.

If any of the prescribed circumstances apply, then subsections 38BA(1) and (3) of the Act do not apply. Effectively the circumstances are defences to the application of these provisions. The circumstances that constitute a defence relate to circumstances that may arise as the result of persons becoming familiar with new Zoning Plan requirements. This provision is therefore intended to ensure that during a 120 day period there is a transitional period that will allow Marine Park users to familiarise themselves with new requirements without risking prosecution.

Paragraph 138(a) provide that the offences in subsection 38BA(1) and (3) of the Act will not apply where it is in the 120 day period and the person had engaged in conduct of the same kind in that area before an amendment to a zoning plan commenced, permission had not

previously been required and the conduct does not involve fishing (within the meaning of the Act) or collecting (within the ordinary meaning of the expression) in that area that required permission after the amendment commenced.

Paragraph 138(b) provides that the offences in subsection 38BA(1) and 38BA(3) of the Act do not apply in the circumstances prescribed in the in relation to conduct engaged in covered by the Zoning Plan, or a later zoning plan during the 120 day period. These are where the person engaged in conduct of the same kind, in the same area before the amendment commences, permission was not required for that conduct before the amendment commences and that conduct does not involve fishing (within the meaning of the Act) or collecting (within the ordinary meaning of the expression) in that area that required permission after the amendment commenced.

Paragraph 138(c) provides that the offences in subsection 38BA(1) and 38BA(3) of the Act do not apply in the circumstances prescribed in relation to conduct engaged in covered by the Zoning Plan or a later zoning plan after the end of the 120 day period. Subparagraph 138(c) prescribes the circumstance where the person engaged in conduct of the same kind, in that area, before the beginning of the period, permission has not been previously required for the conduct and during the 120 period the person has applied for a permission but it has neither been granted or refused. This circumstance will also be immune from prosecution under subsections 38BA(1) and (3) of the Act provided that the other criteria in subparagraph 138(c) are met.

Section 139 No permission for reef walking in Whitsunday Planning Area

The purpose of section 139 is to prevent the activity of reef walking from being able to be carried out in the Whitsunday Planning Area under permissions currently in force which would otherwise allow this. The section complements clause 1.30 of the *Whitsundays Plan of Management 1998*, which states that the Authority will not grant a new permission for reef walking in the Whitsunday Planning Area.

The activity of reef walking is not encouraged within the Marine Park as it can contribute to localised impacts on coral cover. Clause 1.30 of the Plan, coupled with section 139 of the Instrument, is intended to increase protection to coral in the Whitsunday Planning Area.

Subsection 139(1) provides that for the purposes of paragraph 66(2)(u) of the Act the Authority must not grant a permission for the activity of reef walking in the Whitsunday Planning Area and a permission that purports to give such permission is of no effect subsection to subsection 139(4). This means that even where there is a permission in force which specifically allows the activity of reef walking to be carried out in the Whitsunday Planning Area, the permission is to be read as if it does not allow this.

Subsection 139(2) clarifies that subsection 139(1) does not affect a permission to the extent that the permission deals with any other activity whether or not the activity is in the Whitsunday Planning Area, this is because some permissions captured by subsection 139 may allow for activities other than reef walking in the Whitsunday Planning Area.

Even though the replacement permission or further permission will no longer allow the activity of reef walking in the Whitsunday Planning Area, it can still be said to be a permission of 'the same kind' for the purposes of subsections 83(3) or 116(1). For the

purposes of a transfer of a permission pursuant to section 123 (Approval of transfer), the new permission need not allow the activity of reef walking in the Whitsunday Planning Area in order to meet the requirement under subsection 123(3) for the new permission to be 'of identical effect and with identical conditions as the permission held by the transferor'.

Subsection 139(4) provides one exclusion to subsection 139(1). It is the Authority's intention that one permission holder be allowed to continue the activity of reef walking only at Langford Reef and only until the current expiry date of permit G14/36918.1 (31 May 2020). This was preserved when the equivalent to section 139 (regulation 88ZZA) was originally added to the old regulations in 2017 on the basis that the permission holder had significant experience at Langford Reef and had previously gone through an eligibility process under the Plan to retain a permission to carry out reef walking activities.

The note alerts the reader that subsection 139(1) applies in relation to reef walking at all other areas in the Whitsunday Planning Area other than Langford Reef. If the permission holder transfers or renews their permission reef walking at Langford Reef will not be allowed in any replacement permission granted, whether the transfer or renewal occurs before, on or after 1 June 2020.

Part 4—Traditional Use of Marine Resources Agreements (TUMRAs)

The current *Zoning Plan* established a new framework for managing traditional use of marine resources for Australian Aboriginals and Torres Strait Islanders. The framework complements existing community-based measures developed by some Traditional Owner Groups to manage their use of some of these resources and recognises entitlements enshrined in the *Native Title Act 1993*. It promotes the sustainable use of threatened (for example, dugong, turtles) and iconic (for example, barramundi cod, giant clams) species within the Marine Park, given the other sources of human related mortality that may impact upon these stocks. The framework also supports Traditional Owners in maintaining their cultural connections with the sea country of the Great Barrier Reef. This is achieved by working in sea country partnerships to develop and implement Traditional Use of Marine Resources Agreements (TUMRAs) and supporting cooperative management arrangements.

A TUMRA means ‘an agreement, developed in accordance with the regulations, by a traditional owner group, for the traditional use of marine resources in a site or area of the Marine Park’ (as defined in the *Zoning Plan*). TUMRAs describe how Great Barrier Reef Traditional Owner groups work in partnership with the Australian and Queensland governments to manage traditional use activities on their sea country. An agreement may describe how Traditional Owner groups wish to manage their ‘take’ of natural resources (including protected species), their role in compliance and their role in monitoring the condition of plants and animals, and human activities, in the Marine Park. The TUMRA incorporates specific management strategies for the conservation and sustainable use of key species and habitats; restoring and maintaining waterways and coastal ecosystems, maintenance and protection of significant heritage values including important places, traditional ecological knowledge, culture and language; research and monitoring of sea country including partnerships with the Authority and other leading scientific institutes and individuals; leadership and governance including knowledge management; education and information exchange; and compliance.

Part 4 of the Instrument sets out the provisions relating to the accreditation of TUMRAs. The *Zoning Plan* allows various zones in the Marine Park to be used or entered in accordance with an accredited TUMRA. The Part also provides for a modification, suspension and revocation process. It also makes provision for the termination of an accredited TUMRA. The Part allows for the voluntary development of TUMRAs by Traditional Owners. Traditional Owner groups are expected to follow the Instrument process during the TUMRA development process in order for a TUMRA to be accredited. TUMRAs are generally accredited by the Authority for five year terms however longer terms are permissible. When a TUMRA comes toward the end of its term, Traditional Owners are encouraged to follow the Instrument process during development of their next TUMRA.

Division 1—Simplified outline of this Part

Section 140 Simplified outline of this Part

Division 2—Accreditation of TUMRAs

Section 141 Application for accreditation of a TUMRA

Section 141 deals with applications for accreditation of TUMRAs. While a TUMRA is a voluntary agreement it will only have effect once it is accredited by the Authority- see section 147.

Subsection 141(1) provides that an individual or an authorised representative of an individual may apply to the Authority on a Traditional Owner group's behalf for the accreditation of a TUMRA. Joint applications are provided for in subsection 141(8) so that a group of individuals may make a joint application for accreditation of a TUMRA. This is so long as all individuals are members of a Traditional Owner group covered by the TUMRA.

Subsection 141(2) stipulates that an individual who applies for accreditation of a TUMRA on behalf of a Traditional Owner group must be a member of the Traditional Owner group covered by the TUMRA.

Subsection 141(3) sets out the requirements that an application must include, and subsections 141(4) to 141(6) provide what happens if the application does not comply with the application requirements. Where an application is considered by the Authority to not comply with requirements the Authority will provide the applicant, within 10 business days, with advice that the application is incomplete and the matters that must be dealt with to complete the application. This then enables the applicant to resubmit the application in a form that is more likely to be accepted.

Subsection 141(7) provides that despite subsection 141(6) the Authority may continue to consider an application that has been taken to be withdrawn under that subsection. The discretion for the Authority to continue to consider an out of time application is provided for so that these provisions do not operate in an overly restrictive way. The approach is in recognition of the development of TUMRAs being a voluntary process and the policy intent to encourage Traditional Owner groups to seek TUMRA accreditation. There may be special circumstances that have caused a delay in the application requirements being complied with and the Authority will consider any such special circumstances in deciding whether to continue to consider an application that has been taken to be withdrawn.

Section 142 Matters to be included in TUMRA

A TUMRA must, among other things, identify the Traditional Owners covered by the TUMRA. Traditional Owners can be identified in a variety of ways including by name, family, clan, Traditional Owner group or other means used by the group to identify members of the group (subsection 142(2)).

Paragraph 142(1)(e) provides that "if" any species are proposed to be harvested the TUMRA must identify the animal species and if those species include one or more protected species- identify how many specimens of each protected species are proposed to be harvested. It may be the case that a TUMRA is not proposing that any animals be harvested. For example,

the Authority has in the past accredited a TUMRA under the old regulations that contained a ban on harvesting certain animal species.

A note alerts the reader that, for the purposes of paragraphs 142(1)(e) and (g), to see section 30 for information about protected species. Section 30 declares protected species for the purposes of the Zoning Plan.

Subsection 142(3) makes it clear that a TUMRA may be accredited even if it does not contain all of the information required by subsection 142(1). This is because the content of a TUMRA will be dependent on the aspirations of the Traditional Owner group. It may be that some TUMRAs cover the harvest of protected species, for example, and the content requirements in paragraph 142(1)(e) will be relevant but in other TUMRAs not all of the paragraphs will need to be addressed. By making provision for the TUMRA to be accredited, even if it does not contain all of the information, subsection 142(1) retains a discretion for the Authority to consider whether all appropriate content has been included and to approve a TUMRA that is appropriately directed to traditional use of the marine resources proposed.

Section 143 Additional information

Subsection 143(1) provides that the Authority may, in writing, request further information or documents from an applicant or applicants for assessment purposes. Subsection 143(2) provides that the effect of not providing the additional information or document in the specified timeframes will be that the application is taken to have been withdrawn.

Subsection 143(3) provides that despite the effect of subsection 143(2) the Authority may continue to consider an application that has been taken to be withdrawn under that subsection. The discretion for the Authority to continue to consider an out of time application is provided for so that these provisions do not operate in an overly restrictive way. The approach is in recognition of the development of TUMRAs being a voluntary process and the policy intent to encourage Traditional Owner groups to seek TUMRA accreditation. There may be special circumstances that have caused a delay in the additional information being provided and the Authority will consider any such special circumstances in deciding whether to continue to consider an application that has been taken to be withdrawn.

This section supports the Authority having the necessary information in order to effectively assess an application for an accreditation of a TUMRA.

Section 144 Withdrawal of applications

Subsection 144(1) provides that a TUMRA application may be withdrawn by providing written notice to the Authority at any time before the application is decided by the Authority.

Subsection 144(2) provides that the notice must be signed, on behalf of the Traditional Owner group covered by the TUMRA, by the applicant or applicants, or the authorised representative or representatives of the applicant or applicants as the case may be.

Section 145 Assessment of applications for accreditation

Paragraphs 145(a) to (k) set out the matters the Authority must consider in assessing an application for accreditation of a TUMRA, and in deciding whether or not to impose any conditions on the accreditation.

Notably, the Authority does not challenge Traditional Owners' assertions of what their customs and connections to the sea country are and accordingly this is not an aspect of the assessment process. Instead the Authority must consider such matters as the likely effect of the TUMRA on future options for using or entering the Marine Park (paragraph 145(c)) and the likely effects of the proposed traditional use of marine resources on adjoining and adjacent areas (paragraph 145(h)).

Paragraph 145(l) gives the Authority discretion to consider when assessing the application any other matters relevant to the TUMRA and either achieving the objects of the Act or the orderly and proper management of the Marine Park. This is a wide criteria that enables the Authority to assess the TUMRA in line with the overarching objectives for the management of the Marine Park.

A note alerts the reader for the purpose of paragraph 145(e) to see section 30 for information about protected species. Section 30 declares protected species for the purposes of the Zoning Plan.

Section 146 Accreditation of TUMRA

Section 146 requires 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 the Instrument. This is provided the application has been made in accordance with this Part 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.

A note alerts the reader that subsection 7(3) of the Act provides that the Authority must have regard to, and seek to act in a way that is consistent with, the objects of the Act, the principles of ecologically sustainable use and the protection of the world heritage values of the Great Barrier Reef World Heritage Area. These objects should guide the considerations of the Authority in considering whether to accredit a TUMRA.

Subsection 146(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. In doing this the Authority must have considered any advice received from such a body, and make an assessment of the impact that the traditional use of marine resources is likely to have on the Marine Park.

Subsection 146(4) requires the Authority to, within 10 business days of making a decision not to accredit a TUMRA, give the TUMRA holder written notice setting out the reasons for the decision not to accredit the TUMRA.

Section 147 TUMRA has no effect unless accredited

Subsection 147(1) provides that a TUMRA has no force in the Marine Park unless it is accredited by the Authority. This is because the Zoning Plan allows use or entry of the Marine Park in various zones in accordance with an accredited TUMRA.

Subsection 147(2) 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.

Section 148 Conditions of accreditation

Subsection 148(1) permits the Authority to impose conditions on the accreditation of a TUMRA either at the time of accreditation, or after accreditation.

An example of a condition commonly imposed under the old regulations is ‘that the TUMRA Steering Committee must encourage compliance with the TUMRA and undertake prompt notification of suspected or observed illegal activities and non-compliance within the TUMRA Area to the TUMRA Steering Committee, the Great Barrier Reef Marine Park Authority and the Queensland Department of Environment and Science’.

If the conditions are imposed after accreditation, the Authority is, in accordance with subsection 148(2), 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.

There is a requirement in subsection 148(3) for the Authority to consult with the holder of the TUMRA before imposing a condition after accreditation of the TUMRA. This reflects the cooperative nature of these agreements.

Subsection 148(4) provides that any conditions imposed by the Authority must be appropriate to the attainment of the objects of the Act. Subsection 148(5) provides that a condition may include a requirement that in specified circumstances a person give the Authority a written undertaking in a form approved by the Authority.

Section 149 Certificate of accreditation

Section 149 requires the Authority to, within 10 days of deciding to accredit a TUMRA, give to the holder of the TUMRA a copy of the accredited TUMRA and a certificate of accreditation.

Subsection 149(2) provides that 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.

Section 150 Authorities under accreditation

Subsection 150(1) 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. Subsections 150(2) and 150(3) require that such authority must be given in accordance with the management arrangements for implementing the accredited TUMRA and must not contravene a condition of the TUMRA's accreditation.

In circumstances where an authority is given to another person, subsection 150(4) 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.

Section 151 Accreditation to continue

Section 151 prescribes the circumstances where an accreditation of a TUMRA is to continue in force. This provision 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.

Subsection 151(1) provides that the section applies if all of the following apply: an application is made before the end of the period of accreditation for the TUMRA that covers the same area; the Authority has not made a decision on the application before the end of the period of accreditation; and the application has not been withdrawn before the end of that period. The section also applies where both of the following apply: after the end of the period of accreditation for the original TUMRA an application is made under section 141 (Application for accreditation of a TUMRA) for accreditation of a TUMRA that covers the same area as the original TUMRA; and the Authority decides to consider the application.

Subsection 151(2) provides for the original TUMRA, and any authority under it, to be taken to have been and to remain in force until the first of the following occurs

- the application is withdrawn by the applicant/s under subsection 143(2)
- the application is taken to have been withdrawn for failing to provide additional information to the Authority within the necessary time under section 144
- the Authority makes a decision on the new application for accreditation under section 146.

Division 3—Modification of accredited TUMRAs

Section 152 Application to modify TUMRA or conditions of accreditation

Section 152 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 of a modification of a TUMRA, or for the Authority to modify a condition of the TUMRA's accreditation.

Importantly the Authority does not modify the TUMRA rather it approves the modification. This is because a TUMRA reflects an agreement between the relevant Traditional Owner group as opposed to an agreement with the Authority, which may or may not be accredited by the Authority. Traditional Owners, through the TUMRA framework agree on complex matters such as maritime estates (where lore governs boundaries), protocols and principles, sea country planning, hunting areas, community permits, management of traditional hunting activities (including the elimination of unauthorised practices such as poaching), cultural heritage management, development of intellectual property protocols and the identification of economic development opportunities, such as the delivery of environmental services and tourism. It would not therefore be consistent with the objectives of the TUMRA framework for the Authority to modify the TUMRA.

Subsection 152(1) 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 of a modification of the TUMRA, or for the Authority to modify a condition of the TUMRA's accreditation. Subsection 152(2) provides 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 section also provides that the Authority is not required to consider an application which does not comply with each of those requirements in subsection 152(2), and if it decides not to consider the application for that reason, the Authority has 10 days to give written notice in accordance with subsection 152(3) to the applicant advising the matters that are incomplete and the matters that must be dealt with to complete the application.

Subsection 152(5) provides that if the incomplete matters are not dealt with within 30 business days or any longer period specified by the Authority in accordance with section 253, the application is taken to have been withdrawn.

Subsection 152(6) gives the Authority discretion, despite subsection 152(5), to continue to consider an application that has been taken to be withdrawn. The discretion for the Authority to continue to consider an out of time application is provided for so that these provisions do not operate in an overly restrictive way. The approach is in recognition of the development of TUMRAs being a voluntary process and the policy intent to encourage Traditional Owner groups to seek such an approval or modification where needed.

Section 153 Additional information

Subsection 153(1) provides that the Authority may, for the purposes of assessing an application for approval of a TUMRA modification or for the Authority to modify a condition of the TUMRA's accreditation, request additional information from the holder of the TUMRA.

Subsection 153(2) 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 in accordance with section 253, the application is taken to have been withdrawn.

Consistent with the approach taken for TUMRA accreditation throughout this Part, subsection 153(3) provides that despite the operation of subsection 153(2) the Authority

has the discretion to continue to consider an application that has been taken to be withdrawn under that subsection.

Section 154 Decision on application

Section 154 deals with a decision on application. This section 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.

Subsection 154(2) requires the Authority to make a decision on an application within a reasonable period after receipt of an application.

Subsection 154(3) provides the Authority may 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 in certain circumstances. These circumstances are where the Authority has considered an assessment of the impact that the proposed modification is likely to have and the Authority has considered the matters mentioned in section 145 and the Authority is accordingly satisfied that it is necessary and appropriate to do so. The intention here is that paragraph 154(3)(b) will apply whether or not paragraph 154(a) applies, as the Authority should have the ultimate discretion whether or not to approve the application.

For the purpose of this process, paragraph 154(3)(a)(ii) provides, the references in section 145 to “accreditation” should be taken to include references to “modification”.

A note alerts the reader that a new certificate of accreditation is given under subparagraph 155(1)(b)(ii) if a modification of a TUMRA is approved. This ensures that the certificate reflects the current TUMRA including relevant dates of operation and any new conditions imposed.

Section 155 Notice of decision

Section 155 applies in circumstances where the Authority has made a decision under subsection 154(2) in relation to a TUMRA or its conditions of accreditation.

Subsection 155(1) 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 and if the decision is to refuse the application in relation to the TUMRA, give written reasons to the TUMRA holder. Additionally, if the Authority approves a modification or modifies a condition it must give the holder a copy of the modified TUMRA as approved and a new certificate of accreditation that incorporates the effect of the decision.

Subsection 155(2) provides that that notice to approve a modification or modify a condition must specify the day from which the approval takes effect.

Division 4—Modification, suspension and revocation

Section 156 Modification of conditions or suspension of accreditation—pending investigation

Subsection 156(1) 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. These matters include: 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; if the application for accreditation of the TUMRA was being considered again, the accreditation would not be granted because of circumstances that were not foreseen at the time the accreditation was first granted; 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.

Subsections 156(2) and 156(3) require 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.

There are procedural fairness requirements in paragraphs 156(2)(b), 156(4)(b) and 156(5)(b) so that the TUMRA holder is presented with an opportunity to provide reasons to the Authority as to why the Authority should remove the modification or suspension. The Authority must consider any reasons provided by the TUMRA holder in accordance with the notice. This is consistent with similar provisions in the Instrument relating to modification and suspension of permissions.

Subsections 156(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 which is the later of the day after the modification or suspension commenced and the day after the TUMRA holder provides reasons to the Authority in accordance with a notice given to the TUMRA holder under subsection 156(2).

Section 157 Action following investigation

Subsection 157 prescribes the action to be taken by the Authority following an investigation under section 156.

Subsection 157(2) provides that 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.

Subsection 157(3) provides that if the Authority finds there are reasonable grounds for modifying the condition of accreditation, or suspending the TUMRA's accreditation, it may (noting the Authority has discretion in this circumstance), by written notice to the permission holder, either continue the modification or the suspension or revoke the accreditation of the TUMRA.

Subsection 157(4) provides 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 at the end of that period.

This section 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.

Subsection 157(5) sets out the effects of actions that have been taken under subsection 157(3) because of there being found to be reasonable grounds to suspend the TUMRA or to modify its conditions. For a modification, the accreditation has effect as if it had been granted with the modified condition. For a suspension, the accreditation remains suspended for the period specified in the notice. Subsection 157(6) provides that if the Authority revokes the accreditation, the revocation takes effect on the day the Authority gives the notice to the TUMRA holder.

Section 158 Revocation of accreditation—general

Subsection 158(1) sets out the circumstances in which the Authority has discretion to revoke the accreditation of the TUMRA. The revocation is to be by written notice. The circumstances are where:

- the holder of the accredited TUMRA consents to the revocation, on behalf of the Traditional Owner group covered by the TUMRA; 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 certain provisions of the Criminal Code relating to provision of false or misleading information to the Commonwealth.

Subsection 158(2) provides that the revocation of a TUMRA's accreditation takes effect on the day the Authority gives notice to the TUMRA holder or if a later day is specified in the notice then it will have effect on that later day.

Subsection 158(3) provides that before taking action to 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, the Authority is required 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. Additionally, the Authority must 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.

Subsection 158(4) provides that in deciding whether to revoke the TUMRA's accreditation the Authority must consider any reasons given in accordance with paragraph 158(3)(b).

This section has been changed from the old regulations so that it no longer includes a power to suspend accreditations, leaving only a power to revoke. This removes the overlap that existed with section 156 for suspension powers as well as aligning with the permission provisions. It is not logical to suspend an accreditation of a TUMRA where there is no

intention of conducting an investigation and therefore it is more appropriate for the power to suspend to only be available under section 156.

Regulation 89T(1)(b) of the old regulations provided that the Authority could suspend or revoke an accreditation of a TUMRA if the Authority was satisfied on reasonable grounds that a person authorised by or under the TUMRA to undertake traditional use of marine resources had not complied with the provisions of the TUMRA in relation to use or a condition of the TUMRA accreditation. This was a duplication of grounds under regulation 89R (the equivalent of section 156) and has therefore been deleted. In circumstances where such grounds arise it is more appropriate that the Authority firstly be required to modify conditions or suspend the accreditation pending an investigation under section 156 before making a final decision about continuing the modification/suspension or revoking.

Paragraph 89T(1)(c) of the old regulations also included a ground that allowed the Authority to suspend or revoke the accreditation of a TUMRA in cases where there were reasonable grounds for believing that if an application for accreditation of the TUMRA was being considered again the accreditation would not have been granted because of circumstances that were not foreseen at the time the accreditation was first granted. This ground has been moved to section 156, which is more appropriate as an investigation should first take place before a final decision is made about continuing a suspension or revoking the accreditation.

Division 5—Termination of accredited TUMRA

Section 159 Termination of accredited TUMRA

Section 159 provides that the holder of an accredited TUMRA may terminate the TUMRA, advise the Authority of the termination, and thereby cancel the TUMRA's accreditation. This can be done at any time by written notice to the Authority.

Subsection 159(2) 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.

Part 5—Discharge of sewage

Vessel-based sewage discharge delivers increased nutrients and pathogens in the water column. Compounded with other impacts, it can adversely affect corals, fish, seagrasses and other flora and fauna of the Region, particularly in poor tidal areas such as bays and lagoons. Localised effects on a coral reef can include reduced species diversity, lower coral cover and suppressed coral recruitment. Accordingly, all vessel owners must ensure vessel sewage is managed appropriately.

Section 160 Simplified outline of this Part

Section 161 Limit on application of this Part

Section 161 makes it clear that Part 5 does not apply to a discharge of sewage to which Division 2 of Part IIIB of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* applies. If a vessel discharges *sewage* in, or into, the Marine Park, and Division 2 of Part IIIB of that Act applies to the discharge, then an offence would have been committed under that Act and not the Instrument. Section 161 ensures that there is not inconsistent or duplicate regulation of the discharge of *sewage* in the Marine Park.

A note alerts the reader that the object of Division 2 of Part IIIB of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* is to give effect to Australia's obligations regarding the discharge of sewage into the sea under Annex IV of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78).

Section 162 Discharge of sewage generally

Subject to some exceptions, subsection 162(1) makes it an offence for a person to discharge sewage in, or into, the Marine Park in circumstances where the person engages in conduct and the person was negligent as to whether sewage would be discharged in, or into, the Marine Park.

The penalty is 50 penalty units.

Paragraph 162(2)(a) clarifies that the offence outlined in subsection 162(1) does not apply if the sewage is discharged from a vessel or aircraft because of accidental damage to the vessel or aircraft and all reasonable precautions were taken after the occurrence to prevent or minimise the escape of sewage. Additionally the offence does not apply if the sewage is discharged for the purpose of saving life at sea or securing the safety of the vessel or aircraft. These offence-specific defences are appropriate because they relate to circumstances beyond the control of the defendant.

Note 1 alerts the reader that a defendant bears an evidential burden in relation to matters in subsection (2) in accordance with subsection 13.3(3) of the *Criminal Code*. Further, note 2 alerts the reader that there are additional defences in sections 163 and 164 (discharge of treated and untreated sewage from vessels) and section 10.5 of the *Criminal Code* (lawful authority). The effect of the *Criminal Code* is such that it will be a defence where the sewage is discharged in a zone and the person holds any necessary permission required under the relevant zoning plan to authorise such a discharge of sewage in the zone.

The offence has been drafted consistent with the Guide to Framing Commonwealth Offences. The defendant appropriately bears the evidential burden in relation to matters in subsection 162(2). Where sewage is discharged due to accidental damage to vessel or the aircraft, it will be peculiar to the knowledge of the defendant what precautions were taken to prevent this, or what was done to minimise the escape of sewage. This is also the case for the purpose of saving life at sea or securing the safety of the vessel or aircraft. It is expected that it would not be unreasonably difficult for a defendant to discharge the evidentiary burden in the circumstances described in paragraph 162(2)(b) while it would be overly difficult and/or costly for the prosecution to do so.

Negligence is the appropriate fault element applied to the circumstance of the sewage being discharged into the Marine Park (paragraph 162(1)(c)) as it is appropriate for the person's liability to be determined with reference to an objective standard. Negligence is applied to the 'circumstance' or 'result' of sewage being discharged in the Marine Park. Negligence is a well-established indicator of liability in relation to environmental pollution and the high standards of care required to prevent such pollution are well understood. The imposition of negligence is also justified as the penalty of 50 penalty unit is relatively low and there is no possibility of imprisonment.

Section 163 Discharge of untreated sewage from vessels

This provision and section 164 are directed at any person who engages in conduct under section 162.

Subsection 163(1) provides that section 162 (Discharge of sewage generally) does not apply in relation to conduct engaged in by a person that causes sewage to be discharged from a vessel in, or into, the Marine Park in the circumstances set out. This includes where a vessel has 15 or fewer persons on board and the criteria set out in subparagraphs 163(1)(b) to (d) are met.

Subsection 163(2) is directed to the circumstances where section 162 will not apply in the case of a vessel that has more than 15 persons on board and the criteria set out in subparagraphs 163(2)(b) to (f) are met.

The criteria relating to distance from an aquaculture operation are different from the old regulations to clarify that the requirement is intended to be equally applicable to an aquaculture operation that is out in the middle of the reef and an operation that is adjacent to the reef. This will be achieved by replacing the requirement that the sewage be discharged more than one nautical mile from the 'seaward edge' of any aquaculture operation with a requirement in paragraphs 163(1)(d) and 163(2)(f) that the sewage simply be discharged more than one nautical mile from an aquaculture operation.

Notes direct the reader that a defendant bears an evidential burden in relation to matters in subsections 163(1) and 163(2) and to see subsection 13.3(3) of the *Criminal Code*.

The defence is drafted consistent with the Guide to Framing Commonwealth Offences. It is appropriate that the offence for discharging sewage should not apply in certain circumstances as it would be overly harsh and would fail to consider the sewage control efforts that had been made. The evidential burden appropriately rests with the defendant in relation to matters in subsections 163(1) and 163(2). Information relating to the vessel such

as how many people are on board and the vessel's sewage management processes would be easily established and evidenced by the defendant. It is expected that if these defences were available to the defendant then the information would be peculiar to the knowledge of the defendant, it would not be unreasonably difficult for the defendant to establish and it would be overly difficult and/or costly for the prosecution to disprove.

Section 164 Discharge of treated sewage from vessels

Section 164 provides that section 162 does not apply in relation to conduct engaged in by a person that causes sewage to be discharged from a vessel if the circumstances set out in paragraphs 164(a) to (d) exist. These paragraphs include such considerations as the type of treatment the sewage has received, the type of waterway the activity of the vessel is taking place in and the distance the discharge of sewage would be from such things as the reef, people, aquaculture operations and boat harbours.

A note directs the reader that a defendant bears an evidential burden in relation to matters in this section (see subsection 13.3(3) of the *Criminal Code*).

The provision is drafted consistent with the Guide to Framing Commonwealth Offences. It is appropriate that these offence-specific defences apply in recognition that the sewage has been appropriately managed and has not been discharged in a vulnerable area. The evidential burden appropriately rests with the defendant in relation to matters in section 164. In response to an offence, specific defences and information relating to the vessel, such as the vessel's sewage management processes, would be easily established and evidenced by the defendant. As with the matters in section 163 it is expected that the information would be peculiar to the knowledge of the defendant, that if these defences were available to the defendant they would not be unreasonably difficult to establish and they would be overly difficult and/or costly for the prosecution to disprove.

Section 5(1) defines Grade A treated sewage, Grade B treated sewage, Grade C treated sewage and tertiary treatment, which are relevant to this section.

Section 165 Discharge in prescribed circumstances

Section 38DD of the Act relates to the offence of discharging waste under the Act. Subsections 38DD(1) and (4) of the Act indicate where a person commits an offence and subsection 38DD(6) of the Act provides that those subsections do not apply if circumstances prescribed by the Regulations for the purposes of that subsection exist in relation to the discharge.

Proposed section 165 provides that for the purposes of subsection 38DD(6) of the Act, the circumstances set out in sections 163 (Discharge of untreated sewage from vessels) and 164 (Discharge of treated sewage from vessels) are prescribed. This means that provided the criteria in the relevant section is met a person will not have committed an offence in relation to discharge of sewage.

Part 6—Removal of property and various offences

Section 166 Simplified outline of this Part

Section 167 Removal of property

Section 167(1) empowers the Authority to order a responsible person in writing to remove abandoned, sunk or wrecked property. This power also allows 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*.

A note alerts the reader that it is an offence to contravene the order and refers the reader to see subsection 167(5) and section 38DC of the Act.

The notice need only be served on one of the persons listed in paragraphs 167(2)(a) – (d). In circumstances where there is more than one category of responsible person, the Authority should have discretion to decide who the most appropriate person is to receive the notice.

Subsections 167(3) and 167(4) provides for the circumstance where the responsible person is unable to be located and enables the Authority to publish a notice on its website or in a Queensland newspaper which sets out the matters listed in paragraphs 167(4)(a) to 167(4)(d).

Subsection 167(5) provides that an order under subsection 167(1) or paragraph 167(4)(c) is an order to which section 38DC of the Act applies. A note alerts the reader that the section creates an offence for contravening the order.

It is necessary and appropriate to leave the content of the offence in section 38DC of the Act to delegated legislation because of the changing nature of the requirements for the Authority to effectively manage the Marine Park. The Marine Park is currently undergoing unprecedented levels of change to things such as trends for the use of the Marine Park, or threats to the environment in the Marine Park. This could necessitate changes to the types of orders that need to be prescribed.

Section 168 Certain animals not to be taken onto Commonwealth Islands

Section 168 is an offence of strict liability that prohibits certain animals being taken onto Commonwealth Islands.

Subsection 168(1) provides that a person commits an offence of strict liability if the person takes a living terrestrial animal on to (or allows such an animal to enter upon) an island, or part of an island, that is owned by the Commonwealth and within the Marine Park.

Terrestrial animals are animals that live predominantly or entirely on land as distinct from aquatic animals.

The penalty is 50 penalty units.

Subsection 168(2) provides an exception for the circumstances where the animal is the person's assistance animal (within the meaning of section 9 of the *Disability Discrimination Act 1992*).

This is an appropriate offence-specific defence as it is reasonable that a person should be able to take an animal on to the island if it is an assistance animal. Note 1 would alert the reader that a defendant bears an evidential burden in relation to the matters mentioned in subsection 168(2) and refers to section 13.3 of the *Criminal Code*. Note 2 refers the reader to section 10.5 of the *Criminal Code* which relates to lawful authority. Where a person has the written permission of the Authority to take the animal onto the island this will be a defence in accordance with the *Criminal Code*.

The evidential burden appropriately rests with the defendant in relation to matters in subsection 168(2). Information about whether the animal is the person's assistance animal will be peculiar to the knowledge of the defendant and it would not be difficult for the reverse burden to be discharged. By contrast this would be overly costly and/or difficult for the prosecution to disprove.

The offence is drafted consistently with the Guide to Framing Commonwealth Offences. The offence is appropriately a strict liability offence as it supports the integrity of the regulation of the environment. A Marine Park user is placed on notice to guard against the possibility of contravention with a wide range of signage and information available about what is allowed in the Marine Park. Intention would be difficult to prove in relation to this offence and therefore deterrence would be undermined if intent had to be proven. There is no possibility of imprisonment and the penalty is not more than 60 penalty units. It is also important for the offence to be a strict liability offence so that it is appropriate to bring it within the infringement notice scheme that is created by the Instrument.

Section 169 Littering prohibited

Littering in the Marine Park is an offence of strict liability.

Section 169 provides that a person commits an offence of strict liability if the person deposits litter in the Marine Park.

The penalty is 50 penalty units.

The offence is drafted consistently with the Guide to Framing Commonwealth Offences. It is appropriately a strict liability offence as it supports the integrity of the regulation of the environment. It is likely that it would be difficult to establish intention in relation to littering. State legislation prohibits littering and it is widely understood to be an offence. Marine Park users are therefore placed on notice to guard against littering and therefore possible contravention which further justifies the imposition of strict liability. The maximum penalty is not more than 60 penalty units and there is no possibility of imprisonment. It is also important for the offence to be a strict liability offence so that it is appropriate to bring it within the infringement notice scheme that is created by the Instrument.

Section 170 Mooring buoy must display mooring reference number

Section 170 provides that it is a strict liability offence for the holder of the permission for a permitted mooring to not permanently and legibly display their mooring reference number on the mooring bay.

The penalty is 15 penalty units.

The offence is drafted consistently with the Guide to Framing Commonwealth Offences and is appropriately a strict liability offence as it supports the integrity of the regulation of the environment. The circumstances are such that it could be difficult to establish intention, and a requirement to establish intention would therefore undermine the objective of regulating use of moorings. The maximum penalty is not more than 60 penalty units and there is no possibility of imprisonment. It is also important for the offence to be a strict liability offence so that it is appropriate to bring it within the infringement notice scheme that is created by the Instrument.

Section 171 Public mooring and public infrastructure not to be removed, misused or damaged

Public moorings are available to all vessel operators and have been installed by (or for) the Authority and the Queensland Parks and Wildlife Service at popular locations in the Marine Park. Buoys attached to the moorings are blue in colour with a label explaining the class (vessel length), time limits and maximum wind strength limits that apply to the mooring. This and other information is also displayed on tags that are attached to moorings.

Section 171 contains offence provisions relating to removal of, misuse of or damage to public moorings and public infrastructure. For both public moorings and public infrastructure, there are separate offence provisions for a 'person' and a 'person responsible for a vessel'.

In comparison to the old regulations, the reference in this section to 'responsible person' for a vessel has been expanded so that it now applies to the owner of the vessel, which is necessary due to regulation 201 of the old regulations not being remade by the instrument (which otherwise would have potentially extended the application of section 171 to the owner). A defence for the owner has also been included in section 171 for circumstances where the vessel is stolen; this is also necessary due to the regulation 201 of the old regulations (which previously contained this defence) not being carried over into the Instrument.

Where a person (whether they are on a vessel or otherwise) engages in conduct and the conduct results in the removal of, misuse of or damage to either a public mooring or public infrastructure, that person commits an offence of strict liability under subsection 171(1) (if in relation to a public mooring) or subsection 171(3) (if in relation to public infrastructure).

Additionally, where a person on a vessel engages in conduct and the conduct results in the removal of, misuse of or damage to either a public mooring or public infrastructure, a responsible person for the vessel will have also committed an offence of strict liability pursuant to either subsection 171(2) (if in relation to a public mooring) or subsection 171(4) (if in relation to public infrastructure).

Subsection 171(5) provides an exception for the owner of a vessel when a vessel has been stolen. In this circumstance a person will not have committed an offence under this section if the person owns the vessel, the alleged offence is committed by another person who is in charge of the vessel and at the time of the alleged offence the vessel was stolen or illegally taken. It is appropriately a defence to the offence if the owner of the vessel had the vessel stolen and therefore the vessel was not within their control.

A note alerts the reader that in relation to the exception in this subsection the defendant bears an evidential burden and refers the reader to subsection 13.3(3) of the *Criminal Code*. The evidential burden is appropriately reversed in this circumstance as the vessel owner will have the means by which to demonstrate that the vessel was stolen at the time of the incident (whether by providing a police report or other evidence), it would be peculiar to their knowledge, and it would not be overly burdensome on them to do so. By contrast it would be overly costly for the prosecution to disprove.

The penalty for these offences is 50 penalty units.

The offence is drafted consistently with the Guide to Framing Commonwealth Offences and is appropriately a strict liability offence as it supports the integrity of the regulatory regime for the environment. Further the circumstances of the offence are such that it could be difficult to establish intention, and therefore requiring proof of intention would undermine the objective of regulating the use of moorings. A person is placed on notice to guard against the possibility of contravention by the wide range of signage and information available (including the information on the mooring buoys themselves) about what is and is not allowed in the Marine Park. The maximum penalty is not more than 60 penalty units and there is no possibility of imprisonment. It is also important for the offence to be a strict liability offence so that it is appropriate to bring it within the infringement notice scheme that is created by the Instrument.

Part 7—Register of permissions and other instruments

Registers kept by the Authority pursuant to Part 7 have the benefit of being accessible to the public so that Marine Park users and regulators are easily able to access such instruments as permissions.

Section 172 Simplified outline of this Part

Section 173 Register of permissions and other instruments

Section 173 gives the Authority the discretion to keep a register of permissions and other instruments. Subsection 173(1) provides that the Authority may keep a register of permissions, accreditations, approvals, Hinchinbrook authorisations, authorities, exemptions and licences relating to the Marine Park. Subsection 173(3) provides guidance for the purpose of paragraph 173(1)(c) as to whether an instrument on the register is taken to relate to the Marine Park.

Subsection 173(2) gives the Authority the discretion to include copies of, and information in relation to such things set out in paragraphs 173(3)(a) to (h).

Subsection 173(4) clarifies that section 173 does not limit the power of the Authority to keep a register for any other purpose.

Section 174 Access to register

Section 174 provides that a register kept for the purpose of section 173 must be made publicly available on the Authority's website. The Authority's website is www.gbrmpa.gov.au. The ability of the public to access the register is intended to improve transparency in decision making and support regulation of the Marine Park.

Part 8—Reporting requirements

Section 175 Simplified outline of this Part

Section 176 Great Barrier Reef Outlook Report

Every five years, the Authority publishes an Outlook Report that examines the Great Barrier Reef's health, pressures, and likely future. The report is required under section 54 of the Act and aims to provide a regular and reliable means of assessing reef health and management in an accountable and transparent way. The Act provides that the report must be prepared in accordance with any Regulations made under the Act.

Section 176 prescribes an assessment of the relevant heritage values of the Region as a matter that must be contained in the Outlook Report.

Subsection 176(2) provides a definition of relevant heritage values for the purpose of this section. It defines these values as the Commonwealth Heritage values, the Indigenous heritage values, the National Heritage values, the world heritage values and any other heritage values (within the ordinary meaning of the term) that the Authority considers relevant. This definition is not overly prescriptive and leaves the Authority with the flexibility to consider heritage values that are more or less relevant at a particular time.

Subsection 5(1) defines heritage values as having the same meaning as in the EPBC Act. The definition of world heritage values includes natural heritage and cultural heritage in accordance with sections 12 and 528 of the EPBC Act. Pursuant to subsection 12(4) of the EPBC Act, 'natural heritage' and 'cultural heritage' have the meaning given by the Convention for the Protection of the World Cultural and Natural Heritage 1972. An essential component of the definitions of natural heritage and cultural heritage is 'outstanding universal value'. The description and concept of outstanding universal value is based on criteria and processes established under the World Heritage Committee Operation Guidelines for the Implementation of the World Heritage Convention 2012.

Subsection 176(3) provides for what an assessment of relevant heritage values will include. These things are an assessment of the current relevant heritage values of the Region, an assessment of the risks to the relevant heritage values of the Region, an assessment of the current resilience of the relevant heritage values of the Region, an assessment of the existing measures to protect and manage the relevant heritage values of the Region, an assessment of the factors influencing the current and projected future relevant heritage values of the Region and an assessment of the long-term outlook for the relevant heritage values of the Region. These factors ensure that the Outlook Report is an appropriate and useful assessment, supporting and informing the ongoing management of the Region.

Part 9—Interacting with cetaceans

Part 9 of the Instrument limits all human interactions with cetaceans in the Marine Park. These limits apply to anyone interacting with cetaceans, including private recreational boaters and commercial tourist programs.

The intention of these provisions is to minimise potential human impacts on cetaceans in the Marine Park.

Cetacean is defined in subsection 5(1) of the Instrument as meaning ‘an animal of the Suborder Mysticeti or Odontoceti of the Order Cetacea’. These animals are more commonly known as dolphins and whales. All whales and dolphins in the Marine Park are legally protected.

The Marine Park is a vitally important breeding ground for about 30 species of whales and dolphins. It is critical for their continued survival that their ‘nurseries’ are available to them, free from any harassment as harassment may lead to calf mortality.

The objectives of the provisions controlling interactions with cetaceans including whale watching are to ensure (1) complementarity with other Commonwealth regulations for interacting with *cetaceans* (including whale watching) such as the *Environment Protection and Biodiversity Conservation Regulations 2000 (EPBC Regulations)*; and (2) for ease of user and enforcement management staff understanding of the Marine Park. There would without these provisions be a section of the Marine Park that was unregulated in relation to human interactions with cetaceans as a result of an area not falling within the coverage of the EPBC Regulations.

The offence provisions prohibit actions such as feeding, touching or pursuing cetaceans, failing to comply with the approach distances around cetaceans, making sudden movements within specified distances of cetaceans, and swimming with cetaceans. The offences under the Instrument are generally ones of strict liability. The offences are all intended to protect cetaceans in the Marine Park and ensure that they remain free from harassment.

The Instrument makes provision for persons to apply for an exemption from provisions of the Regulations where such persons hold permissions to conduct research relating to cetaceans; to undertake photography, filming or sound recording of cetaceans; to conduct tourist programs relating to cetaceans; or to operate a vessel (other than a prohibited vessel) or aircraft in support of those permitted activities.

Division 1 Introduction

Section 177 Simplified outline of this Part

Section 178 Application of this Part

Paragraph 178(a) provides that a person would not contravene a provision of Part 9 if they are undertaking certain activities mentioned in paragraphs 231(c), (d), (e) or (f) of the EPBC Act. Those activities are an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering of a cetacean; an action that is reasonably necessary to prevent a risk to human health; an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the

purposes of law enforcement; or an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property.

Paragraph 178(b) provides that a person would not contravene a provision of Part 4A if they are undertaking certain action mentioned in paragraphs 231(a), (b) or (h) of the EPBC Act; or if the action could not be undertaken at a time or in a way to avoid contravening the provision. The relevant provisions of the EPBC Act provide for an action authorised by a permit issued under section 238 of the EPBC Act and in force; an action provided for by, and taken in accordance with, a recovery plan or a wildlife conservation plan made or adopted under the EPBC Act and in force; or an action provided for by, and taken in accordance with, a plan or regime for a fishery or fisheries that is accredited under section 245 of the EPBC Act.

Note 1 alerts the reader that a defendant bears an evidential burden in relation to the matters mentioned in this section (see section 13.3 of the *Criminal Code*). These defences are appropriate as they reflect the operation of the Part 9 provisions in conjunction with the EPBC Act requirements. The evidential burden appropriately rests with the defendant in relation to these matters as they are in relation to offence-specific defences. The purpose of the defendant taking the action would be peculiar to their knowledge and they should easily be able to provide evidence of their authorisation for the action under the EPBC Act. The Authority does not administer the EPBC Act and this information is more appropriately characterised as private information of the defendant. It is therefore unlikely that it would be overly onerous for the defendant to provide the evidence for the defence, by contrast it would be difficult for the prosecution to disprove.

Note 2 alerts the reader that Part 9 applies subject to any exemption that the person may have under section 188. Section 188 allows the Authority to issue exemptions to permission holders to conduct certain activities.

Division 2 – Offences

The offences in Division 2 of Part 9 are intended to ensure consistency with provisions concerning cetaceans under the EPBC Regulations, and to support the Australian National Guidelines for Whale and Dolphin Watching 2005. These offences are generally ones of strict liability.

Approach distances reduce the risk of disturbing whales or dolphins. They apply to boats, prohibited vessels (including jet skis and hovercraft), aircraft (including helicopters) and people who are in the water. The offences in Division 2 relate to cetaceans. Approach distances are also relevant to dugong under permissions for commercial dugong watching.

Approach distances are divided into caution zones and no approach zones.

The caution zone is an area surrounding a whale or dolphin in which vessels cannot travel at speeds of more than six knots or speeds that create a wake. The caution zone extends out 300 metres from a whale, and 150 metres for a dolphin. Within a caution zone there are areas designated as ‘no approach’ zones that vessels cannot enter. These are the areas closest to an animal and directly in front of and behind an animal. For a whale, the no approach zone surrounds the animal for 100 metres and extends 300 metres in front of and

behind the animal. For dolphins, the no approach zone surrounds the animal for 50 metres and extends 150 metres in front of and behind the animal.

The offence provisions in Division 2 have been drafted consistently with the Guide to Framing Commonwealth Offences. They are appropriately strict liability offences as they support the integrity of the regulation of the environment and the overarching objective of minimising human impact on the environment of cetaceans. Offenders are placed on notice to guard against possible contravention by detailed information publicly available and widely distributed about what is allowed in the various Zones of the Marine Park. The zoning maps highlight caution zones for cetaceans. Each year the Authority conducts a 'whale season' media campaign that reminds people of approach distances and other responsible practices. This usually involves a media release, television and radio interviews, front webpage promotion etc. The penalties do not exceed 60 penalty units and there is no possibility of imprisonment. It is also important for the offences to be strict liability offences so that it is appropriate to bring it within the infringement notice scheme that is created by the Instrument.

Users of the Marine Park are expected to be familiar with the requirements and to comply with them when in the Marine Park anytime that a cetacean is nearby. In particular, tourist operators conducting activities such as whale-watching and swimming with whales are expected to comply with this Part in conducting their operations.

Section 179 Requirements relating to prohibited vessels

Subsection 179(1) provides that the operator operating a prohibited vessel in the Marine Park commits an offence of strict liability if they contravene subsections 179(2), 179(3) or 179(4).

The penalty is 50 penalty units.

Subsection 179(2) provides that the operator must not allow the vessel to approach closer than 300 metres to a cetacean. Subsection 179(3) provides that the operator must move the vessel, at a constant speed of less than 6 knots, away from a cetacean that is approaching so that the vessel remains at least 300 metres away from the cetacean. A note alerts the reader that a speed that is the equivalent of a brisk walking pace is not exceeding 6 knots. Six knots is about 11 kilometres per hour.

Subsection 179(4) provides that a prohibited vessel must not be used in the Marine Park for a swimming-with-whales activity or a whale watching activity. This is because these kinds of vessels are considered to create too great a disturbance to the environment of cetaceans.

Section 180 Other craft – caution zones near adult cetaceans

Subsection 180(1) provides that an operator operating a vessel in the Marine Park that is not a prohibited vessel commits an offence of strict liability if the operator contravenes subsections 180(2), (3), (4) or (5).

A note alerts the reader that section 181 relates specifically to calves and that additional limitations apply in relation to whale protection areas. There are stricter requirements in relation to interactions with calves because of their vulnerability.

The penalty is 50 penalty units.

Subsections 180(2) to (5) set out the requirements for caution zones. The diagram below reflects these requirements. Paragraphs 180(2)(a) to (g) set out such requirements as the operator must operate the vessel at a constant speed of less than 6 knots, minimise noise and make sure the vessel does not restrict the path of the cetacean.

Note 1 alerts the reader that subsections (4) and (5) apply if a cetacean approaches a vessel or comes within the limits mentioned in paragraph 2(b). Those subsections indicate the action that must be taken by the operator.

Note 2 alerts the reader that subsection (6) provides an exemption for paragraph (2)(b).

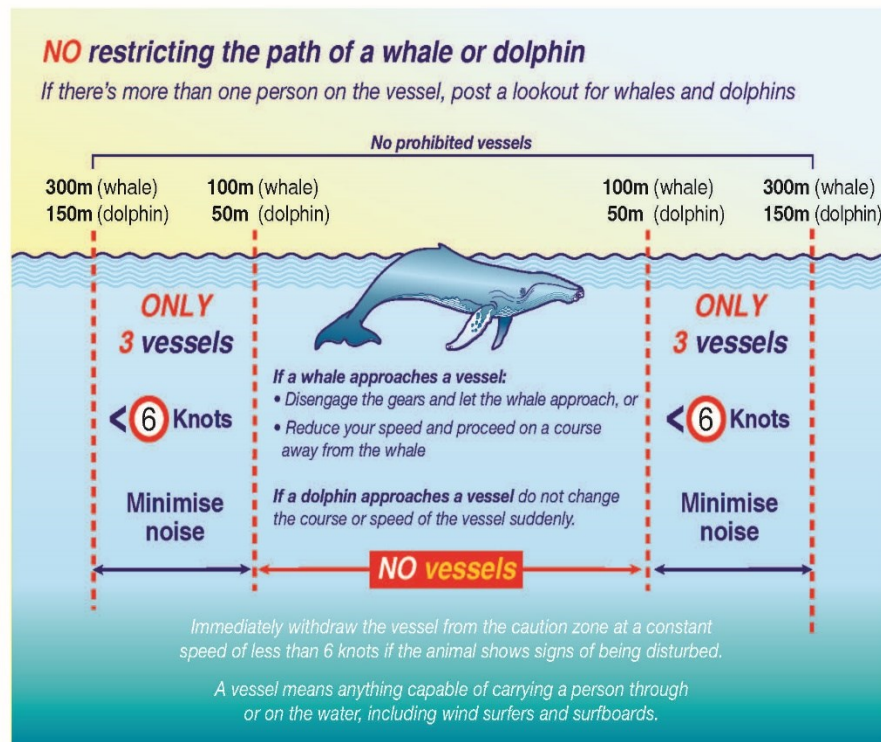
Subsection 180(3) provides for a limit of 3 vessels in the caution zone of a cetacean (other than a calf). Section 181 prohibits entry into the caution zone of a calf.

Subsection 180(4) provides that if a whale approaches the vessel or comes within paragraph (2)(b) limits then the operator must disengage the gears and let the whale approach or reduce the speed of the vessel and proceed on a course away from the whale. In the circumstance of a dolphin (other than a calf) approaching a vessel or coming within the paragraph (2)(b) limits the person must not change the course or speed of the vessel suddenly.

Subsection 180(6) provides that it is a defence to the offence at paragraph (2)(b) if the cetacean has approached the vessel. This is an appropriate offence specific defence as it would be unreasonable for the offence to apply in the circumstance of the cetacean having approached the vessel.

The defence is necessary to ensure that operators of vessels are not inadvertently captured by the offence provisions in the Instrument, particularly as the exceptions apply to strict liability offences where fault is not required to be proven. A note alerts the reader that a defendant bears an evidential burden in relation to this defence and refers to section 13.3 of the Criminal Code. Whether the cetacean was approaching the vessel is likely to be peculiar to the knowledge of the defendant and would be overly onerous for the prosecution to disprove so the evidential burden is reversed. It should also be noted that the relevant offences are largely minor offences, all with a penalty of 50 penalty units or less with no possibility for imprisonment. It is also important for the offence to be a strict liability offence so that is appropriate to bring it within the infringement notice scheme that is created by the Instrument.

The following diagram (which is not intended to be comprehensive) highlights many of the requirements of section 180.



181 Other craft- caution zones near calves

Subsection 181(1) provides that the operator of a vessel that is not a prohibited vessel commits a strict liability offence if the operator contravenes subsection 181(2) or (3) in the Marine Park. The intent of the Instrument is to impose stricter limits on interactions with cetaceans when there is a calf present. This is in recognition of the vulnerability of calves.

Subsection 181(2) provides that the operator must not allow the vessel to enter the caution zone of a calf. As for section 181 the circumstance of the calf approaching the vessel is appropriately a defence as set out in subsection 181(4) to the offence in subsection 181(2).

It is not appropriate that the offence applies if the calf has approached the vessel as this is not something the operator of the vessel can control. The defence is therefore necessary to ensure operators are not inadvertently captured by the offence provision. A note alerts the reader that a defendant bears the evidential burden to prove the defence in subsection 181(4). The evidential burden is appropriately placed on the defendant as this is an offence-specific offence. It is not appropriate for the prosecution to need to establish that the cetacean was not approaching the vessel, it would be overly onerous for them to do so, and it would be peculiar to the knowledge of the defendant. The penalty for the offence at 50 penalty units is also relatively low.

Subsection 181(3) provides for how a vessel must be operated if a calf appears within the caution zone. The operator of the vessel must immediately stop the vessel, must turn off the vessel's engines, and disengage the gears or withdraw the vessel from the caution zone at a constant speed of less than 6 knots so that the vessel remains at least 300 metres away from the calf.

182 Aircraft near cetaceans

Section 182 provides that a person who is operating an aircraft in the Marine Park commits a strict liability offence in certain circumstances.

The section specifies the distances to a cetacean within which a person cannot operate an aircraft. These distances are the height of 1650 feet and the horizontal radius of 500 metres for a helicopter or a gyrocopter, and the height of 1000 feet and 300 metres for all other aircraft. In addition, the section provides that aircraft cannot approach a cetacean from head on, and must not land the aircraft on water so that it comes within the radius of a cetacean of 500 metres for a helicopter or gyrocopter, or 300 metres for other aircraft.

This offence is in recognition of the potential for the environment of cetaceans to be disturbed from the air.

The penalty is 50 penalty units.

183 No feeding of cetaceans

Subsection 183(1) provides that it is an offence for a person to feed or attempt to feed a cetacean in the Marine Park. This includes by throwing food or rubbish into the water near a cetacean.

The penalty is 50 penalty units.

Subsection 183(2) provides an exception to the offence under subsection 183(1) in relation to the routine discarding of bycatch by a commercial fisher if the fisher makes reasonable efforts to avoid discarding bycatch near a cetacean. This defence is tailored to the specific offence recognising that it will be necessary for a commercial fisher to routinely discard bycatch and provided they have made reasonable efforts to avoid doing this near a cetacean then it should not attract the offence provision.

A note alerts the reader that a defendant bears an evidential burden to establish the defence and refers to section 11.3 of the *Criminal Code*. It is appropriate that the defendant has the evidential burden to establish the exception as the defence is an offence-specific defence and the efforts made by the fisher to avoid discarding bycatch near a cetacean will be peculiar to the knowledge of the fisher. It is not considered overly onerous for a person to discharge this burden whereas it would be overly difficult and/or costly for the prosecution to disprove. The penalty of 50 penalty units is also relatively low.

Section 184 No touching, or sudden movements near, cetaceans

Section 184 provides that it is an offence of strict liability if a person touches a cetacean or makes a sudden movement within 2 metres of a cetacean.

The penalty is 50 penalty units.

This offence is intended to prevent the harassment of cetaceans. It is consistent with ensuring that cetaceans have a stress free habitat.

Section 185 Requirements for swimming with cetaceans

Subsection 185(1) provides that a person commits an offence if a person enters the water and the entry occurs within 100 metres of a whale or 50 metres of a dolphin, and the whale or dolphin is in the Marine Park.

It is not relevant whether the person is in the Marine Park at the point of entry to the water as this would exclude persons entering from beaches. The focus is instead on whether the whale or dolphin is in the Marine Park and subsection 185(2) provides that strict liability applies to this element of the offence. It will be necessary for the prosecution to show intent in relation to the person entering the water and that entry was within 100 metres of a whale or 50 metres of a dolphin.

Subsection 185(3) provides that a person commits an offence of strict liability if while in the Marine Park the person approaches within 30 metres of a cetacean.

Subsection 185(4) provides that a person commits an offence of strict liability if the person is in the water in the Marine Park, a cetacean comes within 30 metres of the person, and the person does not move slowly away or if they swim towards the cetacean.

The penalty for these offences is 50 penalty units.

The offences in section 185 have been drafted consistently with the Guide to Framing Commonwealth Offences. Appropriately strict liability is applied in the first offence to the circumstance of the whale or dolphin being in the Marine Park as it would be overly onerous for the prosecution to establish intent of the defendant in relation to this circumstance.

Strict liability supports the integrity of the regulatory regime of the Marine Park. The penalty is below 60 penalty units and there is no possibility of imprisonment. It is also important for the offences to attract strict liability so that it is appropriate to bring the offences within the infringement notice scheme that is created by the Instrument.

Section 186 Conducting swimming-with-whales activities without permission

Section 186 provides that a person commits a strict liability offence if the person conducts a tourist program in the Marine Park that consists, in whole or part, of a swimming-with-whales activity involving dwarf minke whales and the person does not hold a permission to conduct that activity.

This offence is intended to protect whales within the Marine Park while also aiding the integrity of the permissions system.

The penalty is 50 penalty units.

Section 187 Protection of whales in whale protection area

Section 187 provides for two strict liability offences. The first prohibits a person from operating a vessel to approach within 300 metres of a whale in a whale protection area; while the second offence prohibits a person from operating a vessel in a whale protection area as, or as part of, a tourist program to conduct a whale watching activity or a swimming-with-whales activity.

The whale protection area is designed to minimise disturbance to whales. The areas specified are areas where whales calve and the whale protection area is intended to support protection of and management of calving in these areas.

The penalty for each offence is 50 penalty units.

Division 3- Exemption from this Part

The provisions in Part 9 operate subject to a permission holder being granted an exemption under section 188. Such exemptions operate in conjunction with the permissions system.

Section 188 Exemption from this Part

Section 188 relates to the Authority's ability to give an exemption from a particular provision or provisions of Part 9 where a person applying for or holding a permission that relates to cetaceans will require that exemption to lawfully undertake the activity they have been or may be permitted to do.

Subsection 188(1) provides for the Authority to have the discretion to grant an exemption on application under section 189 (Application for exemption) from the application of Part 9, subject to subsection 188(2), for a person who holds a permission to conduct any of the activities set out in paragraphs 188(1)(a) to (d). These activities are: undertaking research relating to cetaceans, undertaking photography, filming or sound recording of cetaceans, conducting a tourist program that consists of a swimming-with-whales activity or whale watching activity, and operating a vessel or aircraft in the Marine Park to support any of the aforementioned activities.

An exemption given by the Authority will also be recognised as an exemption from the similar offence provisions under the EPBC Regulations. The reference in the EPBC Regulations is to the old regulations. The effect of the *Acts Interpretation Act 1901* and the *Legislation Act 2003* is that the reference applies as if it were to new section 188 of the Instrument.

A note at the end of subsection 188(1) alerts the reader to the fact that a defendant bears an evidential burden in relation to the matters mentioned in subsection 188(1) and refers the reader to section 13.3 of the *Criminal Code*. The effect of this is that the evidential burden of proof is reversed in relation to whether a person holds an exemption, for the purposes of making out a defence to the offences in Part 9. As offence-specific defences the burden is appropriately reversed because the existence of an exemption may be peculiarly within the knowledge of the defendant and it would be impossible for the prosecution to prove that no exemption exists. This is because in cases where the Authority has granted an exemption to a permission holder, the exemption automatically applies to any person who holds a written authority given under section 118 (see discussion of subsection 188(9) below). There is no requirement for the holder of a permission to advise the Authority in cases where they give a person a written authority under section 118 therefore it is almost impossible for the prosecution to establish whether this has occurred. Thus, the presence of a written authority under section 118 and any exemption attached because of section 188(9) would be peculiar to the knowledge of the defendant (and the relevant permit holder) in cases where the defendant holds such an authority. Exemptions granted by the Authority are required to be granted in writing therefore it would not be difficult for a defendant who holds an exemption, or who holds a written authority under a permit to which an exemption is attached, to produce evidence of this.

Subsection 188(2) provides that the Authority must not give an exemption that relates to the operation of a prohibited vessel or the conduct of an activity in a whale protection area. This recognises that such operations and activities should never be considered lawful interactions with cetaceans.

Subsection 188(3) provides that where an exemption is given under subsection 188(1) to a permission holder for a tourist program that consists of a swimming-with-whales activity or a whale watching activity then the exemption may also be given to any tourist participating in the tourist program. For example, such an exemption would enable tourists participating in a swimming-with-whales activity to enter the water at closer than 100 metres to the cetacean.

Subsection 188(4) provides that an exemption only applies in the circumstances, and subject to the conditions, set out in the exemption. Subsection 188(5) provides the Authority may by written notice vary (which would include to add or reduce) the conditions attaching to the exemption.

Subsections 188(6) and (7) set out the limitations on exemptions. An exemption relating to the operation of a vessel may be given only in order to allow use of the vessel or aircraft to support activities authorised by a permission of a type mentioned in paragraphs 188(1)(a), (b) or (c) and applies while the vessel or aircraft is operating in the Marine Park to support those activities.

Subsection 188(7) provides that an exemption does not continue in force when the permission to which it relates is not in force, is in force only for the period specified in the exemption and (if given under subsection 188(3)) applies only while a tourist is participating in the tourist program. Subsection 188(8) provides that an exemption has effect according to its terms and subsection 188(9) provides that an exemption granted to a holder of a permission applies in relation to a person authorised in accordance with section 118 by the holder of the permission in the same way as the exemption applies in relation to the holder of the permission.

Subsections 188(8) and (9) provide for the effect of an exemption. Subsection 188(8) provides that an exemption has effect according to its terms. This means that the terms set out in an exemption are to dictate how it applies. Subsection 188(9) provides for circumstances where the holder of a permission has granted a written authority to a person to carry out an activity under the permission pursuant to section 118. In such circumstances, subsection 188(9) clarifies that any exemption granted to the permission holder applies to the holder of the written authority in the same way that it applies to the holder of the permission.

Section 189 Application for exemption

Section 189 provides for who may make an application for an exemption, the prescribed content of the application and the matters the Authority must take into account in considering the application.

Subsection 189(1) provides that the applicant to the Authority for an exemption must hold a permission referred to in section 188 or have applied for such a permission and a decision on the application is pending. Subsection 189(2) provides that an application for an exemption must include the information set out in paragraphs 189(2)(a) to (v). A note alerts the reader that the Authority may require additional information under section 190. Additional information may be required in order to effectively determine if an exemption is appropriate.

Subsection 189(3) sets out the matters the Authority must take into account when considering an application. Subparagraph 189(3)(d) requires the Authority to consider if the applicant owes any fee or other amount under the Act, the Instrument or any other instrument made for the purposes of the Act. The reference to any other instrument would cover instruments no longer in force such as the old regulations.

Subparagraph 189(3)(d) gives the Authority the discretion to take into account any other matter the Authority considers relevant. This is of particular use as additional matters may become relevant over time or be relevant to the particular application.

Section 190 Additional information

Subsection 190(1) allows the Authority to request additional information when assessing an application under section 189 for an exemption. The request for additional information must be made in writing.

Subsection 190(2) provides that the applicant has 20 days after the Authority gives the request to the applicant, or a period extended by the Authority in accordance with section

253 to comply with the request. If the applicant has not complied within that time the application will be taken to be withdrawn.

Part 10—Compulsory pilotage

In 1991, the Australian Government introduced compulsory pilotage to reduce the risk of ship groundings and collisions in the Great Barrier Reef. Compulsory pilotage required all regulated ships to have a pilot on board when travelling through the Inner Route, Hydrographer's Passage and the Whitsundays compulsory pilotage area. Regulated ships are considered to be vessels that are 70 metres or longer, or ships carrying oil, chemicals or liquefied gas.

Section 191 Simplified outline of this Part

Section 192 Compulsory pilotage area

For the purposes of subsection 3(1) of the Act, subsection 192(1) prescribes compulsory pilotage areas for the inner route described in subsection 192(2), the Hydrographer's Passage described in subsection 192(2), and the Whitsundays compulsory pilotage area described in subsection 192(4).

Subsection 192(2) defines the inner route as the Australian mainland, the northern boundary of the Region, the outer eastern edge of the Great Barrier Reef and the parallel 16°39.91'S.

Subsection 192(3) provides that the Hydrographer's Passage is the area bounded by the line starting at the point described in item 1 of the table and running sequentially as described in the table. Subsection 192(4) provides that the Whitsundays compulsory pilotage area is the area bounded by the line starting at the point described in item 1 of the table and running sequentially as described in the table.

Section 193 Exemption from requirement to navigate with a pilot- prescribed information

Section 193 prescribes for the purposes of subsection 59F(2) of the Act the information that is to be provided to the Minister in order for the Minister to make a decision on whether to exempt the applicant from the pilotage requirement.

The section retains a discretionary power for the Minister to make a decision even if all the prescribed information is not provided so as to take account of instances where all the information is either not required or is not applicable to the nature of the particular shipping operation proposed.

Paragraphs 193(a) to (k) set out practical items for inclusion such as the name and address of the applicant; matters which allow for the need for a pilot to be appropriately considered e.g. the details of the types, quantities and location in the ship of oil intended to be carried; and details of cargo on the ship including (if hazardous goods are carried) their types and quantities.

Section 194 Minister may request further information

Subsection 194(1) provides a means for the Minister to seek further information from an applicant for an exemption from the pilotage requirements if the Minister considers the information in the application is insufficient for the Minister to make a decision. The further information sought must be requested in writing.

Subsection 194(2) deems an application for exemption to have lapsed if this further information is not provided before the end of 60 days after the Minister makes the request (or if the information is not provided within an extended period if the Minister has extended the period in accordance with section 253).

Section 195 Exemption may be conditional

The provisions of section 195 allow the Minister to apply conditions to the granting of an exemption. The section provides that for the purposes of paragraph 66(2)(ua) of the Act, an exemption granted under section 59F of the Act may be expressed to be conditional on the person granted the exemption complying with any requirements the Minister specifies to be necessary to attain the purpose of Part VIIA of the Act (compulsory pilotage).

Section 196 Duty to notify if information given for exemption becomes inaccurate

A master or owner of a ship who has been granted an exemption under section 59F of the Act is obliged under subsection 196(1) to notify the Minister in writing, if the information given to the Minister by the applicant for the exemption becomes inaccurate.

The obligation to notify the Minister arises, in accordance with subsection 196(2) as soon as practicable after the person becomes aware of the inaccuracy. This is a change from the old regulations to clarify that the duty to notify the Minister of changes arises as soon as it is practicable to do so and does not depend on whether the change ‘could alter the Minister’s opinion’ (which is the wording used in the old regulations). It is not appropriate that the master or owner of the ship should be expected to know whether a change could alter the Minister’s opinion thus the duty to notify should simply arise in every case where there is a change. Under the old regulations the duty previously arose to notify ‘without delay’ and before the ship left the compulsory pilotage area. It is more appropriate that the obligation to notify simply arises as soon as practicable after the master or owner of the ship becomes aware of the change.

Section 197 Termination of exemption in certain circumstances

Section 197 provides a means for the Minister to terminate an exemption. This can be in the case of the applicant breaching the conditions that have been applied to the granting of the exemption or where the master or owner of the vessel has not complied with their duty under section 196 to notify if information given for the exemption becomes inaccurate.

Part 11—Bareboat operations

Bareboats are vessels, usually yachts, that are chartered to visitors with no crew on board. In the Marine Park, the bareboat fleet is focussed in the Whitsundays, with smaller fleets based around Hinchinbrook, the Keppel Islands and Magnetic Island. Bareboats are either motorised or sail boats and are defined as being at least 6 metres in length. The Instrument requires the Authority to keep a register of appropriately qualified persons for bareboat operations and also provides for an offence, in certain circumstances, where a person fails to display an identification number issued by the Authority for a bareboat operation on a vessel.

Section 198 Simplified outline of this Part

Section 199 Register of appropriately qualified persons

In recognition of the different standards of operation within the bareboat industry, a set of Bareboat Industry Standards have been developed with a focus on marine safety and environmental awareness. These standards also complement briefing requirements under Marine Order 504. The Instrument is intended to adopt these standards and additional environmental standards. Subsection 199(1) provides that the Authority must keep a register of appropriately qualified persons for bareboat operations in the Marine Park and make that register publicly available on the Authority's website.

Subsection 199(2) provides the criteria that will lead to a person being considered to be appropriately qualified. That subsection provides criteria in paragraph 199(2)(a) for senior staff and persons responsible for briefing clients of the operations and in paragraph 199(2)(b) for radio operators.

Previously the equivalent provision of the old regulations required that senior staff and persons responsible for a bareboat operation hold a Statement of Attainment from the Barrier Reef Institute of TAFE (Whitsunday Bareboat Course – Briefer) or equivalent along with a Restricted Radio Operator's Certificate. The relevant Statement of Attainment is no longer offered by TAFE and there is currently no equivalent. This has therefore been replaced with the requirement that a person who is a member of the senior staff or is responsible for briefing clients of the operation is to hold a certificate evidencing they have completed a course on communicating which has been adapted for briefing clients about bareboats in the Whitsunday Planning Area, or equivalent course. Additionally, there is a requirement that the person hold a Restricted Radio Operator's Certificate and a requirement that the recreational boating operator licensing requirements under the laws of Queensland be met.

For radio operators the requirement is for the person to hold a certificate evidencing that the person has successfully completed a course on communicating which has been adapted for briefing clients about bareboats in the Whitsunday Planning Area, or an equivalent course, and hold a Restricted Radio Operator's Certificate.

Section 200 Offences—bareboat identification numbers

Section 200 makes it a strict liability offence to display on a vessel an identification number issued by the Authority for a bareboat operation in certain circumstances. These

circumstances are where the person is not the permission holder for the bareboat operations, the person is the holder of a permission for a bareboat operation that is suspended, the permission that the person holds does not allow that kind of vessel to be used for that kind of bareboat operation, or the conditions to which the permission for the bareboat operation is subject do not require the person to display the identification number on the vessel.

The penalty is 50 penalty units.

The offence is drafted consistently with the Guide to Framing Commonwealth Offences. It is appropriately a strict liability offence as it is in support of regulation of the environment by ensuring that only those who are current permission holders and who are operating an appropriate vessel are displaying information identifying themselves as such. As a strict liability offence it supports the integrity of the regulatory regime as it would be difficult to show intent in relation to this offence. The requirements for bareboat operators are widely distributed and therefore potential offenders are on notice to guard against possible contravention. The penalty is not in excess of 60 penalty units and there is no possibility of imprisonment. It is also important for the offence to be a strict liability offence so that it is appropriate to bring it within the infringement notice scheme that is created by the Instrument.

Part 12—Fees

Division 1—Simplified outline of this Part

Section 201 Simplified outline of this Part

Division 2—Fees

Subdivision A—Fees for fee-bearing applications

The Authority collects a fee to cover the cost of the time spent administering and assessing an application for a permission to use or enter the Marine Park for a commercial purpose. The Authority also collects fees for applications for exemptions for compulsory pilotage for this reason. Fees vary according to the complexity of the application and are required to be paid before the application assessment starts.

Section 202 Fees for fee-bearing applications

Subsection 202(1) imposes a fee on an applicant for the assessment of an application to carry on an activity of a commercial nature in the Marine Park (including entering or using the Marine Park). This will be the case for an activity listed in column 1 of an item of the table in subsection 202(6).

A note alerts the reader that the amount of a fee may be waived under section 209. Fees are waived under this section where minimal activity will be required from the Authority in response to an application.

Subsection 202(2) indicates the amount of the fee is specified in column 2. This is the case except for the fee in the circumstances described in subsection 202(3) in which case the fee is set out in column 3. Subsection 202(3) lower fee levels apply if the application was made by a person who, at the time of the application, held another permission that was in force, as a result of an earlier fee-bearing application, to carry on the same activity in the same area and was for permission to carry on the activity after the other permission ceases to be in force. This appropriately recognises that the administrative costs are lower where the application is for a permission to carry on the same activity and therefore the fee is lower.

Subsection 202(4) provides for the fee where an activity is covered by more than one item and provides that the fee is to be the higher of the possible fees. This will not be the case, under subsection 202(5) if a fee is specified in item 4 or 5 of the table and another item of the table that applies because of the Authority's decision under section 91 (Authority must decide on approach for assessment) specifies a lower fee. In this circumstance the lower fee will apply.

Subsection 202(6) sets out the table of fees for assessments of fee-bearing applications. A note alerts the reader that the amounts in this table are indexed under Division 3. Current fees are available on the Authority's website at www.gbrmpa.gov.au.

Section 203 Notices of fees payable

Subsection 203(1) requires that the Authority must, as soon as possible after receiving a fee-bearing application from a person for a permission and making a decision on an assessment approach, give the person a notice in writing.

Subsection 203(2) provides that the notice must set out the fee payable for the application, the date on which the notice is given, and require the person to pay the fee within 21 days after that day either in full or if the relevant impacts are to be assessed by public environment report (or environmental impact statement then the sum of \$10,000 should be paid in part payment of the fee).

Subsection 203(3) makes provisions for when the remaining fee is to be paid in relation to assessments by public environment report or environmental impact statement. The timeframe for payment will be triggered by the report or statement about the activity being made available in draft or final form. At this point the Authority must give the person a notice in writing stating the day on which the notice is given and requiring the person to pay, within 21 days after that day, the amount of the fee that has not been paid.

Subsection 203(4) clarifies that if an application for a permission is withdrawn before the end of the 21 days in which the fee is to be paid, no fee is paid and, if the fee has been paid, the fee must be refunded. Subsection 203(5) provides that an amount paid is not to be refunded for an application that is subsequently withdrawn (or otherwise ceases to have effect) after the amount is paid.

Subsections 203(6) and (7) relate to the notice of the fee payable where the assessment approach is revoked and replaced. At times it becomes apparent that a more, or less, involved assessment approach is appropriate and that is when the assessment approach is revoked and replaced. Subsection 203(6) provides that the Authority must give a notice under subsection 203(7) if the Authority has revoked the assessment approach and replaced it with a new approach. If the fee for the new approach exceeds the old fee (and it is not the case that the old fee was set by item 4 of the table in subsection 202(4)) the new fee is set by item 5 of that table. Subsection 203(7) provides that the Authority must give the person a notice in writing stating the day on which the new notice is given and requiring the person to pay, within 21 days after that day the further fee. That further fee will be either:

- in accordance with paragraph 203(7)(a) the excess of the new fee over the amount of the old fee already paid; or
- in accordance with paragraph 203(7)(b) in the case of the relevant impacts of the activity being assessed by public environment report or environmental impact statement, \$10,000 in part payment of the new fee; or
- if an amount of the old fee has already been paid then the excess of \$10,000 over that amount in part payment of the new fee.

A note at the end of subsection 203(6) alerts the reader that if paragraph 203(6)(c) is not met, subsection 203(1) continues to apply.

A note at the end of subsection 203(7) alerts the reader that if paragraph 203(7)(b) applies, subsection 203(3) can apply later to allow the Authority to give notice requiring the person

to pay the difference between the new fee and \$10,000. This enables the appropriate fee for the replacement assessment approach to be charged.

Section 204 Lapsing of application for permission

Section 204 provides that the effect of a non-payment of a fee for the assessment of a permission application is that the application for permission will lapse. This is a necessary mechanism in support of compliance with fee requirements.

Subdivision B—Fees for other applications and requests

Section 205 Fees for other applications and requests

Subsection 205(1) provides that a fee is payable in relation to other applications and requests for a permission to carry on an activity of a commercial nature in the Marine Park. These are set out in the table in that subsection.

Note 1 alerts the reader that the fee mentioned in item 8 for a request to vary an application is additional to any fee payable under section 202 for an assessment in respect of the application. This is to avoid any doubt about whether the section 202 fee is covering this circumstance. Note 2 alerts the reader that the amount of a fee may be waived under section 209. As discussed below the fee may be waived where the application requires minimal work for the Authority.

Subsections 205(2) and (3) relate to the lapsing of an application or request if a fee is not paid within 10 business days. Subject to the exception in relation to an expression of interest for a special permission, subsection 205(2) provides that the Authority must, as soon as practicable after receiving an application or request that is not accompanied by a fee, give the applicant written notice that sets out the fee amount, the day on which the notice is given and states that the application or request lapses if the fee is not paid to the Authority within 10 business days after that day. Subsection 205(3) provides that the application or request lapses if the specified fee is not paid in accordance with paragraph (2)(c). The application or request is reinstated if the Authority later waives the fee. A note alerts the reader that a fee may be waived under section 209.

Subsection 205(2) does not apply in relation to an expression of interest for a special permission. This is because if an expression of interest is not lodged by the closing date, and without the indicative fee, the Authority is not required to consider the expression of interest for ranking.

Subdivision C—Other fees

Section 206 Fee for application for exemption from compulsory pilotage

Subsection 206(1) provides for a fee of \$750 to be paid to the Authority for an application for a decision under section 59F of the Act for an exemption from compulsory pilotage. This fee is in recognition of the administrative costs of dealing with the application.

Subsection 206(2) provides that the Authority is not required to consider or further consider the application if the fee has not been paid. This again supports compliance with the fees set under the Instrument.

Section 207 Reinstatement fee

Section 207 provides for a reinstatement fee for the purpose of paragraph 131(3)(b) of the Instrument. This applies where a permission has been suspended for non-compliance with the EMC. A \$120 reinstatement fee is payable to the Authority in circumstances where a permission has been suspended for failure either to pay an EMC or to provide EMC returns in accordance with the Instrument. Additionally, the outstanding EMC is required to be paid before the suspension will be lifted.

This fee recognises the administrative cost incurred by the Authority in these circumstances.

Division 3—Miscellaneous provisions for fees under sections 202 and 205

Section 208 Indexation of fees under sections 202 and 205

Section 208 provides for the indexation of fees under sections 202 and 205 of the Instrument.

Subsection 208(1) provides that the fee under sections 202 or 205 for an application, request or lodgement is an amount worked out in accordance with the formula provided. Definitions are provided for the values of CPI number and fee as relevant inputs for the formula. The use of the CPI number is to ensure that fees remain current factoring into account the Consumer Price Index.

Subsection 208(2) provides further instruction on the working out of the formula. This subsection provides that in working out the result any part of the result for section 202 that is less than \$10 should be ignored and for 205 any part of the result that is less than \$1 should be ignored.

The Authority publishes current fees on its website at www.gbrmpa.gov.au.

Section 209 Waiver of fees under sections 202 and 205

Section 209 provides for the waiver of fees under sections 202 and 205.

The Authority has the discretion to waive or refund a fee payable under sections 202 or 205 for an application or request that involves minimal activity by the Authority to act on. This assists in ensuring fairness so that the fee amount that is set goes towards compensating the Authority's work. In circumstances where there has been minimal activity required by the Authority a fee may not be appropriate.

Part 13- Environmental management charges

The EMC is a charge upon the holders of certain types of permissions (chargeable permissions) for the Marine Park. The holder of the permission is liable to pay the prescribed amount for each visitor taken into the Marine Park (or per facility based upon various formulae). The charge is associated with most commercial activities, including tourism operations, non-tourist charter operations, and facilities, operated under a permit issued by the Authority. For most tourism operations, Marine Park visitors participating in a tourist activity are liable to pay the charge to the permittee, who then remits the charge to the Authority. Other operations in the Marine Park such as those involving the hire of equipment, installation and operation of tourist facilities, underwater observatories, sewage outfalls and vending operations, must pay fixed quarterly charges to the Authority.

The EMC is imposed by way of the *Great Barrier Reef Marine Park (Environmental Management Charge- Excise) Act 1993* and the *Great Barrier Reef Marine Park (Environmental Management Charge- General) Act 1993*. Section 39C of the Act provides that the amount of the EMC is to be ascertained in accordance with regulations made under the Act (such as the Instrument).

The role of the chargeable permission holder is to collect and remit the EMC to the Authority by the due date in accordance with the provisions in Part 13.

Division 1- Simplified outline of this Part

Section 210 Simplified outline of this Part

Division 2- Chargeable permissions and determining secondary services

Subdivision A- Meaning of chargeable permission

Section 211 Meaning of chargeable permission

Subsection 3(1) of the Act provides that chargeable permission means a permission granted under the regulations, where the permission is of a kind declared by the regulations to be a chargeable permission for the purpose of this Act.

Section 211 defines chargeable permission for the purposes of the definition of chargeable permission in subsection 3(1) of the Act as a permission granted under the Instrument if it is for any of the specified kinds of activity.

The specified kinds of activity include most commercial activities. They are set out in paragraphs 211(a) to (e), being the operation of a tourist program, a commercial operation that primarily involves the sale of goods or services from a vessel, a vessel chartering for a purpose other than tourism, the construction or maintenance of a facility, the operation of a land-based sewage outfall, the establishment or operation of farming facilities for the culture of pearls or clams, or the construction and operation of a mooring.

Subdivision B- Determining secondary services

The proposed Instrument would allow for the Authority to identify providers of secondary services and exempt them from the standard tourist program charge, which is a form of

EMC. A secondary service provider is intended to be a person who provides a tourist program which wholly comprises of visitors who, for any given day, will have already paid the standard tourist program charge to another tourist operator. The exempting of secondary services accords with the intent that generally the standard tourist program charge should only be paid once per day in respect of any particular visitor to the Marine Park.

Section 212 Secondary services

Section 212 provides for what will constitute a secondary service and provides for secondary services determinations to be sought from the Authority.

Subsection 212(1) provides that a service will be a secondary service if every visitor using the service is likely to have been recorded as a visitor for another chargeable permission on the same day and the Authority determines, under this section, that the service is a secondary service. Subsection 212(2) provides that a chargeable permission holder, or an applicant for one, may apply to the Authority for such a determination.

Subsection 212(3) provides that the application must be in writing and must set out the following details: the primary service provider who supplies, or proposes to supply, visitors to the program (paragraph 212(3)(a)); what percentage of visitors who use, or will use, the service are visitors who are liable to pay the standard tourist program charge (paragraph 212(3)(b)); and how the applicant proposes to find out whether visitors who use the service are visitors who have paid the standard tourist program charge (paragraph 212(3)(c)).

The chargeable permission holder could provide details in their application, for example, for the purposes of paragraph 212(3)(c) that when customers are purchasing a tour package the permission holder will ask the customers to indicate whether they will be partaking in an activity on the same day that would attract the standard tourist program charge.

Additionally, to assist with decision making, subsection 212(4) allows the Authority, at its discretion, to ask the applicant for any other information reasonably necessary to consider the application.

Subsection 212(5) provides that the Authority must determine the application within 28 days after the Authority receives the application (or if the Authority asks the applicant to provide further information then the Authority must determine the application within 28 days of the day the information is given to the Authority).

Section 216 (Visitors who do not have to pay charge) is intended to further the same policy intent as section 212 of avoiding double charging of the standard tourist program charge. The purpose of section 212 is to provide tourist operators with the option of front loading the administrative burden by seeking a secondary services determination as opposed to keeping relevant records for the purposes of reporting compliance with section 216 under subsection 229(2).

Section 213 Notice of decision

An applicant for a determination in relation to a secondary service is given notice of the Authority's decision and that notice will clearly outline the review rights available to them.

Subsection 213(1) requires the Authority to notify the applicant in writing of a decision in respect of the application for determination of a secondary service. Subsection 213(2) provides for the matters that a notice of a refusal to make the determination must set out. These matters are: the reasons for the decision and a statement to the effect that the applicant can apply for review by the Authority under section 64 of the Act and if dissatisfied with the outcome of such a review the applicant can apply to the AAT under section 64A of the Act for review of the decision on reconsideration. Subsections 213(3) and (4) provide that the Authority must give a unique number to a secondary service and a notice under section 212 must contain that number. The purpose of the unique number is to provide the Authority with a mechanism for tracking these decisions.

Subsection 213(5) provides that failure to comply with section 213 does not affect the validity of the decision.

Division 3- Amount of charges and payment

Subdivision A- Standard tourist program charges

There is a full day amount and part day amount for the standard tourist program charge that is determined based on the length of the activity. The full day amount is set out in section 217 and the part day amount is half the full day amount as provided for in section 219. The type of activity will determine whether a charge is attracted and what the level of that charge will be. The relevant charge year will need to be considered to calculate a charge as it is increased based on a formula utilising the Consumer Price Index.

Section 214 Meaning of takes part in a tourist program

Section 214 provides for the meaning of takes part in a tourist program. It provides that a visitor takes part in a tourist program if the visitor participates (wholly or partly) in the excursions or activities provided in the Marine Park by the permission holder who provides the program.

This definition facilitates the determination of whether the criteria is met for a person being liable to pay a standard tourism program charge. Reference to the definition shortens the explanation of what is intended each time the phrase is used.

Section 215 Liability for standard tourist program charge

Section 215 provides that each visitor who takes part (as defined in section 214) in a tourist program provided under a chargeable permission for a primary service for a day or part of day is liable to pay a standard tourist program charge.

This requirement is subject to sections 216 (Visitors who do not have to pay charge) and 218 (Tours that are longer than 3 days).

Section 216 Visitors who do not have to pay charge

The exemption applies in subsection 216(1) when the visitor takes part in a tourist program on a day, on the same day the visitor has used a service for which the full amount of the standard tourist program charge is payable by the visitor, and the visitor or the holder of the

chargeable permission who provided the first service, has evidence (in the form of a dated receipt or dated ticket) that the visitor has paid the charge.

Subsection 216(2) provides additional exemptions whereby a visitor who takes part in a tourist program provided under a chargeable permission on a day will not have to pay the standard tourist program charge in certain specified circumstances. This includes such circumstances as set out in paragraphs 216(2)(a) to (g), for example, if the visitor is taking part in the program by using any non-motorised beach equipment or using a dinghy for which a permission holder is liable to pay charge. These exemptions are directed at activities that instead will attract a charge under section 223 (Charges payable by the holder of a chargeable permission) or section 224 (Charges payable by visitors).

This section has the same policy intent as section 212 which is directed at avoiding double charging of the standard tourist program charge.

Section 217 Full day amount

Section 217 provides for the method of calculating the full day amount of the standard tourist program charge.

Section 39C of the Act provides that EMC amounts are to be ascertained in accordance with regulations made under the Act. For the purposes of section 39C of the Act, subsection 217(1) generally provides that the amount of standard tourist program charge that is payable for a day in a charge year is the full day amount for the year. This rule applies except as provided by sections 218 (Tours that are longer than 3 days), 219 (Tours that are 3 hours or less) and 220 (Tours that arrive later or depart early), which provide for a different amount of charge to be payable instead of the full day amount in certain circumstances.

A note alerts the reader that sections 218, 219 and 220 deal with tours that are longer than 3 days or less than 3 hours, or tours that arrive late or depart early. These tours will attract a different charge amount.

Subsection 217(2) provides that the full day amount for a charge year, being the second charge year after the current charge year, is the greater of: \$4.00; and the amount worked out under subsections 217(3) and 217(4). The reason for the reference to 'the second charge year after the current charge year' is because the standard tourist program charge for any given charge year is normally calculated ahead of time, and is generally calculated by the Authority toward the end of a charge year (e.g. in February) for the charge year that is just over 12 months away. For example, in February 2019 the Authority could calculate the full day amount of the standard tourist program charge for the charge year commencing on 1 April 2020. In this example the charge year commencing in 1 April 2020 is the 'second charge year after the current charge year', with the current charge year being the charge year commencing on 1 April 2018.

Subsection 217(3) provides a formula for working out a charge increase, which is then used in subsection 217(4) to determine the full day amount of the standard tourist program charge. The formula in subsection 217(3) is, in effect, intended to be exactly the same as the formula which applied under the equivalent provision of the old regulations (regulation 141):

- The new formula refers to \$4.00 as a base amount because this was the amount of the original standard tourist program charge when the original formula began under the old regulations on 1 April 1998. Under regulation 141 of the old regulations the intention for this amount (\$4.00) to be the base rate is apparent from the reference in the formula to 'STPC', which was defined as 'the standard tourist program charge for the current charge year'. The explicit reference to \$4.00 in the new formula in subsection 217(3) makes this intention clearer.
- The reference in the new formula to 'CPI for the quarter ending 31 December in the current charge year' is intended to be a reference to the CPI for the charge year at the time the charge is being calculated. Because the charge is calculated over 12 months ahead of time, this will be the charge year that is two years prior to the charge year for which the charge increase is being calculated. For example, the charge increase for the charge year commencing on 1 April 2020 is calculated by reference to the CPI for the quarter ending 31 December 2018.
- The reference in the new formula to CPI for the quarter ending 31 December 1997 links back to the time when the charge was first introduced under the old regulations.
- Finally, 'the standard tourist program charge for a day in the current charge year' is deducted in order to determine the charge increase. Because the charge is being calculated over 12 months ahead of time, this will be the charge year that is two years prior to the charge year for which the charge increase is being calculated. For example, the charge increase for the charge year commencing on 1 April 2020 is calculated by deducting the standard tourist program charge for a day in the charge year commencing on 1 April 2018.

A note provides the reader with an example to work out the full day amount for the charge year beginning 1 April 2019. In the example the charge is being calculated in February 2018 because this is the time when the Authority would normally calculate the charge increase 'for the second charge year after the current charge year' and allows the Authority to give the tourism industry at least 12 months' notice of any such increase. The example uses the CPI for the quarter ending 31 December 2017, and the standard tourist program charge for the charge year beginning 1 April 2017. Up to date information about the current level of charge is provided on the Authority's website www.gbrmpa.gov.au.

Subsection 217(4) provides that the full day amount for a charge year, being the second charge year after the current charge year, is as set out below. The reference to the 'second charge year after the current charge year' is reflective of the fact that the charge is being calculated over 12 months in advance.

- Under paragraph 217(4)(a) the full day amount will be the same as the full day amount (the previous full day amount) for the current charge year if the charge increase for the relevant charge year is negative or less than \$0.40. E.g. the full day amount for the charge year commencing on 1 April 2020 will be the same as the full day amount for the charge year commencing on 1 April if the charge increase is negative or less than \$0.40.

- Under paragraph 217(4)(b) the full day amount will be \$0.50 more than the previous full day amount if the charge increase for the relevant charge year is \$0.40 or more but less than \$0.90; and
- Under paragraph 217(4)(c) the full day amount will be \$1.00 more than the previous full day amount if the charge increase for the relevant charge year is \$0.90 or more but less than \$1.40; and
- Under paragraph 217(4)(d) the full day amount will be \$1.50 more than the previous full day amount if the charge increase for the relevant charge year is \$1.40 or more.

Section 218 Tours that are longer than 3 days

Section 218 provides that for a tour that takes longer than 3 continuous days, a standard tourist program charge is not payable in relation to any day after the third day. This is to minimise the charge amount for longer tours once a charge has already been incurred.

The question of whether charge is payable in relation to the first 3 days is determined under sections 215 and 217.

Section 219 Tours that are 3 hours or less

Subsection 39C(1) of the Act provides that the amount of charge is the amount ascertained in accordance with the Regulations.

Subsection 219(1) provides that for the purposes of section 39C of the Act, the amount of the standard tourist program charge that is payable for a tour that takes 3 hours or less on a day in a charge year is the part day amount for the year.

Subsection 219(2) defines the part day amount for the purpose of subsection 219(1) as half the full day amount for the charge year. These tours are considered to be short tours and therefore attract a reduced charge.

Section 220 Tours that arrive late or depart early

Subsection 220(1) provides that if a tour enters the Marine Park after 5pm or departs the Marine Park before 6am then the amount of charge is for the part day amount (ie half of the full day amount) for each visitor on that day. This section does not apply in respect of tours that are more than 3 days (see section 218). Under section 218 if a tour takes longer than 3 continuous days then 3 times the full day amount is payable irrespective of whether the tour departs late or arrives early.

Subsection 220(2) clarifies that, for the purpose of this section, a tour that begins or ends at a jetty, wharf or similar structure that is within or partly within the Marine Park enters the Marine Park when it leaves the structure or leaves the Marine Park when it arrives at the structure.

Section 221 When charge is payable

Section 221 makes provision for when the charge is payable.

Subsection 221(1) provides that the standard tourist program charge is payable by the visitor to the holder of the permission on behalf of the Commonwealth.

Subsection 221(2) provides for the time at which the payment is due. This is, for tours that are less than 3 days-on each day that the visitor takes part in the program and, for tours that take longer than 3 days-on the first day that the visitor takes part in the tour.

222 Offences-altering ticket etc.

Section 222 makes it a strict liability offence to alter or add the date on or to a ticket or receipt relating to a tourist program. This offence is directed at preventing the avoidance of the requirement to pay the EMC.

The section also makes it an offence for a permission holder to use a receipt or ticket they know to have been or have reason to believe has been altered, as evidence for the purpose of subsection 216(1) where the person knows or has reason to believe that the receipt or ticket has been altered or added to. Strict liability applies to the physical element in this subsection of using the receipt or ticket as evidence for subsection 216(1).

The penalty is 50 penalty units.

The offence is appropriately a strict liability offence and is framed consistently with the Guide to Framing Commonwealth Offences. It supports the integrity of the regulatory regime as it would be difficult to show intent in relation to this offence. Potential offenders are placed on notice to guard against the possibility of contravention by the information provided to chargeable permission holders about their obligations in relation to EMC. The penalty does not exceed 60 penalty units and there is no possibility of imprisonment. It is also important for the offence to be a strict liability offence so that it is appropriate to bring it within the infringement notice scheme that is created by the Instrument.

Subdivision B- Other charges

Section 223 Charges payable by the holder of a chargeable permission

Section 223 provides that quarterly charges are payable in relation to the specified commercial activities in the Marine Park for the purposes of section 39C of the Act. Subsection 39C(1) provides that the amount of charge is the amount ascertained in accordance with the regulations. The section includes a table which sets out other charges payable by the holder of a chargeable permission.

Subsection 223(1) provides that column two of the table sets out the amount of the charge for:

- The hiring of equipment or dinghies as specified in items 1, 2 or 3 for use in the Marine Park. The charge is intended to apply to the hiring of equipment or dinghies even where this takes place outside of the Marine Park provided that it is for use in the Marine Park.
- An activity that is specified in items 4, 5, 6, 7, 9 or 10 that is undertaken in the Marine Park.
- The operation of a land-based outfall that results in discharge of sewage into the Marine Park as specified in item 8.

Item 7 of the table refers to an 'underwater observatory that is not attached to a pontoon'. This is because there is already a charge payable for operation of a pontoon under item 4 as

discussed above. Often these pontoons will have a small underwater observatory that forms part of the pontoon for tourists to view coral and fish. The underwater observatory charge is not intended to capture these types of operations.

A note alerts the reader to see section 225 for when the charge is payable. Section 225 provides that charge is payable quarterly.

Subsection 223(2) provides that item 8 of the table specifies that the amount of charge for operation of a land-based outfall for discharging sewage is \$400.00 for the quarter if the sewage has received tertiary treatment or if it has not then \$400.00 plus the additional amount worked out under this subsection. This subsection provides a formula for calculating the amount which is a higher amount. Subsection 223(3) relates to the assessment of the sewage for the purpose of determining the inputs for subsection 223(2). The assessment must be made in accordance with samples of discharge analysed by a laboratory registered under the rules of the National Association of Testing Authorities for analyses of that kind. Subsection 223(4) requires that the holder of the permission to operate the land-based outfall for discharging sewage must provide the results of the analysis to the Authority in accordance with paragraph 230(b). A note alerts the reader that a holder may commit an offence against paragraph 230(b) if the holder does not provide the results in accordance with that paragraph.

Section 224 Charges payable by visitors

Section 224(1) imposes the liability on a visitor to pay a charge where the visitor takes part in an activity specified in column 1 of the table in this subsection. This subsection provides that the amount of the charge is the amount specified in column 2 of the table.

Subsection 224(2) clarifies that for the purposes of item 1 of the table, if a visitor participates in two or more semi-submersible boat or glass-bottomed boat excursions, or two or more sightseeing aircraft excursions, on the same day, and all the excursions are provided under the same chargeable permission, the charge is only payable by the visitor for the first excursion. This is to avoid double payment of the charge.

Subsection 224(3) provides that a charge is not payable by a visitor for an excursion if the excursion is provided under the chargeable permission under which the visitor is liable to pay a standard tourist program charge under section 215. Again, this is to prevent double payment of charges.

Subsection 224(4) provides that a charge is payable under this section by a visitor to the holder of the relevant permission on behalf of the Commonwealth on the day, or the first day, the visitor becomes liable to pay the charge. This is to clarify at what point liability for payment arises, especially in cases where the relevant activity may span over more than one day.

Subdivision C- Payment and overpayment

Section 225 When charges under section 223 are payable

Section 225 provides for quarterly payment of charges payable by the holder of a chargeable permission under section 223. The payments are to be made to the Authority in

April, July, October and January in respect of the exercise of the permission in the preceding quarter.

Section 226 When collected amounts are payable

Section 226 provides that a collected amount in respect of a chargeable permission is payable by the holder of the permission to the Authority in whichever of April, July, October or January is the month after the quarter in which the amount is collected.

A note alerts the reader that the holder of a chargeable permission who does not collect the charge is liable to pay a penalty amount equal to the amount of the charge. The note refers to section 39FA of the Act, which provides for an offence for failing to collect charge.

Section 227 Payment on cessation or transfer of permission

Section 227 provides for payment on cessation or transfer of a permission.

Subsection 227(1) requires amounts to be paid by a person if a chargeable permission held by the payer ceases to be in force on a day (change day) or the payer transfers the payer's interest in a chargeable permission to another person on a day (also change day).

Subsection 227(2) sets out the payments that are to be made to the Authority within 30 days after the change day. These payments are any charge that the payer is liable to pay in respect of the exercise of the permission after the end of the preceding quarter and before the end of the change day; any amounts collected by the payer, from a visitor who is liable to pay charge in relation to the permission, after the end of the preceding quarter and before the end of the change day; and any amount of late payment that, under section 39G of the Act, the payer is liable to pay in relation to the permission, including any amount that accrues after the change day.

Subsection 227(3) provides that for the purposes of subsection 227(1) a permission to which subsection 116(1) applies is taken not to have ceased to be in force unless, and until, the application for the further permission is taken to be withdrawn, lapses or is refused.

Subsection 227(4) provides that for the purpose of the circumstance described in paragraph 227(1)(b), where the payer transfers the payer's interest in a chargeable permission to another person on a change day, the charge payable in respect of the day on which a transfer occurs is taken to be an amount equal to the average charge payable in respect of each other day in the period referred to in paragraph 227(2)(a).

A note alerts the reader that the holder of a chargeable permission who does not collect charge is liable to pay a penalty amount equal to the amount of the charge and refers the reader to section 39FA of the Act. That section provides for an offence for failing to collect charge.

Section 228 Overpayment of charge by holder of chargeable permission

Section 228 provides the means by which any overpayment of charge by a holder of a chargeable permission will be redressed if the Authority determines that the holder of a chargeable permission has paid more charge than the holder is liable to pay. Unless the Authority has already refunded the overpayment the next amount of charge that is payable is reduced by the amount of the overpayment.

Division 4- Record-keeping and returns etc.

In support of the record-keeping requirement in Division 4 the Authority encourages the use of EMC Online (a web-based system which assists in managing EMC obligations) or electronic logbooks to submit EMC data. It is the Authority's practice to provide electronic EMC logbooks to permittees at the beginning of each calendar year, and to new permittees a few weeks after a permission is granted. Permittees with bareboat and aircraft operations are required to submit electronic logbooks. Permittees with vessel operations are also encouraged to complete electronic logbooks.

Permissions may be suspended or revoked if the permittee fails to comply with the Instrument requiring the provision of information, such as logbooks and payments.

There are offence provisions directed at failing to meet the obligations in Division 4.

Section 229 Record-keeping etc.

Subsection 229(1) provides that the holder of a chargeable permission commits an offence of strict liability if they contravene the record keeping requirements set out in subsections 229(2) to (5).

Subsection 229(2) provides that where the chargeable permission is covered by section 215 or is for an activity described in any of items 4 to 7 of the table in subsection 223(1) or an item of the table in subsection 224(1), the holder must record each day on which the permission is used by the holder (229(2)(a)). This requirement applies whether or not charge is incurred or collected (229(2)(b)). The holder must also record the information that the Authority requires the holder to keep for the purpose of working out the charge payable for the quarter and the charge required to be collected for the quarter 229(2)(c)(i) and (ii)). Subsection 229(3) provides that receipts or tickets used to obtain an exemption under section 216 must be kept for 2 years from the day of the receipt or ticket.

Log books are to be used for record keeping. The log book is supplied to the chargeable permission holder by the Authority and subsection 229(3) provides that this is where information must be recorded, unless the Authority has approved a different form. Paragraph 229(4)(a) provides that the logbook must be kept in the holder's booking office. However, paragraph 229(4)(b) provides that if the holder's permission allows the visiting of more than 5 different locations in the Marine Park (for a purpose other than transferring passengers) access to each of which requires use of a vessel then the log book must be kept in the vessel used for the part of the program to which the information relates. The log book can alternatively under paragraph 229(4)(c) be kept in any other place approved by the Authority. This recognises the need to at times tailor the requirements to an individual permission holder's operation.

Subsection 229(5) requires the information to be kept by the chargeable permission holder for at least 2 years after the quarter to which the information relates.

The offence is drafted consistently with the Guide to Framing Commonwealth Offences. It is appropriately an offence of strict liability as without appropriate record keeping by holders

of a chargeable permission it would be difficult to determine liability for the charge and would frustrate the collection of EMC. The record keeping requirements are made clear to the chargeable permission holder- there is detailed information available on the Authority's website,(www.gbrmpa.gov.au), a web-based tool to manage record keeping as discussed above, and a hotline to call that provides assistance as to obligations. Chargeable permission holders are therefore placed on notice to guard against contravention. Strict liability supports the integrity of the scheme, in support of environmental regulation, as it would be difficult to establish intent in relation to this offence. The penalty is also not more than 60 penalty units and there is no possibility of imprisonment. It is also important for the offence to be a strict liability offence so that it is appropriate to bring it within the infringement notice scheme that is created by the Instrument.

Section 230 Returns

Under section 230 an offence of strict liability will be committed by the chargeable permission holder if the log book or the form is not given to the Authority.

The section provides that the holder of a chargeable permission commits an offence of strict liability if the holder does not give the Authority in each of April, July, October and January in relation to the preceding quarter a charge return in the form approved by the Authority (230(a)(i)) or a copy of the part of the logbook supplied to the holder by the Authority, or the form approved by the Authority, for the recording of information (230(a)(ii)).

Alternatively, paragraph 230(b) provides that for a chargeable permission for operating a land-based outfall for discharging sewage, a return must be in a form approved by the Authority that sets out the total volume of sewage generated during the quarter, the total volume of sewage discharged at the land-based outfall during the quarter and the information determined by the laboratory referred to in subsection 223(3) that discloses the level of treatment the sewage has received before discharge.

The penalty is 50 penalty units.

The offence is consistent with the Guide to Framing Commonwealth Offences. As with the offence provision in relation to record keeping this is a strict liability offence to support the enforcement of the EMC provisions. The Authority is reliant on permission holders submitting required information and this being a strict liability offence supports the deterrent effect of the provision. It would be difficult for the Authority to show intent and permission holders are given clear information as to what is required (as outlined above in relation to section 229) so they are placed on notice to guard against contravention. The penalty is also not more than 60 penalty units and there is no possibility of imprisonment. It is also important for the offence to be a strict liability offence so that it is appropriate to bring it within the infringement notice scheme that is created by the Instrument.

Section 231 Custody and banking of collected amounts

Given that collected amounts are payable quarterly under section 226 it will be necessary for amounts to be retained in accounts until they are payable. Section 231 provides for this.

Subsection 231(1) allows the holder of a chargeable permission to deposit a collected amount in to an account, maintained by the holder with a bank, until the amount is due for payment to the Authority on behalf of the Commonwealth.

The Act allows the Instrument to provide for the permission holder to receive any interest derived from the deposit of an amount. Subsection 231(2) provides that the permission holder is entitled to any interest derived from the deposit of the amount.

Part 14 – Plan of Management Enforcement Provisions

The Plan of Management enforcement provisions provide for offences for non-compliance with Plans of Management. These enforcement provisions are an important part of the regulatory regime for the Marine Park.

Section 232 Simplified outline of this Part

Section 233 Contravention of the *Shoalwater Bay (Dugong) Plan of Management 1997*

Shoalwater Bay is the most important dugong and seagrass habitat in the southern region of the Marine Park. The *Shoalwater Bay (Dugong) Plan of Management 1997* aims to manage activities in the bay that threaten the dugong population or impact on the seagrass meadows.

Section 233 provides that it is an offence of strict liability if a person contravenes subclause 6.2, 6.4 or 8.1 or clause 7 of the *Shoalwater Bay (Dugong) Plan of Management 1997* as in force from time to time.

A note alerts the reader that clauses 6, 7 and 8 of the *Shoalwater Bay (Dugong) Plan of Management 1997* restrict the use of nets, the collecting of dugong and interference with dugong. The enforcement provisions for the *Shoalwater Bay (Dugong) Plan of Management 1997* are designed to prevent further decline of the species in that area through capture in gill nets.

Specifically clause 6.2 of the *Shoalwater Bay (Dugong) Plan of Management 1997* provides that 'a person must not have in the Area a net that is capable of being used for the taking of fish'. Clause 6.4 provides that 'a person may be taken to have a net in the Area whether or not the net is stowed or secured'.

These restrictions recognise the impacts of nets on dugong mortality.

Clause 7 provides that 'a person must not collect a dugong in the Area except in accordance with a relevant permission'.

Collecting of Dugong without a permission is an offence under the Act, however the offence in the Act relies upon the purpose of the use of or entry into the Marine Park. In some unique circumstances a charge under the Act may fail due to a failure to prove the purpose of the use or entry. This provision captures that conduct which amounts to collecting of a dugong, but for which purpose need not be shown.

Clause 8 of Part 4 states that it is an offence to interfere with a dugong or the carcass of a dugong. "Interference with" is not defined, except that collecting is excluded from its meaning. This provision has been included to penalise activities such as the evisceration of carcasses in an attempt to sink and hide them.

The penalty for a contravention of section 233 is 50 penalty units.

The offence has been drafted consistently with the Guide to Framing Commonwealth Offences. The existence of the *Shoalwater Bay (Dugong) Plan of Management 1997* is highlighted on the Authority's website www.gbrmpa.gov.au which aims to place Marine

Park users on notice of what is and not permitted in this area. The categorisation of this offence as a strict liability offence is also intended to have a deterrent effect which is appropriate for the regulation of the environment. The penalty is not greater than 60 penalty units and there is no possibility of imprisonment. It is also important for the offence to be a strict liability offence so that it is appropriate to bring it within the infringement notice scheme that is created by the Instrument.

Section 234 Contravention of the Plan of Management for Cairns Area, Hinchinbrook or Whitsundays

The Cairns Planning Area and Whitsunday Planning Area are subject to high-density tourism activities, while the Hinchinbrook Planning Area is renowned for relatively untouched nature based experiences. The Plans of Management are intended to control the levels of tourism and activities and their associated impacts on the planning areas to protect the values of those areas.

Section 234 provides that a person commits an offence of strict liability if they contravene a provision of Part 2 of the *Cairns Area Plan of Management 1998*, Part 2 of the *Hinchinbrook Plan of Management 2004*, or Part 2 of the *Whitsundays Plan of Management 1998*, as in force from time to time.

The penalty is 50 penalty units.

Note 1 alerts the reader that Part 2 of the Plans of Management contain enforcement provisions. These enforcement provisions are what the Instrument is giving effect to. Note 2 directs the reader to see also section 10.5 of the *Criminal Code* (lawful authority). The defence of lawful authority in the *Criminal Code* will apply where the person is acting:

- for or on behalf of the Authority in accordance with its functions or powers,
- in relation to the *Cairns Area Plan of Management 1998* and the *Whitsundays Plan of Management 1998* in accordance with a permission, or
- in relation to the *Hinchinbrook Plan of Management 2004* in accordance with an authorisation, or a new permission granted after the eligibility process commencement day or as permitted by subsection 70(3) (which allows a permission holder to carry on the relevant activity in accordance with the permission until a decision to which subsection 70(2) applies has effect).

The offence in section 234 is drafted in accordance with the Guide to Framing Commonwealth Offences. It is appropriately a strict liability offence in support of regulation of the environment. The existence of the Plans of Management is highlighted on the Authority's website www.gbrmpa.gov.au which aims to place Marine Park users on notice of what is and not permitted in these areas. It would undermine the integrity of the regulatory regime if intent had to be proven as it would likely be difficult to establish. The penalty is not more than 60 penalty units and there is no possibility of imprisonment. It is also important for the offence to be a strict liability offence so that it is appropriate to bring it within the infringement notice scheme that is created by the Instrument.

There are defences in the Plans of Management in relation to damaging coral. The defences in the Plans of Management are broadly to the effect that the prohibition on damaging coral

does not apply where a person has taken reasonable care and has used an anchor (anchoring in an appropriate area) commonly referred to as a reef pick.

Part 15- Notification and review of decisions

Part 15 of the Instrument contains the provisions relating to notification and review of decisions. Under sections 235 to 239 of the Instrument, a person generally has the right to seek internal reconsideration and external Administrative Appeals Tribunal (AAT) review of administrative decisions made under the proposed Instrument.

The old regulations limited standing in relation to certain decisions, so that not all persons affected could seek merits review. It is the Australian Government's policy, reflected in the Administrative Guide, that an administrative decision that will, or is likely to adversely affect the interests of an individual should be reviewable on the merits of the decision. In cases that may have a public interest element, broader rules of standing should generally be available given the broader public interest in the correct decision being made. Accordingly, the approach in relation to standing has been revisited and for the purposes of the Instrument standing has been expanded so that all persons affected by a reviewable decision can seek merits review.

The review rights contained in the Instrument have been developed consistently with the principles contained in the Administrative Guide. This Guide was considered in broadening the standing for applications for review and the decisions that should appropriately attract review (as compared to the approach in the old regulations).

Section 235 Simplified outline of this Part

Section 236 Reviewable decisions

Paragraph 64(3)(d) of the Act provides that a decision by the Authority prescribed for the purposes of the Act is a reviewable decision. Section 236 prescribes that a number of decisions are reviewable decisions for the purposes of paragraph 64(3)(d) of the Act. The consequences of a decision being prescribed to be a reviewable decision is that certain review rights will flow from the decision pursuant to section 239 (Reconsideration of reviewable decisions) of the Instrument (which provides for reconsideration of reviewable decisions) and section 64A of the Act (which provides for review of a decision on reconsideration in the Administrative Appeals Tribunal). The decisions which are prescribed by section 236 to be reviewable decisions are discussed below. Generally speaking, most administrative decisions which are provided for in the Instrument are prescribed.

Accreditations of educational and research institutions

Paragraph 236(a) prescribes a decision to accredit or revoke the accreditation of an education or research institution under section 13 or a harvest fishery under section 14. Under the old regulations, decisions made under regulations 7 and 8 (the equivalent of sections 13 and 14 of the Instrument) to accredit, or revoke the accreditation of, an educational or research institution or harvest fishery were not reviewable decisions. Under section 236 merits review will now be available for these types of decisions. This change is to achieve consistency with Commonwealth Government policy on merits review and the Administrative Guide.

Continuations of special permissions

Paragraph 236(b) prescribes a decision mentioned in subsection 83(4) of the Instrument to treat an application as having been made before the end of the period specified in the permission during which the permission is in force.

Permission applications

Paragraph 236(c) prescribes a decision under Part 3 (permissions) on an application for the grant of a permission except:

- A decision under section 77 about whether the application was made in accordance with section 76
- A decision as to which assessment approach must be used for assessing the relevant impacts of conduct proposed to be permitted by a permission
- A decision to grant or refuse a permission to camp on a Commonwealth Island
- A decision on an EPBC referral deemed application.

The flow on effect of a decision being exempt from being a reviewable decision is that a person whose interests are affected by the decision is not able to request a reconsideration of the decision under section 239 of the Instrument, nor can the person make an application under the *Administrative Appeals Tribunal Act 1975* to the Administrative Appeals Tribunal for a review of the decision under section 64A of the Act.

Exclusion – properly made applications and assessment approaches

It is not appropriate that review rights be available in relation to a decision under section 77 about whether an application for a permission is a properly made application in accordance with section 66, nor is it appropriate that review rights attach to a decision as to which assessment approach must be used for assessing the relevant impacts of the proposed conduct. The Authority considers that these types of decisions are preliminary or procedural in nature and are therefore unsuitable for review. They are not a substantive type of decision, but instead facilitate the proper administration of permission applications under the Instrument, and lead to the making of more substantive decisions under other provisions.

The requirements for making applications, and the assessment approaches that should attach to different types of applications, are clearly explained in guidelines, policies and the permission application form (which are all publicly available on the Authority's website) therefore applicants are well informed of what is expected to make a properly made application and what can be expected in terms of the likely assessment approach. There will be no significant consequences flowing from rejection of an application that is not properly made as no fee will have been paid at that stage and the application is easily able to be amended to address defects and resubmitted to the Authority. The lack of review rights could potentially prejudice an applicant in circumstances where there is an existing permission approaching expiry and a new permission of the same kind (a continuation application) is sought pursuant to section 116 of the Instrument. To address this, a requirement is provided for in section 77 of the Instrument to allow an applicant for a continuation 30 business days to rectify any failure to make a properly made application.

Exclusion – applications for permissions to camp on Commonwealth Islands

The exclusion of review rights from decisions to grant or refuse permissions to camp on a Commonwealth Island is justified because of the high volume and routine nature of these decisions, and the high administrative burden that would be created by the presence of review rights.

Exclusion – EPBC referral deemed applications

The rationale behind the exclusion of review rights on EPBC referral deemed applications is that where an activity is also subject to an EPBC Act approval, reconsideration would more appropriately occur in the context of the EPBC Act decision.

Suspension and revocation of permissions, and imposition of and modification of permission conditions

Paragraph 236(d) prescribes a decision under Part 3 to suspend or revoke a permission, to modify a condition of a permission or to impose a condition on a permission except in relation to:

- a permission granted to camp on a Commonwealth island;
- a permission granted on an EPBC referral deemed application; or
- a decision under section 129 (modification of conditions or suspension of permission – pending investigation).

The exclusion of the decisions about modification, suspension, etc. in relation to permissions to camp on Commonwealth islands and in relation to EPBC referral deemed applications is necessary following on from the exclusion of review rights under paragraph 236(c) in relation to decisions on whether to grant or refuse such permissions, and is based on the same justification discussed above in relation to paragraph 236(c).

Under the old regulations, a permittee could potentially seek review of a decision by the Authority to modify or suspend a permission pending an investigation. Such a decision is an interim step taken and following an investigation a more final decision about modification, suspension or revocation would be made. A change has been made so that merits review is no longer available for the interim decision (see subparagraph 236(d)(iii)) as this is inappropriate and may unnecessarily hinder the Authority's ability to conduct an investigation. Merits review remains available for the final decision following the investigation.

TUMRAs

Generally all decisions under Part 4 relating to TUMRAs are prescribed under paragraph 236(e), being:

- A decision on an application for accreditation of a TUMRA;
- A decision on an application to approve the modification of an accredited TUMRA or to modify a condition of the accreditation of a TUMRA;
- A decision to suspend or revoke the accreditation of a TUMRA;
- A decision to modify a condition of accreditation of a TUMRA; and
- A decision to impose a condition on the accreditation of a TUMRA.

Exemptions to allow interactions with cetaceans

Paragraph 236(f) prescribes a decision on an application for an exemption under subsection 188(1), which allows the Authority to, on an application under section 189, give a written exemption from any or all of the provisions of Part 9 (Interacting with cetaceans).

Hinchinbrook authorisations

Paragraph 236(g) prescribes decision for the grant of a Hinchinbrook authorisation.

Secondary services

Paragraph 236(h) prescribes a decision by the Authority under section 212 that a service or proposed service is not, or will not be, a secondary service.

Section 237 Notice of certain decisions

Section 237 sets out the requirements for the Authority to publish notice of various types of its decisions made under the Instrument.

Subsection 237(1) provides that the Authority must publish a notice on its website as soon as practicable after making a decision in relation to the matters set out in paragraphs 237(1)(a) to (d). These matters are:

- subject to some exemptions discussed below, a decision under Part 3 (permissions) on an application (including an EPBC referral deemed application) for the grant of a permission.
- a decision under Part 3 to suspend or revoke a permission, to modify a condition of a permission, on an application to transfer a permission or to impose a condition on a permission.
- in relation to TUMRA decisions under Part 4, a decision on an application for accreditation of a TUMRA; a decision on an application to approve a modification of an accredited TUMRA or to modify a condition of the accreditation of a TUMRA; a decision to suspend or revoke the accreditation of a TUMRA; a decision to modify a condition of accreditation of a TUMRA; or a decision to impose a condition on the accreditation of a TUMRA.
- a decision under subsection 188(1) on an application for an exemption from one or more provisions of Part 9 (interacting with cetaceans).

The exemptions to the publication requirements under subsection 237(1) are in relation to three types of decisions and these are set out under paragraph 237(1)(a). These are:

- decisions by the Authority under section 77 on whether an application was a properly made application in accordance with section 76;
- decisions by the Authority on the approach that must be used for assessment of an application for a permission; and
- decisions to grant or refuse a permission to camp on a Commonwealth Island.

The effect of a decision being exempt from publication under paragraph 237(1)(a) is that a person whose interests are affected by the decision is not able to request a reconsideration of the decision under section 239, nor can the person make an application under the AAT Act to the Administrative Appeals Tribunal for a review of the decision. As discussed in relation to section 236 the Authority considers that the types of decisions listed above are preliminary or procedural in nature and are therefore unsuitable for review. These decisions are not substantive decisions, but instead facilitate the proper administration of applications under the Instrument, and lead to the making of more substantive decisions under other provisions. Additionally, decisions to grant or refuse a permission to camp on a Commonwealth Island is exempt due to the high volume of applications and the routine nature of the consideration of the applications.

Subsection 237(2) provides that the Authority may also give a person affected by the decision a written notice of the decision and subsection 237(3) provides that a failure to comply with subsection 237(1) does not affect the validity of the decision.

Section 238 Contents of notice

Section 238 provides that a notice of a decision published under subsection 237(1) or given to a person under subsection 237(2) must include certain matters. These matters are that the person whose interests are affected by the decision referred to in section 236 may obtain a statement of reasons from the Authority for the decision and ask the Authority to reconsider the decision (paragraph 238(1)(a)) and that subject to the AAT Act, the person may apply to the AAT for review of the decision made by the Authority after reconsideration (paragraph 238(1)(b)).

Subsection 238(2) makes it clear that failure to comply with subsection 238(1) does not affect the validity of the relevant decision.

Section 239 Reconsideration of reviewable decisions

Section 239 sets out the key requirements for reconsideration of reviewable decisions including time limits for making requests, matters to be included in requests, time limits for reconsiderations and when a decision on reconsideration takes effect.

Time limits for making requests

Subsection 239(1) provides that for the purposes of paragraph 64(5)(a) of the Act, a person must make a request for reconsideration of a reviewable decision within 15 business days after

- for a decision relating to an emergency direction under subsection 61ACA(2) of the Act- the decision is published on the Authority's website.
- for a decision relating to a direction under subsection 61AEA(2) of the Act- a copy of the direction is given to the person
- for a decision of the Minister or Authority, prescribed by the Instrument or any other instrument, for the purposes of paragraphs 64(3)(c) or (d) or the Act- after the decision is made.

Matters to be included in requests

Subsection 239(2) provides that for the purposes of paragraph 64(5)(b) of the Act, the request must set out the reasons why the Minister or the Authority, depending on what is required, should reconsider the decision.

Time limits for reconsidering decisions

Subsection 239(3) provides that for the purposes of paragraph 64(5)(c) of the Act, the Minister or Authority, depending on what is required, must reconsider the decision within 30 *business days* after receiving the request.

When a decision on reconsideration takes effect

Subsection 239(4) provides for when a decision on reconsideration takes effect for the purposes of paragraph 64(5)(d) of the Act.

For a decision relating to an emergency direction under subsection 61ACA(2) of the Act, the decision takes effect when the decision on reconsideration is published on the Authority's website. This reflects the time critical nature of the subject matter.

For a decision relating to a direction under subsection 61AEA(2) of the Act, the decision takes effect when the Minister gives the person requesting the reconsideration written notice of the Minister's decision on reconsideration.

For a decision of the Minister or Authority, prescribed by the Instrument or any other instrument, for the purposes of paragraphs 64(3)(c) or (d) of the Act, the decision takes effect when the Minister or Authority gives the person requesting the reconsideration written notice of the decision on reconsideration.

Part 16- Inspector's powers

Part 16 gives Inspectors the power to give directions and also sets up an infringement notice regime. The majority of Inspector's powers are contained in the EPBC Act. These provisions are, in part, of the kind dealt with in the *Regulatory Powers (Standard Provisions) Act 2015* (Regulatory Powers Act) but the Act is intentionally not triggered to adopt any of the standard provisions under that Act. The unique environment of the Marine Park, and the complex suite of laws which regulate it, necessitate tailored regulation. To the extent possible the provisions have been aligned with the Regulatory Powers Act but where necessary, and this is noted below, provisions which are specific to the Marine Park regulatory environment are retained.

Division 1—Simplified outline of this Part

Section 240 Simplified outline of this Part

Section 240 provides an outline of Part 16 which creates a framework for the use of infringement notices. Infringement notices can be issued in relation to contraventions of certain offence provisions contained in the Instrument.

Division 2 – Powers to give directions etc.

Sections 241 (Power of inspector to give directions) and 242 (Powers of inspector to require person to leave the Marine Park or produce permission etc.) are considered necessary for the specific purposes of the Authority in regulating the unique environment of the Marine Park. They directly support the integrity of the regulatory regime directed at ensuring that use and entry to the Marine Park is in accordance with the Zoning Plan. The power to give directions supports the objectives of the permissions system. There is no equivalent to these provisions in the Regulatory Powers Act.

In the case of these powers the decision maker is appropriately the inspector as these kinds of decisions will need to be made while inspectors are in the field. The circumstances in which inspectors are able to make such a decision to exercise these powers are prescribed.

Section 241 Power of inspector to give directions

Section 241 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 instruments made under the Act are complied with. The inspector may give such a direction orally, in writing, by radio or by any other appropriate means of communication in accordance with subsection 241(2). Subsection 241(3) provides that the exercise of powers is subject to requirements for an inspector to identify themselves as such when giving the direction and to produce an identity card issued under the Act at the first practicable opportunity.

A note alerts the reader that Identity cards are issued to inspectors under section 45 of the Act. The form of these identity cards is prescribed in the Instrument.

Subsection 241(4) provides that it is an offence of strict liability to fail to comply with such a direction given by an inspector.

The penalty is 50 penalty units.

Failure to comply with a direction is specified as an offence and is an offence of strict liability. This is consistent with the Guide to Framing Commonwealth Offences. This is because it is considered that the offence, along with section 242 (Powers of inspector to require person to leave the Marine Park or produce permission etc.) below, are regulatory in nature, as they regulate matters related to environmental protection which are of particular public interest. The imposition of strict liability supports the deterrent effect of the provisions and the integrity of the regulatory regime as it would be difficult to show that a person intended to not comply with the direction of an inspector. The offences would benefit from being dealt with expeditiously to ensure public confidence in the regulatory regime. They establish a maximum penalty of less than 60 penalty units. It is also important for the offence to be a strict liability offence so that it is appropriate to bring it within the infringement notice scheme that is created by the Instrument.

Section 242 Powers of inspector to require person to leave the Marine Park or produce permission etc.

Subsection 242(1) provides that an inspector may require any person in the Marine Park to leave the Marine Park, a zone or location within the Marine Park where the person is found, for a specified period if the inspector reasonably suspects the person has committed an offence against the Act, the Instrument, or any other instrument made for the purposes of the Act. The specified period must be reasonable in all the circumstances.

Subsection 242(2) provides that an inspector may require any person to produce a permission, permit or authority under the Act, the Instrument or a zoning plan; or evidence of such a permission, permit or authority if the inspector reasonably suspects the person of having done an act in respect of which the person is required to hold the permission, permit or authority. It will be acceptable for a person to produce a hard copy or an electronic copy of the permission, permit or authority.

Section 242(2) will require a person to provide information that may incriminate them or expose them to a penalty. This abrogates the privilege against self-incrimination and self-exposure to a penalty. The subsection provides that an inspector may require any person to produce a permission, permit or authority under the Act, the Instrument or a zoning plan or evidence of such a permission, permit or authority if the inspector reasonably suspects the person has committed an offence against the Act or the Instrument.

Subsection 242(3) provides a person commits an offence of strict liability if the person fails to comply with a requirement made of the person under subsection 242(1) or (2).

The penalty is 50 penalty units.

The offence in subsection 242(3) is framed consistent with the Guidelines for Framing Commonwealth Offences.

The public benefit of abrogating the privilege against self-incrimination decisively outweighs the harm to the individual who disclosed the information in this case. The existence of permits, authorities and permissions is central to use of the Marine Park in circumstances in which it would not be permitted due to concerns about protection of the environment or of

public health. It is well known, advertised and understood that that a permission etc. must be obtained to use the Marine Park for certain activities. It would undermine the ability of the Authority to monitor and enforce these requirements if the privilege against self-incrimination were not abrogated.

If an inspector is unable to confirm while in the field that the person does or does not hold the necessary permission for the act, the inspector is unable to take immediate action to prevent the act from continuing (e.g. by giving a direction to the person to leave the Marine Park). The privilege can only be required to be waived where the inspector has a 'reasonable suspicion' of the person having done an act. The Authority has measures in place requiring that inspectors satisfactorily complete a government investigations course before being appointed, and complete refresher courses for the during of their appointments. This ensures that inspectors receive the necessary training and possess the requisite skills to exercise their powers under section 242. The power to require a person to produce a permission is analogous to the power that can be exercised by a police officer who pulls over a car on suspicion of some breach of the law and requests the driver produce a licence.

The abrogation of the privilege in this case is not subject to a 'use' immunity which allows for self-incriminatory disclosures made as a result of the abrogation of privilege not to be used against the person who makes the disclosure in a later court proceeding. As discussed above, the holding of a permission etc. is the means of demonstrating that what would otherwise be prohibited is allowed. It is appropriate that the failure of a person to produce evidence of this should be able to be relied on in court proceedings.

It is appropriately a strict liability offence in support of regulation of the environment. There is a wealth of information given and available to permission holders as to what is and is not permitted in the Marine Park and they are accordingly placed on notice to guard against contravention. There is no possibility of imprisonment and the penalty is not more than 60 penalty units. It is also important for the offence to be a strict liability offence so that it is appropriate to bring it within the infringement notice scheme that is created by the Instrument.

Division 3—Infringement notices

An infringement notice is a notice of a pecuniary penalty imposed on a person by statute setting out particulars of an alleged contravention of a law. It gives the person to whom the notice is issued the option of either paying the penalty set out in the notice to expiate the offence or electing to have the matter dealt with by a court. The notice also specifies the time and method for payment and the consequences if the person to whom the notice is issued fails to respond to the notice either by making payment or electing to contest the alleged contravention.

Infringement notices are administrative methods for dealing with certain breaches of the law and are typically used for low-level offences and where a high volume of uncontested contraventions is likely. Offences subject to infringement notices are generally of strict or absolute liability and with a clear physical element. Infringement notices are often used as a low cost and efficient means by which regulators can deal with minor contraventions and for wrongdoers to discharge their obligation without appearing before a court.

The infringement notice provisions contained in the Instrument have been aligned to the extent possible with the provisions contained in the Regulatory Powers Act.

Section 243 Infringement notice offences and infringement notice penalties

The table in subsection 243(1) sets out the infringement notice offences for the Instrument and the corresponding infringement notice penalties. Subsection 243(1) provides that an offence against a provision of the Instrument mentioned in column 1 of an item in the table set out in the subsection is an infringement notice offence. The penalty (being the infringement notice penalty) for the offence is the penalty mentioned in column 2 of the item.

Subsection 243(2) provides for the infringement notice penalty levels for Act infringement notice offences. It provides that an offence against subsection 38BA(3) (conduct in the Marine Park Zone) or 38EA(4) (conduct contravening permission or authority) of the Act is an infringement notice offence. The infringement notice penalty for an offence against subsection 38BA(3) of the Act is 12 penalty units and for an offence against subsection 38EA(4) of the Act is 4 penalty units.

The penalty levels for infringements are not aligned with the Regulatory Powers Act as this would have involved a substantial increase to the penalties in the old regulations, particularly those that are less than 10 penalty units, that are not considered proportionate to the specific offence types. The penalty levels in the old regulations are retained at a level considered appropriate for environmental regulation.

Section 244 When an infringement notice may be given

Subsection 244(1) empowers an inspector to issue an infringement notice where the inspector has reasonable grounds to believe a person has contravened a provision subject to an infringement notice under Part 16. Infringement notices provide a simpler and faster remedy to a suspected contravention of a provision than formal civil or criminal proceedings.

An infringement notice must be issued within 12 months of an alleged contravention. An infringement notice issued later than this is invalid and cannot be enforced.

To ensure the reasons for each notice are clear, a separate infringement notice must be issued for each alleged contravention, unless the contravention relates to an action that should have been completed before a particular time and the ongoing failure to complete the action constitutes multiple contraventions.

A note alerts the reader to see subsection 4K(2) of the *Crimes Act 1914* for continuing offences. Subsection 4K(2) of that Act provides that where a person fails to comply with a requirement in the time period specified a person commits an offence in respect of each day during which the person refuses or fails to comply with that requirement, including the day of a conviction for any such offence or any later day.

This provision has been aligned with the Regulatory Powers Act.

Section 245 Matters to be included in an infringement notice

Section 245 specifies a range of matters that must be included in each infringement notice. This includes, among other things, the name of the person to whom the notice is given, a statement that payment of an infringement notice does not constitute an admission of guilt and a statement that a person may choose not to pay the amount but if they do so they may be prosecuted in a court for the alleged contravention.

The list in section 245 is non-exhaustive and it is open to include other matters considered necessary in the infringement notice.

This section has been aligned with the contents of the Regulatory Powers Act.

Section 246 When infringement notice penalty must be paid

Section 246 sets out when an infringement notice penalty must be paid by. It provides for three separate circumstances. The first being where no action is taken in relation to the notice, in which case the person must pay the infringement notice within the 28 day period from when the notice is given (246(a)). Second, where an application for a further period of time to pay has been granted under section 247 (Extension of time to pay amount) then the end of the further period granted is the relevant time frame (246(b)). Thirdly, if an application for a further period of time to pay has been refused under section 247 then the person has the later of 10 days after the day of the notice of refusal or by the end of the 28 day period (246(c)) to pay.

Depending on when the application for extension was made it may be that the period for payment exceeds 28 days due to the effect of paragraph 247(c).

Section 247 Extension of time to pay

To ensure that a person who wishes to pay an infringement notice is not prevented from doing so by financial hardship or other difficulties, subsection 247(1) allows a person who has received an infringement notice to apply to the Authority for an extension of time to pay the infringement notice penalty.

Subsection 247(2) provides that an application made after the end of the 28 days must include a statement explaining why the alleged offender could not deal with the notice within that period. Subsection 247(3) provides for the action the Authority must take on receiving such an application. The Authority must grant or refuse a further period, give the person written notice of the decision and, in the case of refusal, state in the notice the reasons for refusal and the period in which the infringement notice penalty must be paid.

Subsection 247(4) provides that the Authority may extend the period more than once.

Sections 246 and 247 reflect the content of the old regulations. These provisions are relied on by inspectors to grant extensions of time in appropriate circumstances. Proposed section 247 is tailored specific to regulation of the Marine Park, where the Authority seeks to resolve matters using infringement notices rather than pursuing costly prosecutions, and is not aligned with the Regulatory Powers Act as the standard provisions do not allow an extension of time application to be made after a specified time period.

Section 248 Withdrawal of an infringement notice

A person who receives an infringement notice may elect to challenge the notice rather than pay it. Section 248 therefore sets out processes for withdrawing infringement notices and provides guidance as to what information the Authority must and may take into account in considering whether to withdraw an infringement notice.

Subsection 248(1) provides that a person issued with an infringement notice may make written representations to the Authority seeking withdrawal of the notice. Subsection 248(2) allows the Authority to withdraw the notice either in response to such written representations or at its own initiative. Subsection 248(3) provides for the matters the Authority is required to take into account; such as any written representations made by the person seeking the withdrawal of the infringement notice, and the matters the Authority may take into account such as the circumstances of the alleged contravention.

Subsection 248(4) provides for the matters that must be included in the withdrawal notice and subsection 248(5) provides that if the Authority withdraws the infringement notice and the person has already paid the amount stated in the notice then the Commonwealth is to refund to the person an amount equal to what was paid.

This provision has been aligned with the Regulatory Powers Act.

Section 249 Effect of payment of amount

Section 249 ensures that paying an infringement notice before the end of the period referred to in section 246 (When infringement notice penalty must be paid) discharges all liability for the alleged contravention, without constituting an admission of fault.

This is appropriate for an administrative remedy that may be discharged without legal advice or adjudication by the courts. However, payment does not discharge liability if the notice is subsequently withdrawn and where relevant the amount refunded under section 248. In this sense, withdrawing a notice acts as if the notice was never issued.

This provision has been aligned with the Regulatory Powers Act.

Section 250 Effect of this Part

Section 250 clarifies that Part 16 of the Instrument, dealing with infringement notices, does not make infringement notices a mandatory response to a suspected contravention. Rather, they remain a discretionary remedy. Part 16 also does not affect the liability of a person for an alleged contravention of an infringement notice if the person does not comply with the notice, an infringement notice is not given to the person, or an infringement notice is given to the person and it is subsequently withdrawn.

Part 16 also does not prevent the giving of two or more infringement notices to a person for an alleged contravention of an infringement notice provision, and it does not limit a court's ability to determine the amount of a penalty if a person is found to have contravened an infringement notice provision.

Part 17- Miscellaneous

Section 251 Simplified outline of this Part

Section 252 Use of computer programs to make decisions etc.

Section 252 allows the Authority to make certain types of decisions, and give certain types of notices, automatically through the use of computer programs.

Subsection 252(1) provides that the Authority may arrange for the use, under the control of the Authority, of computer programs for any purposes for which the Authority is required or permitted to make a decision (however described), or give a notice, under Part 3 (which is about permissions) or Part 12 (which is about fees). Subsection 252(2) provides that the Authority is taken to have made a decision, or given a notice, that was made or given by the operation of a computer program under an arrangement made under subsection 252(1).

The Act contemplates that the Act and Instrument will contain decision-making provisions. Section 252 is a facilitative provision for the purpose of giving effect to the Act and the Authority's decision making, made under the necessary and convenient power in subsection 66(1) of the Act.

An example of how the Authority anticipates utilising subsections 252(1) and 252(2) is in the case of applications for certain classes of activities, the Authority might decide that if certain criteria are met in online applications then these applications will always be properly made applications and should always be allocated the routine assessment approach. The Authority may facilitate the making of decisions for individual applications that fall into the relevant class by way of a computer program that is able to recognise that certain criteria are met when a relevant application is submitted, and automatically generate a notice to the applicant pursuant to section 77 (Authority must decide whether applications are properly made) stating that the application has been made in accordance with section 76 (How applications for permissions must be made), and stating that the routine assessment approach applies to the application pursuant to section 91 (Authority must decide on approach for assessment).

Subsection 252(3) is intended to act as a safety net in cases where a computer program used by the Authority malfunctions or does not operate in the manner intended. If the Authority is satisfied that a decision made or notice given under subsection 252(1) is incorrect then the Authority must substitute another decision or notice. To ensure fairness the decision or notice that is substituted is taken to have been given or made at the time the original decision or notice was made or given.

Section 253 Extending periods

This section is referred to throughout the Instrument to give authority to the circumstance of a time period, in which a person is required to do something, being extended. Subsection 253(1) provides that the section applies if either a person is requested or required under the Instrument to do a thing before the end of a period or the Authority or Minister is required to do a thing under the Instrument in relation to a person before the end of a period and the provision refers to the period being extended under this section.

Subsection 253(2) provides that the Minister or Authority may extend the original period before it ends by giving written notice. The Minister may extend the period if the Minister requests or requires a person to do a thing, or a person is required to do a thing, and otherwise the Authority may extend the period.

Subsection 253(3) allows for the practical circumstance of the Authority or Minister being able to provide the extension in the notice which requests or requires a person to do something.

Section 254 Form of identity card

Section 254 prescribes the form of the identity card for the purpose of subsection 45(1) of the Act.

Section 45 of the Act requires the Authority to issue inspectors with photographic identity cards in a form prescribed.

Part 18- Application, saving and transitional provisions

Division 1- Simplified outline of this Part

Section 255 Simplified outline of this Part

Section 255 states that Part 18 deals with application, savings and transitional provisions relating to the making, or amendment, of the Instrument.

While the Instrument is in substantially the same form as the old regulations it repeals and replaces the regulatory regime established under the old regulations and it is therefore necessary to provide for the transition from the old to the new regime.

There are no transitional, application or savings provisions relating to Hinchinbrook authorisations. The reason for this is that none have been granted therefore it is not necessary to provide for them transitioning over to the new scheme.

Division 2- Application, saving and transitional provisions relating to the making of this instrument

Section 256 References to old regulations

Section 256 is intended to clarify the meaning of a reference in Division 2 of Part 18 to the old regulations.

Subsection 256(1) confirms that a reference to the old regulations is a reference to the *Great Barrier Reef Marine Park Regulations 1983*, which are the Regulations being repealed and replaced by the Instrument.

Subsection 256(2) confirms that a reference to a thing done under the old regulations may be a thing done under a previous version of the old regulations. A note is included at the end of section 256 referring to a common example of where a thing may be done under a previous version of the old regulations, being an application for a permission made to the Authority before 4 October 2017. Such an application would be a 'thing done' under a previous version of the old regulations because amendments to the old regulations made by the *Great Barrier Reef Marine Park Amendment (Permissions System) Regulations 2017* commenced on 4 October 2017. These amendments made significant reforms to the components of the *old regulations* relating to permissions.

Section 257 Things done under the old regulations

Incomplete processes

Subsection 257(1) relates to incomplete processes. One example of an 'incomplete process' is where an application for a permission has been made under the old regulations prior to commencement of the Instrument and the assessment or decision making processes in relation to that application have not been completed before commencement of the Instrument. The general approach taken in subsection 257(1) is that where processes are incomplete at the time of commencement of the Instrument, the old regulations continue to apply to such processes until they are completed.

Subsection 257(1) provides that, despite the repeal of the old regulations, they will continue to apply as if not repealed to a process begun before commencement under the old regulations, or (under paragraphs 257(1)(a) and (c)) begun before commencement under a provision of the Act/an instrument made under the Act to the extent the old regulations apply to such a provision.

To the extent that there are linkages between the old regulations, the Act and instruments made under the Act such as the Zoning Plan, it may not be clear whether a process can be said to be under the old regulations, the Act or the relevant instrument. Paragraphs 257(1)(a) and (c) have been included to eliminate doubt about whether the old regulations apply in such instances. For example, section 59F of the Act contains provisions relating to applying for, and the granting of, an exemption from the requirement for a regulated ship to navigate without a pilot in the compulsory pilotage area. For the purposes of s 59F of the Act, regulation 119 of the old regulations prescribes information that must be contained in an application for such an exemption. Where an application is made for an exemption to navigate without a pilot and the process relating to that application has not been completed before commencement of the Instrument, paragraph 257(1)(a) makes it clear that regulation 119 of the old regulations would continue to apply to the process until it is completed.

The continued application under subsection 257(1) of the old regulations to a process may in some cases mean that superseded versions of the old regulations must be referred to. To remove any doubt subsection 256(2) (discussed above) ensures that superseded versions of the old regulations can be referred to. The most common reason why a superseded version of the old regulations may need to be considered for a process is where an application for a permission is made to the Authority prior to 4 October 2017. Subregulation 207(2) of the old regulations provides that amendments made by the *Great Barrier Reef Marine Park Amendment (Permission System) Regulations 2017* on 4 October 2017 to Parts 2A (permissions) and 7 (fees) of the old regulations only apply to: (a) applications received by the Authority on or after 4 October 2017 for permissions; and (b) (subject to some exceptions) EPBC referral deemed applications taken under subsection 37AB(1) of the Act to have been made on or after 4 October 2017. The significance of this date is that it is when major reforms to the permissions system commenced. The effect of subregulation 207(2) of the old regulations when read in conjunction with subsection 257(1) of the Instrument is that a superseded version of Parts 2A and 7 of the old regulations would apply to a process still underway after commencement of the Instrument relating to an application for a permission received prior to 4 October 2017, or relating to an EPBC referral deemed application taken under subsection 37AB(1) of the Act to have been made prior to 4 October 2017.

For example, consider an EPBC referral deemed application taken under section 37AB of the Act to have been an application made on 1 January 2012 where a decision on the application is not made before commencement of the Instrument:

- Because a decision on the application is not made before commencement of the Instrument, subsection 257(1) will mean that the old regulations will continue to apply to the assessment and decision-making process until that process is completed;

- Because the application was made prior to 4 Oct 2017, paragraph 207(2)(b) of the old regulations will apply so that (subject to some exceptions) the amendments of Parts 2A and 7 made by the *Great Barrier Reef Marine Park Amendment (Permission System) Regulations 2017* will not apply therefore the superseded version of Parts 2A and 7 of the old regulations will need to be applied during the assessment and decision-making process.

Things done or omissions before commencement

Subsection 257(2) relates to things done or omissions before commencement. That subsection provides that, in relation to a thing done or omitted to be done before commencement of the Instrument, the repeal of the old regulations does not affect:

- (a) any right, privilege, obligation or liability acquired, accrued or incurred as a result of the thing done or the omission;
- (b) any penalty, forfeiture or punishment incurred in respect of any offence committed as result of the thing done or the omission; or
- (c) any investigation, legal proceeding or remedy in respect to (b).

Any investigation, legal proceeding or remedy may be instituted, continued or enforced, and any penalty, forfeiture or punishment may be imposed, as if the old regulations had not been repealed.

Subsection 257(2) will ensure that, for example, where a person has committed an offence before commencement under the old regulations, the investigation and prosecution of that offence can continue after commencement of the Instrument as if the old regulations have not been repealed.

Subsection 257(2) is intended to have a similar effect to section 7 of the *Acts Interpretation Act 1901* however subsection 257(2) is broader in that it applies irrespective of whether the right or penalty, etc. arises under the old regulations, the Act or an instrument made under the Act (such as the Zoning Plan). This is to ensure that where there is an interdependent relationship between the Act and the old regulations, or between an instrument made under the Act (such as the Zoning Plan) and the old regulations, the effect of the old regulations is preserved to the extent needed. For example, consider a scenario where an offence is committed under section 38BA of the Act prior to the commencement date for spearfishing in the General Use Zone in a manner which did not fall within the definition of 'limited spearfishing' under the Zoning Plan. Because the definition of limited spearfishing in the Zoning Plan refers to limitations prescribed 'in the Regulations', subsection 257(2) is needed to clarify that for the purposes of legal proceedings, etc. after commencement, the limitations prescribed under the old regulations remain relevant to determining whether or not the spearfishing fell outside of the definition of limited spearfishing in the Zoning Plan, and whether or not an offence was committed under the Act.

Instruments in force before commencement

Subsection 257(3) relates to instruments in force before commencement. Subsection 257(3) provides that despite the repeal of the old regulations, an instrument that is in force under the old regulations immediately before commencement is taken to remain in force after commencement for the purpose of section 257. Subsection 257(3) ensures that to the

extent that a pre-commencement instrument relates to a pre-commencement process which is continuing under the old regulations, the instrument is taken to remain in force for the purposes of completing the process.

Relationship with section 7 of the Acts Interpretation Act 1901

Subsection 257(4) provides that section 257 does not limit the effect of section 7 of the *Acts Interpretation Act 1901* (as it applies as a result of paragraph 13(1)(a) of the *Legislation Act 2003*). Section 7 of the *Acts Interpretation Act 1901* relates to the effect of amendment or repeal of an Act. Subsection 257(4) of the Instrument is included to clarify that subsection 257(2) is not intended to displace the effect of s 7 of the *Acts Interpretation Act 1901*. Rather, for the reasons discussed above, subsection 257(2) has been included to ensure that the same result as that achieved by section 7 of the *Acts Interpretation Act 1901* is achieved in cases where there are interdependencies between the old regulations, the Act and instruments made under the Act such as the Zoning Plan.

Relationship with Part 18

Subsection 257(5) provides that for the avoidance of doubt, the old regulations apply only to the extent required for the purposes of completing the process referred to in subsection 257(1). A note alerts the reader to the fact that there are other provisions in Part 18, such as section 261, that bring old instruments into the new scheme. Such old instruments are only intended to remain in force under the old regulations to the extent that they apply to an old process. For all other purposes Part 18 generally treats old instruments as instruments in force under the new Instrument.

Section 258 Accreditation of institutions and harvest fisheries

Section 258 provides for continuity of old accreditations of institutions and harvest fisheries by preserving the old accreditations as if they are new accreditations.

Subsection 258(1) provides that an accreditation under old regulation 7 or 8 that is in force immediately before the commencement is taken after commencement to be an accreditation under section 13 or 14 of the Instrument. This allows for the accreditations to transition into the new scheme created by the Instrument without interruption to their legal effectiveness.

Subsection 258(2) provides that an accreditation granted under regulation 7 or 8 of the old regulations (as it continues in force under subsection 257(1) of the Instrument) after commencement is taken, after the accreditation is granted, to be an accreditation in force under section 13 or 14 of the Instrument. This ensures that even where, because of section 257 applying to an old process, an accreditation is granted under the old regulations after commencement, that accreditation can be taken to be an accreditation in force under the Instrument and is therefore brought into the new scheme. It is not necessary to include a provision stating that section 258 does not affect the Authority's power to vary or revoke the accreditation as this is implied.

Section 259 Limited impact research (extractive)

Subsection 259(1) provides that section 20 of, and Schedule 6 to, the Instrument apply in relation to the calendar year beginning on 1 January 2020, and later calendar years.

Subsection 259(2) provides that despite the repeal of the old regulations, regulation 19 of the old regulations continues to apply after the commencement of the Instrument in relation to the calendar year beginning 1 January 2019 as if the old regulations had not been repealed.

Because the Instrument commences on 1 April 2019, there is a need to avoid an unintended consequence where ‘take’ of species under regulation 19 of the old regulations from 1 January 2019 to 31 March 2019 may not have counted toward the total quotas for the calendar year (i.e. there is a need to eliminate an opportunity for ‘double dipping’ under the new scheme). The intention is that the ‘take’ of any species in 2019 both prior to, and following, commencement be counted toward the total take for the calendar year of 2019 in accordance with regulation 19 of the old regulations. This ensures that the take count for 2019 does not restart on 1 April 2019 as a consequence of the repeal and replacement of the old regulations. Section 20 of the Instrument will apply to take counts from 1 January 2020. In practice the take count is unchanged under the new Instrument.

Section 260 Directions given following notification

Section 57 of the Instrument, which replaces regulation 72 of the old regulations, provides for the giving of directions following notification that a person proposes to engage in conduct in a zone of the Marine Park.

Subsection 260(1) provides that section 57 of the Instrument applies in relation to any direction given under that section after the commencement, whether in relation to a notification given before or after that commencement. This ensures that where a notification is given to the Authority before commencement that a person proposes to engage in conduct in a zone of the Marine Park, the Authority is able to give directions after commencement under the new section 57.

Subsection 260(2) provides that a direction given under regulation 72 of the old regulations that is in force immediately before commencement is taken to be in force under section 57 of the Instrument. This is intended to bring old directions over into the new scheme created by the Instrument. It is not necessary to include a provision stating that subsection 260(2) does not affect the Authority’s power to vary or revoke such a direction as this is implied.

Section 261 Permissions

Section 261 provides for old permissions to continue to have legal effect by transitioning them from permissions under the old regulations to permissions under the Instrument.

Subsection 261(1) provides that a permission granted under Part 2A of the old regulations that is in force immediately before commencement is taken after commencement to be a permission in force under Part 3 of the Instrument. This is intended to allow an old permission to be treated as if it were granted under the new scheme. It is not necessary to

include a provision stating that subsection 261(1) does not affect the Authority's power to modify, suspend or revoke such a permission as this is implied.

Subsection 261(2) provides that any authority given under an old permission that is in force in accordance with regulation 88ZF of the old regulations (which provides for the granting of authorities under permissions) immediately before commencement is taken to be in force in accordance with section 118 of the Instrument. This ensures the continuity of old authorisations as the corresponding old permissions transition to the new scheme.

Subsection 261(3) provides that a permission granted under Part 2A of the old regulations (as it continues in force under subsection 257(1) of the Instrument) after commencement is taken, after the permission is granted, to be a permission in force under Part 3 of the Instrument. This ensures that even where, because of section 257 applying to an old process, a permission is granted under the old regulations after commencement, that permission can be taken to be a permission in force under the Instrument and is therefore brought into the new scheme. It is not necessary to include a provision stating that subsection 261(3) does not affect the Authority's power to modify, suspend or revoke such a permission as this is implied.

Subsection 261(4) provides that Division 8 of Part 3 (modification, suspension and revocation of permissions) of the Instrument applies, subject to section 257, in relation to any conduct or omission, whether occurring before or after commencement. The effect of this subsection when read in conjunction with section 257 is that if there is conduct or an omission pre-commencement:

- Section 257 would apply if a process was started pre-commencement in relation to the conduct or omission, so that Division 2A.8 of Part 2A (modification, suspension and revocation of permissions) of the old Regulations would continue to apply to the process post-commencement until completion of the process; and
- Subsection 261(4) would apply if a process was started on or after commencement, so that Division 8 of Part 3 (modification, suspension and revocation of permissions) of the Instrument would apply to the process.

Section 262 Changes in beneficial ownership

Section 262 clarifies the operation of section 125 in relation to a change in beneficial ownership. Section 125 imposes certain requirements on a permission holder that is a company to give the Authority notice in circumstances where there is a change in the beneficial ownership of the company.

It provides that section 125 will apply in relation to any changes of beneficial ownership of a company that occur after commencement.

Conversely if a change in beneficial ownership of a company occurs before commencement and is notified before commencement then section 257 operates so that any process which is triggered before commencement in response to the notice will continue under the provisions of the old regulations until such time as the process is concluded.

Section 263 TUMRAs

Section 263 provides for the transition of a TUMRA accredited under the old regulations into the new scheme.

Subsection 263(1) provides that the accreditation (including a certificate of accreditation) of a TUMRA that is in force under Part 2B of the old regulations immediately before commencement is taken after commencement to be an accreditation, and a certificate of accreditation, in force under Part 4 of the Instrument. This ensures that old accreditations can continue to be recognised under the new scheme. It is not necessary to include a provision stating that section 263(1) does not affect the Authority's power to modify, suspend or revoke such an accreditation as this is implied.

Subsection 263(2) provides that the accreditation (including a certificate of accreditation) of a TUMRA given under Part 2B of the old regulations (as they continue in force under subsection 257(1) of the Instrument) after commencement is taken, after the accreditation (and the certificate) is given, to be an accreditation (and certificate) in force under Part 4 of the Instrument. This provision is directed at where there is an incomplete process in relation to an accreditation at the time of commencement and recognises that once the process has been completed under the old regulations any resulting accreditation given under the old regulations post commencement will be treated as an accreditation in force under the new Instrument. It is not necessary to include a provision stating that subsection 263(2) does not affect the Authority's power to modify, suspend or revoke such an accreditation as this is implied.

Subsection 263(3) provides that Division 4 of Part 4 (modification, suspension and revocation relating to TUMRAs) of the Instrument applies, subject to section 257, in relation to any conduct or omission, whether occurring before or after commencement. This provision ensures that accreditations of TUMRAs can be modified, suspended or revoked pursuant to the provisions in the Instrument regardless of whether any conduct or omission giving rise to grounds for modification, suspension or revocation occurred before or after commencement. The effect of making this provision subject to section 257 is that if a process relating to modification, suspension or revocation has been started under the old regulations pre-commencement and is not completed before commencement it will be dealt with as an incomplete process and Division 2B.4 of Part 2B of the old regulations will continue to apply to the process until it is complete.

Section 264 Offences and civil penalty provisions

Section 264 clarifies when offences and civil penalty provisions will apply to conduct and omissions.

Paragraph 264(a) provides that offences and civil penalty provisions in the Instrument apply only in relation to conduct and omissions that occur after commencement, and do not have retrospective effect. At commencement there were only offence provisions and there were no civil penalty provisions contained in the Instrument, therefore paragraph 264(a) effectively only applies to offences.

Where conduct or an omission occurred prior to commencement it is intended that the relevant offence provisions in the old regulations will apply.

Paragraph 264(b) and (c) address cases where an offence or civil penalty provision is contained in the Act or some other instrument made for the purposes of the Act. At commencement there were offence and civil penalty provisions contained in the Act, therefore effectively only paragraph 264(c) has a practical effect. To the extent that the offence or civil penalty provision relates to a matter prescribed in the new Instrument, the offence or civil penalty provision will only apply to any conduct or omission that occurs after the commencement of the Instrument. For example, to the extent that the offence under section 38BA of the Act may relate to a limitation on netting prescribed in section 27 of the Instrument, the offence will only apply to conduct or an omission that occurs after commencement of the Instrument.

Section 265 Registers

Section 265 provides that despite the repeal of regulations 114 and 124 of the old regulations the registers in force under those regulations immediately before commencement continue to be in force after commencement as if those regulations had not been repealed.

This provision ensures there is no disruption to the operation and legal effect of the registers.

Section 266 Application of section 176

Section 266 ensures that the preparation of the Great Barrier Reef Outlook Report 2019 is not affected by the Instrument. It does this by providing in subsection 266(2) that regulation 116A of the old regulations, which prescribes a matter for inclusion in outlook reports, continues to apply for the purposes of the 2019 report. For the 2024 report and later reports, subsection 266(1) clarifies that the new equivalent of the old regulation, section 176, applies.

Section 267 Exemptions from Part 9

Section 267 provides that exemptions given under the old regulations from restrictions on interacting with cetaceans have continued effect under the Instrument.

Subsection 267(1) provides that an exemption under regulation 117K of the old regulations that is in force immediately before commencement is taken after that time to be in force under the equivalent section, section 188, of the Instrument. This is intended to give old exemptions the effect of exempting the holder from the relevant restrictions on interacting with cetaceans in the Instrument.

Subsection 267(2) provides that an exemption under regulation 117K of the old regulations that is given after commencement (as that regulation continues in force under subsection 257(1) of the Instrument) is taken, after it is given, to be in force under section 188 of the Instrument. This subsection ensures that even where (because of section 257 applying to an old process) an exemption is granted under the old regulations after commencement of the Instrument, that exemption can be taken to be an exemption in force under the Instrument once the process is complete, and therefore can transition into the new scheme.

Subsection 267(3) has been included to avoid any confusion where an exemption given before commencement under regulation 117K of the old regulations makes reference to other provisions of the old regulations. In such cases the exemption should be interpreted as if the references are to the equivalent provisions of the Instrument. For example, consider a situation where an exemption given before commencement stipulates that the holder of the exemption is exempt from regulation 117JA, which prohibits a person from conducting a tourist program in the Marine Park consisting of a swimming-with-whales activity involving dwarf minke whales in circumstances where the person does not hold a permission to conduct the activity. After commencement, this exemption should be interpreted as if it stipulates that the holder of the exemption is exempt from section 186 of the Instrument, which is the equivalent of regulation 117JA of the old regulations.

Section 268 Compulsory pilotage

Section 196 imposes a duty on the master or owner of a ship, for which an exemption is given under section 59F of the Act, to notify the Authority if information previously given to the Minister for the exemption becomes inaccurate. Subsection 268(1) clarifies that section 196 applies in relation to an inaccuracies arising after commencement (whether in relation to an exemption given before or after commencement). The effect of subsection 268(1) is that the duty to notify under section 196 arises after commencement irrespective of whether the exemption was given before or after commencement.

In cases where a duty to notify arose before commencement under regulation 122 of the old regulations (the equivalent of new section 196 of the Instrument), the repeal of the old regulations does not affect that obligation. It is intended that section 211(2) and/or 7 of the *Acts Interpretation Act 1901* (as it applies as a result of paragraph 13(1)(a) of the *Legislation Act 2003*) can be relied upon in relation to any contravention of that duty.

Termination of exemption in certain circumstances

Section 197 provides that an exemption is taken to be of no effect in cases where there is a contravention of exemption conditions or a contravention of the duty to notify in section 196. Subsection 268(2) provides that section 197 applies in relation to any contravention that occurs after commencement (whether in relation to an exemption given before or after commencement). The effect of subsection 268(2) is an exemption will be taken to be of no effect where there is a contravention under section 197 irrespective of whether the contravention is of an exemption given before or after commencement.

Where an exemption was taken before commencement to be of no effect under regulation 123 of the old regulations (the equivalent of new section 197 of the Instrument), it is intended that the repeal of the old regulations should not have the effect of reviving the exemption (see section 7 of the *Acts Interpretation Act 1901* and section 13 of the *Legislation Act 2003*).

Section 269 Application of fees

Section 269 clarifies at what point certain provisions of the Instrument relating to fees will apply.

Fees generally

The general approach taken is that where a fee relates to an application, the point in time when the application is made will dictate whether the fee provisions in the old regulations or the fee provisions in the Instrument will apply. If an application is made prior to commencement, then the fee provisions in the old regulations should apply (and this is made clear under section 257). If an application is made on or after commencement then the fee provisions in the Instrument should apply.

Subsection 269(1) provides that sections 202 (fees for chargeable applications), 205 (fees for other applications and requests) and 206 (fee for application for exemption from compulsory pilotage) apply in relation to any fee that is payable in relation to any application, request or lodgement made after the commencement of the Instrument.

A note alerts the reader that fees may remain payable under the old regulations in relation to processes begun before this section commences, and refers to section 257 (which relates to things done under the old regulations).

Reinstatement fees

Section 207 provides for the payment of a fee to the Authority in cases where a permission is to be reinstated following a suspension. Subsection 269(2) provides that section 207 applies in relation to any reinstatement fee that becomes payable after the commencement of the Instrument.

Indexation

Subsection 269(3) provides that section 208 (indexation of fees under sections 202 and 205) applies to fees that are payable in relation to any application, request or lodgement made on or after 1 January 2020. The fee amounts specified in sections 202 and 205 already take into account indexation for the 2019 calendar year so it is appropriate that the indexation provisions do not begin to apply until the following calendar year.

Waiver of fees

Subsection 269(4) provides that section 209 (waiver of fees under sections 202 and 205) applies in relation to any fee (whether the fee became payable before or after the commencement of section 269) as if a reference in section 209 to section 202 and 205 included a reference to regulations 128 and 134 of the old regulations. This is to ensure that the Authority can decide to waive a fee that would otherwise be payable irrespective of whether the obligation to pay that fee arose under the old regulations or under the Instrument.

Section 270 Determination of secondary services

Subsection 270(1) provides that a secondary services determination that is in force under regulation 137 of the old regulations immediately before commencement is taken after commencement to be in force under section 212 of the Instrument. This is to allow old determinations to transition into the new scheme after commencement. It is not necessary to include a provision stating that section 270(1) does not affect the Authority's power to vary or revoke such determinations as this is implied.

Subsection 270(2) provides that a secondary services determination that is made under regulation 137 of the old regulations after the commencement of section 270 (as regulation 137 continues in force under subsection 257(1) of the Instrument) is taken, after it is made, to be in force under section 212 of the Instrument. This is so that where a process that is started prior to commencement results in a secondary services determination being made on or after commencement, the determination transitions into the new scheme once it is made. It is not necessary to include a provision stating that section 270(2) does not affect the Authority's power to vary or revoke such a determination as this is implied.

Section 271 Chargeable permissions

Section 271 clarifies at what point certain EMC obligations arise under the Instrument.

Standard tourist program charge

Subsection 271(1) provides that subdivision A (standard tourist program charges) of Division 3 (amount of charges and payment) of Part 13 (environmental management charges) applies in relation to tourist programs that began after commencement.

Where a tourist program begins before commencement it is intended that section 7 of the *Acts Interpretation Act 1901* and section 13 of the *Legislation Act 2003* be relied upon so that the equivalent provisions of the old regulations apply, being Subdivision 1 (Standard tourist program charges) of Division 8.2 (Amount of charge and payment) of Part 8 (Environmental management charges). This should be the case irrespective of whether the tourist program ends before or after commencement.

Other charges

Subsection 271(2) provides that subdivision B (other charges) of Division 3 (amount of charges and payment) of Part 13 (environmental management charges) applies in relation to quarters that commence on or after commencement. This means that, for example, for the quarter commencing on 1 April 2019, the charge for the hiring of non-motorised beach equipment will be the charge specified in item 1 of the table in section 223.

For quarters prior to commencement the charges under the old regulations will apply pursuant to section 7 of the *Acts Interpretation Act 1901* and section 13 of the *Legislation Act 2003*. For example, for the quarter commencing on 1 January 2019, the charge for the hiring of non-motorised beach equipment is the charge specified in regulation 149 of the old regulations (which is the equivalent of new section 223 and effectively imposes the same amount of charge).

When charges and collected amounts are payable

Subsection 271(3) provides that sections 225 (when charges under section 223 are payable) and 226 (when collected amounts are payable) apply in relation to charges or collected amounts that are payable in or after 1 April 2019. This will mean that, for example, for the quarter commencing on 1 April 2019, the charge for the hiring of non-motorised beach equipment specified in item 1 of the table in section 223 will be payable in July 2019 pursuant to section 225.

For quarters prior to commencement the provisions of the old regulations that provide when charges are payable will apply pursuant to section 7 of the *Acts Interpretation Act 1901* and section 13 of the *Legislation Act 2003*. For example, for the quarter commencing on 1 January 2019, the charge for the hiring of non-motorised beach equipment specified in regulation 149 of the old regulations will be payable in April 2019 in accordance with regulation 163 of the old regulations.

Cessation or transfer of permissions

Subsection 271(4) provides that section 227 (payment on cessation or transfer of permission) applies in relation to transfers that occur, or permissions that cease, after commencement. For permissions that are transferred or cease prior to commencement, it is intended that the requirements of regulation 164 of the old regulations continue to apply to any charges, late payment penalties, etc. that are outstanding after commencement (see section 7 of the *Acts Interpretation Act 1901* and section 13 of the *Legislation Act 2003*).

Overpayments

Subsection 271(5) provides that section 228 (overpayment of charge by holder of chargeable permission) applies in relation to any overpayment whether it is determined by the Authority, or relates to an overpayment, before or after commencement. This is intended to allow the Authority to apply section 228 to reduce the future liability of the holder of a chargeable permission to pay a charge by the amount of an overpayment, irrespective of whether the overpayment occurred before or after commencement, and irrespective of whether the Authority determined before or after commencement that there was an overpayment.

Section 272 Record keeping and returns

Section 272 provides for the transitional arrangements for record keeping and returns.

Record keeping

Section 229 (record keeping, etc.) of the Instrument provides that certain receipts, tickets and other records relating to charges must be kept by the holder of a chargeable permission for two years.

Subsection 272(1) provides that section 229 of the Instrument applies to receipts, tickets and other records that become required to be kept under section 229 after commencement.

Subsection 272(2) provides that despite the repeal of regulation 166 of the old regulations (which is the equivalent of section 229 of the Instrument), that regulation continues to apply, after the commencement of section 272, for 2 years after a record was first required to be kept under that regulation before commencement. The intention of this subsection is that on commencement of the Instrument, just because regulation 166 of the old regulations will be repealed there should still be an ongoing requirement after commencement to keep the relevant records for two years as if regulation 166 had not been repealed.

Returns

Section 230 (returns) of the Instrument provides that the holder of a chargeable permission must give the authority charge returns and other information in April, July, October and January in relation to the preceding quarter.

Subsection 272(3) provides that section 230 applies in relation to returns and logbooks relating to the quarter beginning on 1 April 2019 and later quarters.

Subsection 272(4) provides that despite the repeal of regulation 167 of the old regulations (which is the equivalent of section 230 of the Instrument), that regulation continues to apply after commencement in relation to quarters that end before commencement as if that regulation had not been repealed. The intention of this subsection is that on commencement of the Instrument, just because regulation 167 of the old regulations will be repealed there should still be an ongoing requirement to provide the relevant charge returns and other information under that section in relation to previous quarters. In particular, the holder of a chargeable permission should still be required under regulation 167 to give a charge return and other information to the Authority in April 2019 for the quarter commencing on 1 January 2019.

Section 273 Review of decisions

Section 273 clarifies whether the old regulations or the Instrument will apply to the review of certain decisions. This will depend on whether the decision is made before or after commencement and (for decisions made after commencement) whether the decision is made as a result of a process that started before commencement.

Subsection 273(1) provides that, subject to subsection 273(2), Part 15 (notification and review of decisions) applies in relation to decisions made under the Instrument after commencement.

Despite subsection 273(1) it is still possible for the old regulations (and in particular, Part 13 of the old regulations, which is the equivalent of Part 15 of the Instrument) to apply to a decision made after commencement. This is because of the operation of subsection 273(2) in conjunction with section 257. Subsection 273(2) provides that, despite the repeal of Part 13 of the old regulations, Part 13 continues to apply after commencement in relation to decisions made under the old regulations (as Part 13 of the old regulations is continued in force under subsection 257(1) of the Instrument) after commencement.

The overall intention is that at the time of commencement the old regulations will continue to apply to:

- A review of a decision where the review is already underway prior to commencement (this intent is achieved through section 257);
- A review of a decision where the decision is made prior to commencement and the review is sought after commencement (this intent is achieved through section 257); and
- A review of a decision where the decision is made after commencement but the decision was made under the old regulations as a result of a process that started

prior to commencement (this is achieved through section 257 and subsection 273(2)).

A note at the end of subsection 273(2) highlights that if a decision is already under review upon commencement, the review of that decision will continue to occur under the old regulations (and, in particular, under Part 13) pursuant to section 257.

Subsections 273(3) and 274(4) have been included to clarify that section 273 applies despite any other section of the Instrument (except section 257), but Part 13 of the old regulations applies only to the extent required for the purposes of the reconsideration or review of a decision referred to in subsection 273(4). It is intended that if the result of a decision under the old regulations is, for example, the granting of a permission, even though that permission is taken to be a permission granted under the Instrument due to subsection 261(3) (so that provisions relating to suspension, transfer, etc. under the new Instrument apply) this should not override section 273 i.e. for any review of the decision to grant the permission, the permission should be treated as a permission granted under the old regulations because of section 257.

To demonstrate the operation of section 273 consider the following example: An application for a permission is made on 5 May 2008. On 31 February 2017 a decision is made by the Authority to grant the permission sought. On 2 August 2017 a decision is made by the Authority on reconsideration under regulation 186 of the old regulations as in force on 5 May 2008 to affirm the original decision. An application is made to the Administrative Appeals Tribunal on 30 June 2017 for review of the reconsideration decision. The Administrative Appeals Tribunal is satisfied that under the savings provisions contained in the *Great Barrier Reef Marine Park Amendment Regulations 2009 (No 1)* the Tribunal has jurisdiction to review the decision under the superseded version of the old regulations that applied on 5 May 2008. The matter has not yet been decided by the Tribunal after commencement of the Instrument. The new Instrument should not impact on the review of the matter by the Tribunal under the old regulations because of subsection 273(2) and section 257, but for all other purposes the permission that was granted on 31 February 2017 is currently in force, and is taken to be a permission granted under the Instrument because of subsection 261(3).

Section 274 Infringement notices

Section 274 applies so that infringement notices may be issued under the new scheme upon commencement even in relation to conduct that occurs prior to commencement.

Subsection 274(1) provides that Division 3 (Infringement notices) of Part 16 (Inspector's powers) of the Instrument applies in relation to any infringement notices given after the commencement (whether the conduct to which the infringement notice relates occurred before or after commencement). This is intended to enable the giving of infringement notices under the new scheme upon commencement irrespective of when the relevant conduct occurred.

Section 243 of the Instrument specifies that certain offences in the Instrument are infringement notice offences and prescribes the relevant infringement notice penalty in penalty units for each infringement notice offence. Subsection 274(2) provides that for conduct occurring before commencement, section 243 applies after commencement as if a reference in section 243 to a provision of the Instrument were a reference to the equivalent provision of the old regulations. In other words, the offences listed as infringement notice offences in section 243 (which are listed with their relevant section number as they appear in the Instrument) should be interpreted as if they are a list of the equivalent offences in the old regulations. The intended effect of this is that, to establish whether an infringement notice offence has been committed, it is the elements of the offence under the old regulations which are applicable. This prevents the new infringement notice offences from unintentionally having retrospective operation (albeit that they are not considered to be substantially different from the old offences).

Section 275 Form of identity cards

Section 275 allows for identity cards issued prior to commencement to continue in force despite the new scheme.

The format for identity cards under the new scheme is prescribed under section 254. Subsection 275(1) provides that section 254 applies in relation to any identity card issued after the commencement of the Instrument.

It is not intended that identity cards issued prior to commencement be subject to the requirements of section 254. Rather, the requirements for the format of such identity cards should continue to be the format prescribed in regulation 206 of the old regulations. Subsection 275(2) achieves this intent by providing that despite the repeal of regulation 206 of the old regulations (which was the equivalent provision to section 254 of the Instrument), regulation 206 continues to apply after commencement in relation to identity cards issued before commencement.

Schedule 1- Designated anchorages

Subsection 5(1) of the Instrument defines 'designated anchorage' as including a point or an area described in Schedule 1, and defines 'cruise ship anchorage' as having the same meaning as 'designated anchorage'. Other than these definitions, there are no references to designated anchorages or cruise ship anchorages in the Instrument. Rather, the substantive rules that relate to designated anchorages and cruise ship anchorages are located in the Plans of Management made under the Act. The Plans of Management subdelegate to the Instrument the power to define what is a designated anchorage or cruise ship anchorage. The reason for the subdelegation to the Instrument is to allow the anchorages to be more easily updated from time to time.

Designated anchorage areas are determined through desk top planning, site assessment and through stakeholder and public consultation. They are designed for use by large ships (at least 70 metres) and large vessels (more than 35 metres, but less than 70 metres) that are used as part of a tourism program or for private recreation (e.g. for cruise ships or superyachts). They are designed to offer a range of opportunities in the Marine Park.

Part 1- Far Northern Management Area

1 Far Northern Management area

There are 11 designated anchorages in the far north of the Marine Park. This is a remote area with no port facilities or support infrastructure. The nine anchorages located within the Remote Natural Area cater for cruise ships that are 70-120 metres in length, carry 120-150 passengers and are able to provide their own tourism activities. There are no ship size requirements or passenger limits for the two Flinders Island Group designated anchorages.

Item 1, which includes a table, identifies the geographical location of the designated anchorages in the Far Northern Management area.

Part 2- Cairns/Cooktown management area

2 Cairns planning area

There are seven designated anchorages in the Cairns Planning Area. Cruise ships can operate up to 50 days a year within the Cairns Planning Area with a booking.

Item 2, which includes a table, identifies the geographical location of the designated anchorages in the Cairns Planning Area.

Part 3- Townsville/Whitsunday management area

3 Dunk Island

There is one designated anchorage to the east of Dunk Island. This designated anchorage is outside the Hinchinbrook Planning Area.

Item 3, which includes a table, identifies the geographical location of the designated anchorage in Dunk Island.

4 Hinchinbrook planning area

There are two designated anchorages in the Hinchinbrook Planning Area. Cruise ships can operate up to 50 days a year within the Hinchinbrook Planning Area with a booking.

Item 4, which includes a table, identifies the geographical location of the designated anchorages in the Hinchinbrook planning area.

5 Whitsunday planning area

There are 10 designated anchorages in the Whitsunday Planning Area. Cruise ships can operate up to 50 days a year within the Whitsunday Planning Area with a booking. Only three cruise ship bookings can be made for the area on any one day. Fitzalan Passage caters for cruise ships that are less than 200 metres in length. The prior approval of the Mackay Regional Harbour Master must be obtained before accessing this designated anchorage.

Item 5, which includes a table, identifies the geographical location of the designated anchorages in the Whitsunday planning area.

Part 4- Mackay/Capricorn management area

6 Mackay/Capricorn management area

There are three designated anchorages off Rockhampton. The geographical coordinates are set out in item 6.

Item 6, which includes a table, identifies the geographical location of the designated anchorages in the Mackay/Capricorn management area.

Schedule 2- Superyacht anchorages

Subsection 5(1) of the Instrument defines superyacht anchorage as an area described in Schedule 2 or if a declaration is in force under paragraph 5(2)(c)- the declaration as in force from time to time.

Relevantly, superyacht is defined as meaning a high-value, luxury sailing or motor vessel in use for sport or pleasure (whether for private or commercial use). Other than these definitions, there are no references to superyacht anchorages in the Instrument. Rather, the substantive rules that relate to them are located in Plans of Management, and the Plans of Management subdelegate to the Regulations the power to define what is a superyacht anchorage and a no-anchoring area.

Superyacht anchorage areas are determined through desktop planning, site assessment and through stakeholder and public consultation. Twenty-one superyacht anchorages were introduced in to the *Whitsundays Plan of Management 1998* on 2 August 2017. These anchorages are available for superyachts less than 70 metres and carrying no more than 12 people other than master and crew. They are provided to offer recreational users and commercial operators a range of opportunities in the Marine Park.

1 Superyacht anchorages with capacity for one superyacht

2 Superyacht anchorages with capacity of 2 superyachts

Item 1 provides for superyacht anchorages with capacity for one superyacht while item 2 provides for superyacht anchorages with capacity for 2 superyachts.

At the time the Instrument was made, only the Stonehaven anchorage, Hook Island superyacht anchorage and the Whitehaven Beach South, Whitsunday Island superyacht anchorages were listed as having capacity for 2 superyachts.

The items, which include tables, identify the geographical location of the superyacht anchorages.

Schedule 3- No-anchoring areas

Subsection 5(1) of the Instrument defines ‘no anchoring area’ as an area described in Schedule 3 or (b) if a declaration is in force under paragraph (2)(b)—the declaration, as in force from time to time.

Other than this definition, there is no reference to no-anchoring areas in the Instrument. Rather, the substantive rules that relate to them are located in Plans of Management made under the Act, and the Plans of Management sub-delegate to the Regulations the power to define what is a superyacht anchorage and a no-anchoring area.

No-anchoring areas are determined through desk top planning, site assessment and through stakeholder and public consultation. There are rules about anchoring due to the potentially catastrophic impacts of anchoring on coral. No-anchoring areas have been determined where it is considered necessary for the conservation and protection of coral. Vessels cannot be anchored in designated no-anchoring areas which are generally marked by white pyramid shaped buoys.

1 No-anchoring areas

Item 1, which includes a table, identifies the geographical location of the no-anchoring areas.

Schedule 4- Whale protection area

Subsection 5(1) of the Instrument defines whale protection area as meaning a whale protection area in Schedule 4.

The whale protection area is designed to minimise disturbance to whales. The areas specified are areas where whales calve and the whale protection area is intended, in conjunction with the provisions in Part 9 of the Instrument, to protect and manage calving in these areas. Section 187 expressly relates to the protection of whales in a whale protection area.

1 Whale protection area

Item 1, which includes a table, identifies the geographical location of the whale protection area.

Schedule 5- Special Management Areas

Part 1- Species Conservation (Dugong Protection) SMAs

1 Species Conservation (Dugong Protection) SMAs

2 Conditions of set mesh net use in offshore waters

3 No netting (other than bait netting) area within Bowling Green Bay Species Conservation (Dugong Protection) SMA

4 Restricted netting area within Bowling Green Bay Species Conservation (Dugong Protection) SMA

Item 1, which includes a table, provides the geographical coordinates for the Special Management Area and special management provisions for the section 44 Species Conservation (Dugong Protection) SMAs. This SMA is tailored to the protection and conservation of dugong and item 2 specifies the offshore waters referred to in subsection 44(3) where there are conditions of set mesh net use. Further item 3, in response to dugong mortality rates, provides for the area which is the netting (within the ordinary meaning of the expression) (other than bait netting within the meaning of the Instrument) area within Bowling Green Bay Species Conservation (Dugong Protection) SMA under 44(4) and item 4 provides for the Restricted netting area within Bowling Green Bay Species Conservation (Dugong Protection) SMA relevant to subsection 44(5) and 44(6).

Part 2- Seasonal Closure (Offshore Ribbon Reefs)

5 Seasonal Closure (Offshore Ribbon Reefs) SMAs

Item 5, which includes a table, provides for the geographical coordinates for the Seasonal Closure (Offshore Ribbon Reefs) Special Management Areas and special management provisions in section 45.

Part 3- No Dorries Detached (Offshore Ribbon Reefs) SMAs

6 No Dorries Detached (Offshore Ribbon Reefs) SMAs

Item 6, which includes a table, identifies the geographical coordinates of the No Dorries Detached (Offshore Ribbon Reefs) Special Management Areas and special management provisions in section 49.

Part 4- Restricted Access SMAs

7 Restricted Access SMAs

Item 7, which includes a table, identifies the geographical coordinates of the Restricted Access Special Management Areas and special management provisions in section 47.

Part 5- Public Appreciation SMAs

8 Public Appreciation SMAs

Item 8, which includes a table, identifies the geographical coordinates of the Public Appreciation Special Management Areas and special management provisions in section 48.

Part 6- Natural Resources Conservation (Mermaid Cove, Lizard Island) SMA

9 Natural Resources Conservation (Mermaid Cove, Lizard Island) SMA

Item 9, which includes a table, identifies the geographical coordinates of the Natural Resources Conservation (Mermaid Cove, Lizard Island) Special Management Areas and special management provisions in section 52.

Part 7- Maritime Cultural Heritage Protection SMAs

10 Maritime Cultural Heritage Protection SMAs

Item 10, which includes a table, identifies the geographical coordinates of the Maritime Cultural Heritage Protections SMAs and special management provisions in section 53.

Schedule 6- Limited impact research (extractive)

1 Limited impact research (extractive)

Item 1 provides that the table set out has effect for the purposes of subparagraph 20(3)(b)(i). That subparagraph provides that one of the conditions on limited research sampling is that the sampling for a research project in a calendar year comply with the limits in an item in the table in Schedule 6. Accordingly, that table is provided for in this Schedule.

Subsection 20(4) allows the Authority to by notifiable instrument make a determination for the purposes of paragraph 20(3)(b). In addition to the limits specified in the table provision is made to make notifiable instruments specifying the limits on sampling for a research project. By providing for specification via notifiable instrument the Authority will have a mechanism that allows flexibility and for the limits to be changed as appropriate. No notifiable instruments have been made by the Authority for this purpose, at this point in time, the intention is that if one is made it will be published on the Authority's website, www.gbrmpa.gov.au, and consolidated with the requirements contained in the Instrument to ensure ease of access to what is required.

Schedule 7- Repeals

Items 1 and 2 of Schedule 7 repeal the *Great Barrier Reef Marine Park (Aquaculture) Regulations 2000* (Aquaculture Regulations) and the *Great Barrier Reef Marine Park Regulations 1983*.

Item 1 repeals the Aquaculture Regulations which have been determined to be redundant.

Item 2 ensures that the old regulations cease to have effect when the Instrument commences.

The power to make the Aquaculture Regulations and the old regulations stems from paragraph 66(2)(e) of the Act. Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that where an Act confers a power to make any instrument of a legislative character (including regulations), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal any such instrument. Accordingly, because there is a power in paragraph 66(2)(e) of the Act to make the Aquaculture Regulations and the old regulations, this power is construed as including a power for such regulations to also be repealed.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Great Barrier Reef Marine Park Regulations 2019

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the disallowable legislative instrument

The proposed *Great Barrier Reef Marine Park Regulations 2019* (the Instrument) replaces the sun-setting *Great Barrier Reef Marine Park Regulations 1983* as the primary instrument in force under the *Great Barrier Reef Marine Park Act 1975* (the Act).

The primary objective of the Instrument is to prescribe 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 main object of the Act (set out in section 2A(1)) is to provide for the long term protection and conservation of the environment, biodiversity and heritage values of the Great Barrier Reef Region (the Region).

The other objects of the Act (set out in section 2A(2)) are to do the following, so far as is consistent with the main object:

- allow ecologically sustainable use of the Region for purposes including the following:
 - o public enjoyment and appreciation;
 - o public education about and understanding of the Region;
 - o recreational, economic and cultural activities; and
 - o research in relation to the natural, social, economic and cultural systems and value of the Region;
- encourage engagement in the protection and management of the Region by interested persons and groups, including Queensland and local governments, communities, Indigenous persons, business and industry; and
- assist in meeting Australia's international responsibilities in relation to the environment and protection of world heritage (especially Australia's responsibilities under the World Heritage Convention).

The Instrument gives effect to these objects by regulating use of the Great Barrier Reef Marine Park (Marine Park). The Instrument does this by providing for:

- Giving effect to, and enforcing the observance of, the *Great Barrier Reef Marine Park Zoning Plan* 2003 (the Zoning Plan) and Plans of Management, which are made pursuant to the Act.
- The grant of permissions in the Marine Park, the imposing of conditions which permissions may be subject to, the charging of fees by the Authority in respect of permissions, the keeping of records relating to permissions and a regime for modification, revocation and suspension of permissions.
- The accreditation of Traditional use of Marine Resources Agreements (TUMRAs) between Traditional Owners in respect of the Marine Park.
- The regulation of the discharge of sewerage in the Marine Park which includes offence provisions to support this regulation.
- The regulation of property and things in the Marine Park
- Reporting by the Authority on the condition of the Region through the Great Barrier Reef Marine Park Outlook Report.
- The regulation of interactions with cetaceans in the Marine Park
- The operation of vessels in the Marine Park
- The collection and remittance of an Environmental Management Charge (EMC) by commercial operators in the Marine Park

The Instrument also provides for appropriate notification, reconsideration and review of administrative decisions made by the Authority. Part 15 of the Instrument contains the provisions relating to notification and review of decisions. Under sections 235 to 239 of the Instrument, a person generally has the right to seek internal reconsideration and external review in the Administrative Appeals Tribunal of decisions.

In support of the regulatory scheme established by the Act, the Zoning Plan and the Instrument; the Instrument sets out some of the functions and powers of Inspectors, contains offence provisions and provides for an infringement notices regime which applies to most of these offences.

By regulating the use of the Marine Park, the Instrument establishes clear parameters which people are compelled by law to follow in order to achieve the objects of the Act.

Human rights implications

The Instrument engages the following human rights:

- The presumption of innocence (International Covenant on Civil and Political Rights) (ICCPR), article 14(2);
- The right to freedom of movement, ICCPR, article 12;
- Fair trial and fair hearing rights, ICCPR, article 14;

- The right to health (International Covenant on Economic, Social and Cultural Rights (ICESR), article 2;
- The right to equality and non-discrimination, ICCPR, articles 2 and 26;
- The right to take part in cultural life, ICESCR, article 15(1)(a)); and
- The prohibition on Interference with privacy and attacks on reputation, ICCPR, article 17.

The extent to which the Instrument impacts on human rights is examined in detail below. In this statement the overarching promotion of the right to health, specifically a healthy environment, is discussed followed by discussion of the reasonable, necessary and proportionate limitation on freedom of movement. There is detailed discussion of TUMRAs and their interaction with the right to equality and non-discrimination and the right to take part in cultural life. There is discussion of the right to be free from attacks on privacy and reputation. Infringement notices, criminal offence provisions and inspector powers are discussed in relation to their interaction with the presumption of innocence and the right to a fair trial and fair hearing rights.

It can be seen from this detailed examination that many aspects of the Instrument promote human rights. In cases where human rights are limited by the Instrument this is done in a way which is compatible with Australia's obligations under the seven core international human rights treaties which Australia has ratified.

The right to health

Article 12(1) of the ICESCR provides for the right to the enjoyment of the highest attainable standard of physical and mental health. The United Nations Committee on Economic, Social and Cultural Rights has stated in General Comment 14 that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, including a healthy environment.

The Instrument promotes the right to a healthy environment by supporting the key objectives of the Act and promotes the protection and conservation of the Marine Park. In particular, the main object of the Act set out in subsection 2A(1) is "to provide for the long term protection and conservation of the environment, biodiversity and heritage values of the Great Barrier Reef."

The Marine Park was established to provide for the long-term protection of the environmental, biodiversity and heritage values of the Great Barrier Reef while allowing for ecologically sustainable use of the Region. The Marine Park is a multiple-use park and activities such as tourism, defence training, fishing, recreation, shipping, aquaculture, research and traditional use of marine resources are all socially, culturally and economically important uses of the Marine Park. Management of the Marine Park provides for these important activities to continue while also imposing limits where necessary to protect the Great Barrier Reef's plants, animals and habitats with an aim to maximise the resilience of the Great Barrier Reef against threats such as climate change.

The right to freedom of movement

The Instrument restricts the right to freedom of movement to the extent that it excludes entry into, or places conditions on entry into, certain areas of the Marine Park.

Article 12(3) of the ICCPR provides that the right to freedom of movement can be restricted under domestic law on grounds of (among other things) protecting public health. Laws restricting access to areas of environmental significance may be necessary to protect public health by promoting a healthy environment. In order for such a restriction to be permissible it must be reasonable, necessary and proportionate to the protection and be the least intrusive means of producing the desired result.

Prescribing definitions and limitations for the purposes of the Zoning Plan (Part 2, Division 2)

The Zoning Plan is the primary planning instrument for the management and conservation of the Marine Park. It provides for a range of ecologically sustainable recreational, commercial and research opportunities and for the continuation of traditional activities. Zoning helps to manage and protect the values of the Marine Park that people enjoy. Each zone has different rules for the activities that are allowed, the activities that are prohibited, and the activities that require a permission. In certain zones restrictions may also be placed on how some activities are conducted.

Provisions in Part 2, Division 2, of the Instrument, when read in conjunction with the Zoning Plan, have the effect of prohibiting entry into some zones in the Marine Park for the purpose of conducting certain activities. The limitations and definitions for the purposes of the Zoning Plan are directed at furthering the objectives of the zone to which they relate. The objectives for the zones are tailored to each zone and relate to such things as conservation of the Marine Park and protection of national integrity and values of areas of the Marine Park. Further definitions and limitations in Part 2, Division 2 have the effect of prescribing use of the environment and therefore limiting freedom of movement. These are reasonable in that they balance opportunities for use of the Marine Park against protection and conservation of the area. The restrictions are necessary because unregulated human impacts would be devastating to the Marine Park, and the restrictions are proportionate in that the majority of the Marine Park is accessible for activities provided these activities are conducted in environmentally responsible ways. The restrictions are designed to carefully balance the opportunity to use the environment and the key importance of its conservation and preservation.

For example:

- The general limitations on fishing or collecting (section 17) and the specific limitations on particular types of fishing or collecting such as trapping (section 35), trawling (section 36) and trolling (section 37) are directed at providing appropriate opportunities for the conduct of these activities which would otherwise need to be prohibited because of their potential impact on the health of the environment. The restrictions are reasonable as without such restrictions the numbers of marine species such as fish would not be at sustainable levels. The restrictions are necessary to ensure opportunities to enjoy the marine environment, both commercially and recreationally, into the future. The

restrictions are proportionate because fishing or collecting is managed in some zones rather than prohibited in all zones so the opportunity to use the environment is maintained where this is consistent with the objectives of the zones in the Zoning Plan.

- Research is allowed in many zones without permission from the Authority if the research falls within the definitions of ‘extractive’ or ‘non-extractive’ limited impact research. The rules for carrying out limited impact research (see sections 20 and 21) in the Marine Park restrict the right to freedom of movement to the extent that a person cannot use or enter certain zones in the Marine Park for limited impact research unless the rules for limited impact research are met. However, these rules provide opportunities for the activity to be conducted in a way that does not adversely affect the environment by, for example, specifying tools, that will have a limited impact on the Reef. The limitations are necessary in recognition of the need to balance the important role that research plays in contributing to understanding the Reef against protection and conservation of the Reef. The limitations are also reasonable and proportionate as they allow opportunities for limited impact research to be conducted without the need for a permission in ways that do not adversely affect the Marine Park, where it is consistent with the objectives of the zones in the Zoning Plan, rather than simply prohibiting such activity.

Special Management Areas and special management provisions (Part 2, Division 4)

Special Management Areas (SMAs) provide a responsive and flexible approach to implementing appropriate management strategies at various sites in the Marine Park. All the SMAs in the Marine Park are in recognition of the need for targeted protection in order to promote the right to health. These measures allow for the protection of the natural environment.

SMAs are an additional layer of regulation within zones, which provide rules specific to certain areas. SMAs may be designated for a number of reasons, as set out in the Zoning Plan, including:

- Conservation of a particular species or natural resource (for example conservation of turtles, dugong, bird nesting sites or fish spawning aggregation sites);
- Public safety;
- To ensure opportunities for appreciation by the public; and
- Response to an emergency (for example, a ship grounding, oil spill or marine pest outbreak).

Section 43 of the Instrument designates ten different areas as SMAs. These areas include, among other things, Species Conservation (Dugong Protection) SMAs and Restricted Access SMAs. The Species Conservation (Dugong Protection) SMAs restrict netting with the aim of preventing dugong mortality through entanglement in netting. Restricted Access SMAs recognise the vulnerability of certain areas of the Marine Park and must not be entered without the Authority’s permission.

The special management provisions in SMAs either prohibit entry into some parts of the Marine Park, or impose conditions for use of or entry into certain areas of the Marine Park.

These restrictions are reasonable given the need to protect public safety and the environment. It is necessary to limit access and use of these areas for their tailored conservation and preservation, and it is necessary and proportionate that access and use is facilitated in a regulated way rather than simply prohibited.

Example – Maritime Cultural Heritage Protection SMAs

Closer consideration of the Maritime Cultural Heritage Protection (MCHP) SMA (section 53) highlights the approach that is taken with SMAs and special management provisions. The MCHP SMA's purpose is to protect cultural heritage in general, and in particular, the heritage value of two Royal Australian Air Force Catalina aircraft wrecks (RAAF Catalina A24-24 and RAAF Catalina A24-25) which together contain the remains of 25 deceased military personnel.

Prior to designation as SMAs, the human remains and archaeological fabric of the wrecks were being exposed to damage caused by anchoring, fishing and trawling. The special management provisions are directed to preventing further damage by prohibiting persons from undertaking the following activities in the MCHP SMAs:

- Entering a wreck without the permission of the Authority;
- Approaching within 100 metres of a wreck without the permission of the Authority (except where passing over a wreck in a non-submersible vessel or aircraft);
- Operating a vessel without the permission of the Authority other than for the purpose of transiting through the area;
- Anchoring or attempting to anchor a vessel, or deploying the vessel's anchoring equipment, without the written permission of the Authority; or
- Undertaking fishing or collecting.

Permissions to use or enter MCHP SMAs are only able to be granted by the Authority for cultural heritage purposes, which includes cultural heritage research and monitoring activities, filming or sound recording to improve public education and understanding of cultural heritage and ceremonial activities.

The right to freedom of movement is restricted in minor ways, for example persons are prohibited from entering and approaching wrecks and operating vessels for non-transiting purposes in certain areas of the Marine Park without the permission of the Authority. The restrictions in the Instrument on the right to freedom of movement are necessary to protect public order in the sense that they will help to preserve Australian cultural heritage and will prevent interference with war graves.

Given the historic significance of the Catalina aircraft wrecks and the damage that will continue to occur without the restrictions, the restrictions imposed are proportionate to the need for protection. The restrictions are the least intrusive means of achieving protection because they still allow for persons to enter the MCHP SMAs and only prohibit conduct that would be likely to cause damage to the wrecks.

The MCHP SMA engages and promotes the right to take part in cultural life. Article 15(1)(a) of the ICESCR recognises this right, and article 15(2) provides that the steps to be taken to achieve the full realisation of this right include *'those necessary for the conservation, the*

development and the diffusion of science and culture'. Through conserving the human remains and archaeological fabric of two Royal Australian Air Force Catalina aircraft wrecks, the restrictions promote this right.

Permissions system (Part 3, sections 74 to 139)

The permissions system provisions are an effective means of allowing for use of the Marine Park while ensuring that the Marine Park use is not excessive. The system is a reasonable, necessary and proportionate restriction on use of the Marine Park and it provides the opportunity for use while ensuring that the conservation and preservation of the Marine Park is not compromised. It is necessary to limit access and use and it is proportionate and reasonable that access and use is facilitated in a regulated way rather than simply prohibited.

The process in the Instrument for obtaining permission from the Authority to use or enter the Marine Park (coupled with the existing restrictions in the Zoning Plan on the use of or entry into zones without permission) restricts the right to freedom of movement by subjecting a person who seeks permission to use or enter the Marine Park (for certain activities listed in the Zoning Plan) to a formal application and assessment process, and to the imposition of conditions on any permission granted. It is reasonable to expect persons seeking to conduct activities listed in the Zoning Plan, which are more likely to impact on the environment in the Marine Park than other activities that do not require permission, to submit an application to the Authority, undergo an assessment process and comply with permission conditions in order to safeguard the environment in the Marine Park from conduct that may cause harm. The process in the Regulations for obtaining a permission is no more onerous than necessary to ensure that an applicant provides the Authority with an appropriate level of information about the proposed activity, that the Authority considers matters relevant to achieving effective management of the Marine Park and that the Authority imposes appropriate conditions on permissions to achieve this.

The process for obtaining permissions includes five possible assessment approaches. The Authority must first determine if an application for a permission is properly made and decide on an applicable assessment approach for a properly made application. The Authority also has the ability to cause some decisions on permission applications to be made automatically by the use of computer programs. These processes allow many applications for low risk activities to be processed expeditiously. To the extent that computer programs may be used, it is expected that the interference on the right to freedom of movement created by the Zoning Plan and the Instrument is will be minimised to the extent possible.

The provisions in the Instrument relating to modification, suspension and revocation of permissions limit the right to freedom of movement to the extent that a person may only be able to use or enter the Marine Park for activities requiring permission subject to modified permission conditions, or may not be able to use or enter the Marine Park for activities requiring permission in cases where a permission has been suspended or revoked. It is reasonable for the Authority to modify the conditions of an existing permission, or suspend or revoke an existing permission, in the circumstances provided for under the Instrument which deal with changes in circumstances that could pose a threat to the environment in the Marine Park. Such provisions of the Instrument do not go beyond what is necessary to

achieve the desired level of environmental protection and provide for procedural fairness to be afforded to permission holders where a modification, revocation or suspension is proposed.

Overall, the permissions systems regulations are reasonable, necessary and proportionate to protecting the environment in the Marine Park. The restrictions on freedom of movement are minimised to the extent possible by a streamlined and considered permissions system and are justified by the need to protect and preserve the unique environment in accordance with the objects of the Act.

Environmental management charges (Part 13, sections 210 to 231)

The funds received from *EMC* are vitally important in the day-to-day management of the Marine Park and in improving its long-term resilience. *EMC* is a charge associated with most commercial activities, including tourism operations, non-tourist charter operations, and construction and operation of facilities. For most standard tourism operations, Marine Park visitors participating in a tourist activity are liable to pay the charge to the permittee, who then remits the charge to the Authority. Other operations in the Marine Park such as those involving the hire of equipment, installation and operation of tourist facilities, underwater observatories, sewage outfalls and vending operations, attract quarterly charges to the Authority. All funds received as *EMC* payments are applied directly to management of the Marine Park.

EMC restricts the freedom of movement as without payment of the charge visitors to the Marine Park are not able to engage in activities that attract charge in the Marine Park and permit holders are not permitted to operate. This restriction is reasonable as it is consistent with the overall balancing of providing for entry and use to the Marine Park and protection and conservation of the environment. It is also a necessary and proportionate measure given that the funds are directed to the day-to-day management of the Marine Park and in improving its long-term resilience and the funds are raised from the users of the Marine Park.

Plan of Management enforcement provisions (Part 14, sections 232 to 234)

Plans of Management complement Marine Park zoning by addressing issues specific to an area, species or community in greater detail than can be accomplished by the broader reef-wide zoning plans. The objectives of Plans of Management are set out in the Act (section 39Y). Plans of Management are generally prepared for intensively used, or particularly vulnerable groups of islands and reefs, and for the protection of vulnerable species or ecological communities. They are directed at ensuring a healthy environment by managing the entry and use of these areas in a targeted way, therefore promoting the right to health. There are currently four Plans of Management within the Marine Park.

Criminal offence provisions in Part 14 which apply to contraventions of Plan of Management provisions, which either prohibit entry into some parts of the Marine Park or impose conditions for entry into certain areas of the Marine Park limit freedom of movement. This restriction is reasonable given the importance of regulating use and entry of these areas to protect and conserve the environment, and necessary and proportionate given the potential

impacts on the Marine Park environment if the Plans of Management are not complied with.

Compulsory pilotage (Part 10, sections 191 to 197)

In 1991, the Australian Government introduced compulsory pilotage to reduce the risk of ship groundings and collisions in the Great Barrier Reef. This means all regulated ships must have a pilot on board when travelling through the Inner Route, Hydrographer's Passage and the Whitsundays compulsory pilotage area. This measure and the following measures described contribute to a healthy environment by ensuring that vessels are navigated by suitably qualified pilots who have the skill to ensure that the Marine Park's habitat is not damaged by accidentally hitting the Reef or leaking oil or gas into the Marine Park, thus the right to health is promoted. Regulated ships are considered to be vessels that are 70 metres or longer, or ships carrying oil, chemicals or liquefied gas. The Minister may grant exemptions to compulsory pilotage under section 59F of the Act where it is decided that:

- A pilot would not provide additional environmental protection benefit (for example, an operator may have considerable experience and suitable navigational aids on their ship); or
- The ship does not pose an environmental threat because it is likely to remain stationary or in a limited area.

The Instrument sets out in Part 10 the compulsory pilotage area for the purposes of subsection 3(1) of the Act and the information requirements for Act exemptions.

Compulsory pilotage provisions in Part 10, when read in conjunction with the Act, have the effect of restricting the ability of a person to navigate a regulated ship in certain areas of the Marine Park without a pilot. These provisions reasonably impose that limit in order to ensure that the environment is not put at risk by vessels without a pilot. The limits are necessary and proportionate in that:

- Navigation is not prohibited rather there is the opportunity to enter the areas with the requirement that there is a pilot; and
- There is scope for exemptions to be granted in circumstances where the restriction might otherwise be unnecessary.

Designated anchorages, superyacht anchorages and no anchoring areas

The boundaries of designated anchorages, superyacht anchorages and no anchoring areas are identified in the Schedules of the Instrument. These areas operate in conjunction with Plans of Management and the Plan of Management enforcement provisions discussed above to restrict freedom of movement in minor ways. The Plans of Management restrict people from anchoring vessels in certain parts of the areas covered by Plans of Management through the provisions of the plans that relate to these areas. The no-anchoring areas are areas that have been determined where it is considered necessary for the conservation and protection of coral. Designated anchorages and superyacht anchorages have been determined to be areas appropriate for certain vessels such as large ships and superyachts to anchor provided that certain rules are followed. These areas, when considered in

conjunction with the rules applicable to the areas in Plans of Management, restrict the right to freedom of movement. Such restrictions are reasonable given the need to protect public safety and the environment. The restrictions are necessary and proportionate as the least intrusive means of achieving protection because they still allow for persons to anchor vessels in the planning areas, subject to reasonable conditions to facilitate orderly and ecologically sustainable use of public spaces.

Interacting with cetaceans (Part 9, sections 177 to 190)

Provisions in Part 9 regarding interacting with cetaceans have the effect of restricting the movements of people in the Marine Park in circumstances where cetaceans are close by. This restriction on movement is vital to ensure a stress free and healthy breeding environment in the Marine Park for cetaceans. The restrictions are reasonable in recognition of the need to promote a healthy environment, and necessary and proportionate in that the permissions system does allow some activities involving interacting with cetaceans and in recognition of the impact that unregulated human interaction with *cetaceans* would have on their habitat.

Inspector powers (Part 16)

Inspectors have the power to issue reasonable directions for the purpose of ensuring that the Act, the Instrument and any other instrument made for the purposes of the Act (such as the Zoning Plan and Plans of Management). This includes the power to direct a person to leave the Marine Park. Additionally, inspectors have the power to issue infringement notices for certain offences committed under the Instrument. The powers of inspectors are all appropriately directed and reasonable, necessary and proportionate to the need to regulate conduct in the Marine Park. The regulatory scheme is directed at the objective of ensuring the protection and conservation of the Marine Park and accordingly the instrument is appropriately framed.

To the extent that the exercise of inspector powers may result in restrictions on the right to freedom of movement, such restrictions are for permissible purposes, as they aim to protect public order and public health, through the protection of areas of environmental and/or cultural significance. The restrictions are necessary in the sense that, without the restrictions, it is likely that damage to the protected areas will occur. The restrictions are reasonable in the circumstances because they are only able to be imposed by inspectors in certain circumstances (such as for the purpose of ensuring that the Act and subordinate legislation are complied with) and they are subject to requirements such as that directions be 'reasonable'. Given the significance of the damage that is likely to occur to the Marine Park without the restrictions, the restrictions are considered to be in proportion with the objective being pursued.

Prohibition on Interference with privacy and attacks on reputation

Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. It also prohibits unlawful attacks on a person's reputation. It provides that persons have the right to the protection of the law against such interference or attacks.

The following aspects of the Instrument engage rights regarding personal information:

- An applicant for a permission is required to provide the Authority with personal information in their application, which is used by the Authority to assess the application (section 76);
- Quarterly *EMC* returns and logbook information containing personal information is required to be provided to the Authority and is used by the Authority to determine whether the correct amount of *EMC* is being collected (sections 229 to 231);
- In some cases applications for permissions containing personal information are required to be publically advertised (sections 95 and 99);
- The Authority may keep a register of permissions and other instruments, which contains personal information of permittees (including copies of permissions), and is required to publish any such the register on its website (sections 172 to 174);
- The Authority is required to keep a register of appropriately qualified persons for bareboat operations containing personal information of qualified persons, which is required to be published on the Authority's website (section 199);
- The Authority is required to publish notice of certain decisions, which often contain personal information, relating to permissions and TUMRAs (section 237); and
- The Instrument prescribes a format for inspector identity cards containing inspectors' personal information, and these cards are required to be shown to persons in certain circumstances where an inspector is exercising their powers (section 254).

The above limitations on privacy are necessary for attaining the objects of the Act, protecting the rights and freedoms of others and in the interests of public order. Specifically, the provisions are necessary to allow the Authority to have regard to all relevant matters when making decisions, increase transparency in decision making, allow the community to participate in public affairs, allow affected persons to seek review of decisions and for law enforcement purposes.

Although article 17 of the ICCPR does not set out reasons for which the right to privacy may be limited, permissible limitations recognised in other articles, such as limitations which are necessary for the protection of public health, might be legitimate objectives by which the right to privacy may be limited. On that basis, it appears the aim of protecting the environment in the Marine Park (which promotes the protection of public health) may be a legitimate basis for limiting the right to privacy. Limitations on the right to privacy must be authorised by law and must not be arbitrary. The limitations are not arbitrary. They apply only in very specific circumstances and do not allow decision makers much discretion on authorising interferences with privacy. They do not go beyond what is reasonable to achieve their objectives and are subject to the protections in the *Privacy Act 1988* (the Privacy Act) that apply to the collection and use of personal information by the Authority.

Register of permissions and other instruments

The Instrument limits the right to privacy in section 173, which allows the Authority to keep a public register of permissions and other instruments relating to the Marine Park. The

publishing of the register on the Authority's website (section 174) allows the public to access the details of activities which are permitted to be carried out in the Marine Park, along with information about the persons permitted to carry out such activities.

It is reasonable to expect that a person, who applies for a permission or other instrument to carry out an activity in a public area such as the Marine Park, be prepared to have the details of this made publically available. It is necessary to publish the information so that agency decision makers, inspectors, other permission holders and users of the Marine Park can access the information when needed. The publication of permissions and other instruments also supports transparency and accountability in the making of decisions relating to such permissions and other instruments aimed at the protection of the environment in the Marine Park. Further, anyone affected by a decision has a review right in relation to such decisions so it is necessary that information relating to a decision, such as a permission or instrument to which a decision relates, is publicly accessible.

Register of appropriately qualified persons

Similarly the register of appropriately qualified persons in relation to bareboat operations affects the right to privacy. Section 199 requires that the register be kept and that it be published on the Authority's website. This register assists the operation of the substantive provisions which require bareboat operators to be appropriately qualified. It is reasonable to expect that a person who operates bareboats in the Marine Park is prepared to have this information made publicly available and it is justified in the need to protect the Marine Park that the listing of those appropriately qualified be easily accessible.

Traditional Use of Marine Resources Agreements

The current Zoning Plan establishes a framework for managing traditional use of marine resources for Australian Aboriginals and Torres Strait Islanders. The framework complements existing community-based measures developed by some Traditional Owner groups to manage their use of marine resources and recognises entitlements enshrined in the *Native Title Act 1993* (Native Title Act). The framework promotes the sustainable use of threatened (for example, dugong and turtles) and iconic (for example, barramundi cod and giant clams) species within the Marine Park, given the other sources of human related mortality that may impact upon these stocks. The framework also supports Traditional Owners in maintaining their cultural connections with the sea country of the Great Barrier Reef. This is achieved by working in sea country partnerships to develop and implement TUMRAs and supporting cooperative management arrangements.

A TUMRA means an agreement, developed in accordance with the regulations, by a Traditional Owner group, for the traditional use of marine resources in a site or area of the Marine Park (as defined in the Zoning Plan). TUMRAs describe how Great Barrier Reef Traditional Owner groups work in partnership with the Australian and Queensland governments to manage traditional use activities on their sea country. Part 1.7 of the Zoning Plan states that nothing in the Zoning Plan (including the accreditation of a TUMRA) is intended to extinguish native title rights and interests or affect the operation of section 211 of the Native Title Act.

Accreditation of a TUMRA is intended to create a partnership through a legal management framework which formally recognises traditional lore and custom through conserving and protecting species, habitats and ecosystems critical to the healthy functioning of people, culture and country - those discrete elements being recognised for their outstanding universal value to the world. A TUMRA may describe how Traditional Owner groups wish to manage their take of natural resources (including protected species), their role in compliance and their role in monitoring the condition of plants and animals, and human activities, in the Marine Park. A TUMRA incorporates specific management strategies for:

- The conservation and sustainable use of key species and habitats;
- Restoring and maintaining waterways and coastal ecosystems;
- Maintenance and protection of significant heritage values including important places, traditional ecological knowledge, culture and language;
- Research and monitoring of sea country including partnerships with the Authority and other leading scientific institutes and individuals;
- Leadership and governance including knowledge management;
- Education and information exchange; and
- Compliance.

Part 4 of the Instrument sets out the provisions relating to the accreditation of TUMRAs, and provides for a modification, suspension and revocation process. It also makes provision for the termination of an accredited TUMRA. The Part allows for the voluntary development of TUMRAs by Traditional Owners. Traditional Owner groups are expected to comply with the requirements of the Instrument during the TUMRA development process. TUMRAs are generally accredited by the Authority for five year terms however longer terms are permissible. When a TUMRA comes toward the end of its term, Traditional Owners are required to comply with the requirements of the Instrument during development of any further TUMRA they wish to have accredited.

The TUMRA provisions engage the following rights:

The rights of equality and non-discrimination:

Article 2, of the ICCPR provides that:

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to

adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Article 26, of the ICCPR provides that:

- All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

As the first nations people of Australia, Traditional Owners have a unique connection with the Great Barrier Reef which separates them from other Marine Park users. Traditional Owners are at a disadvantage in comparison to other Marine Park users because competing uses of the Marine Park puts Traditional Owners at risk of losing their long established relationship with their sea country. The Instrument recognises that it is necessary to treat Traditional Owners differently to other Marine Park users in order to promote the rights of equality and non-discrimination by providing a mechanism for TUMRAs to be developed and accredited. In addition, the Act and the Zoning Plan expressly acknowledges the rights and interest of Indigenous Australians in the Marine Park by providing for the management of the traditional use of marine resources, including traditional hunting, in accordance with Aboriginal and Torres Strait Islander tradition and custom.

The Instrument effectively promotes the right to equality and non-discrimination by facilitating the ongoing relationship between Traditional Owners and sea country. This mechanism encourages Traditional Owners to continue practicing customs and traditions, such as traditional hunting activities, in a sustainable manner and provides opportunities for Traditional Owners to actively care for culture and heritage places.

The right to benefit from culture:

The UN Human Rights Committee has stated that article 27 of the ICCPR is directed towards 'ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole'.

The Committee has stated that culture can manifest itself as a particular way of life associated with the use of land resources, especially in the case of Indigenous peoples, which may include such traditional activities as fishing or hunting and the right to live on lands protected by law. This means that the concept of culture will embrace not only the maintenance of traditional practices, but also those social and economic activities that are part of the group's tradition.

The strength of cultural and heritage values held for the Marine Park by the national and international community is demonstrated by the listing of the Great Barrier Reef as a World Heritage Property, additionally the Great Barrier Reef/Region is listed on the Register of the National Estate, the Commonwealth Heritage List and National Heritage List. The Traditional Owners have been undertaking traditional use of marine resources for thousands of years. Traditional use of marine resources under an accredited TUMRA is likely to foster appreciation and practice of cultural or heritage values held by the Traditional Owners for the area, and is not likely to adversely impact the cultural and heritage values held by others

because such use does not result in Traditional Owners having exclusive use of any area. By providing a mechanism for the accreditation of TUMRAs the Instrument ensures that the right of Traditional Owners to enjoy and benefit from culture through traditional use of marine resources is not unduly limited and there is increased opportunity to engage in these practices.

Inspector powers, infringement notices and criminal offence provisions

The Instrument engages the following rights in relation to criminal offence provisions:

- The right to a fair trial and fair hearing in Article 14(1) of the ICCPR;
- The right to the presumption of innocence and imposition of burden of proof on accused person in Article 14(2) of the ICCPR;

Right to a fair trial and fair hearing rights

Article 14(1) of the ICCPR relevantly provides that “in determination of ...[a person’s] rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...”.

Right to the presumption of innocence

Article 14(2) of the ICCPR provides that “everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law”. The presumption of innocence imposes on the prosecution the burden of proving the charge beyond reasonable doubt.

Coercive powers

The majority of coercive powers found in Marine Park legislation relate to the powers of Marine Park inspectors. Most of these powers are located in the Act, which is outside the scope of this statement. However, the Instrument does provide some coercive powers for inspectors including the power to give reasonable directions to Marine Park users under section 241, the power to require a person to leave the Marine Park under subsection 242(1) and the power to require a person to produce a permission, permit or authorisation under subsection 242(2).

Privilege against self-incrimination and self-exposure to a penalty

Subsection 242(2) requires a person to provide information that may incriminate them self or expose them to a penalty. This abrogates the privilege against self-incrimination and self-exposure to a penalty. The subsection provides that an inspector may require any person to produce a permission, permit or authority under the Act, the Instrument or a Zoning Plan or evidence of such a permission, permit or authority if the inspector reasonably suspects the person has committed an offence against the Act or the Instrument. Subsection 242(3) provides a person commits an offence of strict liability if the person fails to comply with the requirement to provide that evidence of their having a permission, permit or authority.

The public benefit of abrogating the privilege against self-incrimination decisively outweighs the harm to an individual who is required to disclose information under this section. The existence of permissions, permits and authorities is central to use of the Marine Park in

circumstances in which use of the Marine Park would not otherwise be possible due to concerns about protection of the environment or of public health. It is well known, advertised and understood that that a permission etc. must be obtained to use the Marine Park for purposes that are otherwise not allowed and it would grossly undermine the ability of the inspectors to monitor and enforce these requirements without the power to require a person to produce.

It is necessary to abrogate privilege because there is a public benefit (i.e. effective management of the Marine Park) that outweighs the loss. Use of the privilege could seriously undermine the effectiveness of the regime because it would prevent timely enforcement of the Regulations. If an inspector is unable to confirm while in the field that a person does or does not hold the necessary permission, etc. for certain conduct, the inspector is unable to take immediate action to prevent such conduct from continuing (e.g. by giving a direction to the person to leave the Marine Park). The privilege can only be required to be waived where the inspector has a 'reasonable suspicion' of the person having done an act in respect of which a person is required to hold the relevant permission, permit or authority. The Authority has measures in place requiring that inspectors satisfactorily complete a government investigations course before being appointed, and complete refresher courses for the duration of their appointments. This ensures that inspectors receive the necessary training and possess the requisite skills to exercise their powers under section 242. The power to require a person to produce a permission is analogous to the power that can be exercised by a police officer who pulls over a car on suspicion of some breach of the law and requests the driver produce a license and similarly is a vital feature of the Instrument.

The abrogation of the privilege in this case is not subject to a 'use' immunity which allows for self-incriminatory disclosures made as a result of the abrogation of privilege not to be used against the person who makes the disclosure in a later court proceeding. As discussed above, the holding of a permission etc. is the means of demonstrating that conduct which would otherwise be prohibited is allowed. It is appropriate that the failure of a person to produce evidence of this should be able to be relied on in court proceedings.

Offences under the Instrument

Strict liability

Strict liability offences engage and limit the presumption of innocence as they allow for the imposition of criminal liability without the need to prove fault. While there is no requirement on the prosecution to prove fault, there generally still remains available the defences under the *Criminal Code 1995*, such as the defence of an honest and reasonable mistake of fact on the part of the defendant.

The Instrument applies strict liability to the majority of offence provisions, found in Division 2.5 (Additional purposes for use or entry), Division 2.6 (Fishing and related offences), Division 3.9 (Offence provisions for permissions), Part 5 (Discharge of sewage), Part 6 (Removal of property and various offences), Part 9 (Interacting with cetaceans), Part 11 (Bareboat operations), Division 4 of Part 13 (Record-keeping and returns etc.) and Part 14 (Plan of Management enforcement provisions).

Strict liability has been partially applied to section 222(2) (Offences—altering ticket etc.).

Offences with ordinary liability in the Instrument are section 64 (Multiple dories in Buffer Zone or *Conservation Park Zone*—offence by person on dory), section 162 (Discharge of sewage generally), subsection 185(1) (Swimming with cetaceans), and subsection 234(2) (Contravention of the Plan of Management for Cairns Area, Hinchinbrook or Whitsundays).

Application of strict liability to the relevant offences in the Instrument has been set with consideration to the guidelines of the Attorney-General's Department as set out in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* (the Guide). The penalties for all offences in the Instrument do not include imprisonment, and do not exceed 50 penalty units consistent with the requirement in subsection 66(11) of the Act. Further, it is important for the majority of the offences in the Instrument to be strict liability offences so that it is appropriate to bring them within the infringement notice scheme that is created by the Instrument.

Strict liability offences will not be inconsistent with the right to the presumption of innocence provided that they pursue a legitimate aim and are reasonable, necessary and proportionate to that aim.

The use of strict liability offences in the Instrument are for the legitimate objective of regulating conduct for the protection of the Marine Park environment. While the strict liability offences in the Instrument relate to relatively minor offences within the context of the regulatory scheme, the existence of these offences are in general crucial as a deterrence against potentially environmentally harmful and damaging, or physically unsafe, conduct in the Marine Park. The strict liability offences also provide for more efficient and effective punitive measures and enforcement options compared to other offence provisions that may be available under the Act, especially considering that such offences attach to the Instrument's infringement notice scheme. Further, the conduct that the strict liability offences apply to is such that fault – i.e. a person's intention, knowledge, recklessness or negligence – would be difficult to prove (for example, for offences which apply in circumstances where a person is in a particular zone or in the Marine Park, it will be difficult to prove the person intended or knew, etc. that they were in a particular zone/in the Marine Park). The strict liability offence provisions are rationally connected to the legitimate objective of the primary object of the Act being to provide for the long term protection and conservation of the environment, biodiversity and heritage values of the Great Barrier Reef.

The use of strict liability is reasonable as the regulated community are largely tourist operators and commercial operators that are aware, or ought to be aware, of the obligations placed on them when entering or using the Marine Park. The Authority regularly provides factsheets, maps and other resources to educate those industries, and the wider public, on the regulatory context in which Marine Park users must operate and act.

In the event there is a genuine misunderstanding, the defence of honest and reasonable mistake of fact is still available to a defendant under the *Criminal Code 1995*. Additionally, the existence of strict liability does not make other defences under the *Criminal Code* unavailable to the defendant.

The use of strict liability is proportionate to achieving the stated objective because the penalties are within reasonable limits and relatively small. Consequently, individuals will not be subject to unreasonable or unduly harsh penalties taking into account the objectives of the Instrument.

The use of strict liability offences are therefore reasonable, necessary and proportionate to the aim of the Authority to protect the Marine Park, and therefore is compatible with the right to the presumption of innocence in Article 14(2) of the ICCPR.

Reverse burden of proof

An offence provision which requires a defendant to carry an evidential or legal burden of proof with regard to the existence of some fact, also known as a “reverse burden”, engages and limits the presumption of innocence. This is because the defendant’s failure to discharge the burden of proof may permit their conviction despite reasonable doubt as to their guilt. Where there are defences and exceptions to offences, a person wishing to rely on those defences and exceptions will bear the evidential burden in relation to the matter.

The Instrument includes a number of defences and exemption provisions for offences.

- Subsection 62(3) contains exceptions to the offences relating to dories in subsections 62(1) and (2) so that those offences do not apply under a number of factual circumstances, including certain situations relating to fishing industry service vessels; the rescue of endangered persons, aircraft or structures; and transporting persons between the primary vessel and land.
- Subsections 162(2) and 163(2), and section 164, contain exceptions to offences relating to the discharge of sewage in subsections 162(1) and 163(1). These sections operate so that the offences do not apply in certain circumstances such as where special circumstances exist (accidental discharge or emergency) or certain conditions relating to treatment, etc. are complied with.
- Subsection 168(2) contains exceptions so that the offence of taking animals onto Commonwealth islands in subsection 168(1) does not apply where the animal is a person’s assistance animal.
- Subsection 171(5) contains an exception so that the offences in subsections 171(1) – (5), relating to the misuse of public moorings and infrastructure, do not apply to the owner of a vessel where a vessel has been stolen.
- Section 178 provides defences so that the offence provisions in Part 9 (Interacting with cetaceans) do not apply where a person is taking certain actions under the EPBC Act.
- Subsections 180(6) and 181(4) contain exceptions to the offences in paragraph 180(2)(b) and subsection 181(2) of allowing a vessel to drift into the *caution zone* for a cetacean or calf in circumstances where a cetacean or calf approaches a vessel.

- Subsection 180(2) contains an exception so that the offence in subsection 183(1) of feeding or attempting to feed a cetacean does not apply where a *commercial fisher* is routinely discarding bycatch.
- Section 188 provides a defence from the offences in Part 9 (Interacting with cetaceans) in circumstances where a person is the holder of an exemption granted by the Authority.

A person seeking to rely on these defences and exceptions will bear an evidential burden in proving that the factual circumstances outlined exist.

The defences and exceptions listed above are necessary to ensure that certain persons within the regulatory community are not inadvertently captured by the offence provisions in the Instrument, particularly as the exceptions mostly apply to strict liability offences where fault is not required to be proven. It should also be noted that the relevant offences are largely minor offences, all with a penalty of 50 penalty units or less with no possibility for imprisonment.

Exceptions relating to factual circumstances, such as emergency situations, use of vessels for certain allowable purposes, etc. are likely to be matters peculiar to the knowledge of the defendant, and would be difficult for the prosecution to disprove if the onus was not reversed. It is expected that it would not be unreasonably difficult for a defendant to discharge the evidentiary burden in those circumstances.

The reversals of the burden of proof in the Instrument are therefore reasonable, necessary and proportionate responses to reflect the conduct involved and the potential harm to the Marine Park environment. Accordingly, the Instrument is consistent with the right to the presumption of innocence in Article 14(2) of the ICCPR.

Infringement notices

The Instrument establishes an infringement notice scheme whereby an infringement notice may be issued by an inspector, either in person or through the post, setting out the particulars of an alleged contravention of an offence. The infringement notice gives the person to whom the notice is issued the option to pay the fine specified in the notice in full, as an alternative to having the offence heard by a court. An infringement notice is a notice of pecuniary penalty imposed on a person. The Instrument takes a graduated approach to compliance and enforcement by using infringement notices to administer a proportional approach to protecting and regulating the Marine Park.

The infringement notice scheme provides that an inspector may give a person an infringement notice if they believe on reasonable grounds that the person has committed an “infringement notice offence” (Division 3 of Part 16). The majority of offences under the Instrument are deemed to be an “infringement notice offence” under the Instrument.

The infringement notice must be given within 12 months after the day the contravention is alleged to have taken place. The person to whom an infringement notice has been given may apply in writing to the Authority requesting a period longer than the required 28 days for the payment of the penalty. The Authority has the power to withdraw infringement

notices under the Instrument, and the person may also make written representations to the Authority seeking the withdrawal of a notice. An infringement notice gives the person to whom the notice is issued the option of paying the penalty set out in the notice, or electing to have the matter dealt by a court. If the person does not pay the amount in the notice, they may be prosecuted if the notice relates to an offence provision. Further, the affected person is given the opportunity to dispute an infringement notice.

The Instrument promotes fair trial and fair hearing rights, to the extent that aspects of the criminal trial procedure are regulated for infringement notice offences. The Instrument does this by providing that:

- within 28 days of an infringement notice being serviced on a person, the person may make submissions to the Authority about any facts or matters the person believes ought to be taken into account in relation to the alleged offence, and the Authority must take any such submissions into account
- evidence of an admission made by a person in such a submission is inadmissible in a proceeding against the person for the alleged offence
- if a person who is served with an infringement notice chooses not to pay the infringement notice penalty and is convicted of the offence, the court must not take into account the fact that the person chose not to pay the infringement notice penalty in determining the penalty to be imposed the Instrument.

As a result, the rights to a fair and public hearing under Article 14(1) of the ICCPR in criminal matters are not limited by the infringement notice scheme created by Fair trial and fair hearing rights

Section 38BA and 38BB of the Act apply in relation to conduct in breach of various Regulations

The Presumption of Innocence

The Instrument engages the presumption of innocence in Article 14 of the ICCPR. Article 14(2) provides that '*everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law*'. The United Nations Human Rights Committee has stated in General Comment 32 that this imposes the burden of proving the charge on the prosecution. The imposition of strict liability in section 38BA engages the right to be presumed innocent in that it allows for the imposition of criminal liability without the need to prove fault.

Under subsection 38BA(1) of the Act a person commits an offence if they engage in conduct in a zone of the Marine Park, the conduct is prohibited under the zoning plan or requires permission, and no such permission is held. The fault element applicable to the conduct is intention. Strict liability attaches to the jurisdictional elements of the offence. The penalty for an aggravated offence is imprisonment for 3 years or 2,000 penalty units (or both) or where there are no circumstances of aggravation the penalty is 1,000 penalty units (circumstances of aggravation are set out in section 38GA of the Act).

Where intention cannot be established in relation to the conduct the strict liability offence in subsection 38BA(3) of the Act can be relied on. This offence provision is identical to the offence provision in subsection 38BA(1) except that strict liability attaches to both the conduct and the jurisdictional elements of the offence. The penalty for the offence is 60 penalty units.

Under section 38BB of the Act, a person must not engage in conduct in a zone of the Marine Park that is prohibited under a zoning plan, or requires permission and no such permission is held. The civil penalty for a contravention of section 38BB is 5,000 penalty units for an aggravated contravention by an individual, 2,000 penalty units for a contravention by an individual in any other case, 50,000 for an aggravated contravention by a body corporate or 20,000 penalty units for a contravention by a body corporate in any other case. Circumstances of aggravation are set out in section 38GB.

Accordingly, the offence provisions of the Act are potentially triggered by conduct that is contrary to the Regulations. For example, permissions to use or enter MCHP SMAs will only be able to be granted by the Authority for cultural heritage purposes, which includes cultural heritage research and monitoring activities, filming or sound recording to improve public education and understanding of cultural heritage and ceremonial activities. Where a person engages in conduct that contravenes the Regulation, the criminal offence and civil penalty provisions under sections 38BA and 38BB of the *Great Barrier Reef Marine Park Act 1975* (the Act) apply.

Strict liability applies in relation to these offences as it:

- ensures the integrity of the regulatory regime in place to protect the Great Barrier Reef;
- overcomes problems of proof that would otherwise make the regulatory regime particularly difficult to enforce; and
- overcomes a “knowledge of the law” problem.

The existence of the Great Barrier Reef Region, Marine Park and Zoning Plan for the Marine Park is fundamental to and underpins regulation and management of the Great Barrier Reef. The fact that an area is part of the Region, Park or a zone is the framework from which regulatory and management arrangements arise. The boundaries and activities allowed within the Region, Park and its zones are widely publicised, for example, through the free distribution of maps and guides to the activities permitted in particular areas, signposting and other educational measures. Zoning is in place for at least seven years and changes are made through processes involving significant public involvement. In this context, making it incumbent on Marine Park users to be aware of the existence of the Region, Park and zones, their location in relation to those areas and the rules that apply is reasonable and essential to the integrity of the regulatory regime in place to protect the Great Barrier Reef.

Proving to a Court that a defendant did not know or was reckless to the fact that an area was a part of the Great Barrier Reef Region, Marine Park or a zone, that they were within such an area and/or that the conduct they have engaged in is not permitted in that area is problematic. Such matters are within the knowledge of the defendant alone, and proving the contrary beyond a reasonable doubt would require significant and difficult to

obtain indirect and circumstantial evidence. The fact that an area is part of the Great Barrier Reef Region, Marine Park or a zone of the Marine Park and the restrictions on use that consequently apply forms a part of the law. The Region is defined by the GBRMP Act. The Marine Park is established through proclamations, which are legislative instruments for the purposes of the LI Act – that is, they determine the content of the law and impose obligations and create rights (see LI Act section 7). Similarly, zoning is established by a zoning plan, which is also a legislative instrument. Allowing people to escape conviction because they were unaware of these legal requirements would allow ignorance of the law to be used as an excuse for criminal behaviour.

In applying strict liability to the offence elements identified above, it is not intended to provide for the defence of honest and reasonable mistake of fact to be used in a way that allows ignorance of the law to be an excuse for criminal behaviour, for example, a mistake as to the legal delineation of zones and the activities permitted within zones.

Despite the imposition of the strict liability offence provision, an accused person's right to a defence is maintained. In the event of an emergency situation where it is necessary to engage in conduct contrary to the Regulation, a person would have a defence under section 5.1 of the Zoning Plan. Section 5.1 allows for a zone in the Marine Park to be used or entered without permission in an emergency for certain purposes. In addition, a person would have access to the defence under the *Criminal Code Act 1995* of mistake or ignorance of fact. It will not be impossible or impracticable for the defendant to make out a valid defence based on facts within the defendant's own knowledge or to which they have ready access.

The offence provisions of the Act, potentially triggered by conduct contrary to the Instrument, will not be inconsistent with the presumption of innocence as outlined above they pursue a legitimate aim and are reasonable, necessary and proportionate to that aim.

For the jurisdictional elements in both subsections 38BA (1) and (3), strict liability is necessary because it will be difficult to prove that a person knew (or was reckless as to the fact that) they were in a zone, that under the zoning plan for the zone the conduct is prohibited or requires permission, and no such permission is held.

The application of strict liability to the conduct element in subsection 38BA(3) is necessary because it will often be impossible for the prosecution to satisfy subsection 38BA(1) by proving beyond reasonable doubt that a person intended to engage in conduct. In particular, it would be difficult to establish that a person intended to approach within 100 metres of a wreck or intended not to travel through an area by the most direct and reasonable route.

For subsection 38BA(3), the punishment of conduct that contravenes the Regulation without the need to prove fault is likely to significantly enhance the effectiveness and efficiency of the Authority's enforcement regime by deterring that type of conduct in the SMAs and by providing a broader spectrum of enforcement options. It will allow minor and 'clear cut' contraventions to be dealt with expeditiously, with a penalty more suited to the nature of the contravention.

Assessment of the Provisions

The majority of the provisions are not classified in Australian law as criminal, they have a purpose which is not criminal, and although the penalties are relatively high, they are justified in the circumstances and do not carry a sanction of imprisonment for non-payment. Accordingly, the provisions should not be classed as criminal under human rights law.

However, an aggravated offence under 38BA may attract a penalty of 3 years imprisonment and is more likely to be considered a criminal sanction at international law. This does not affect compatibility with human rights as the offence is rationally connected to the legitimate objective pursued by the Regulations or protecting and conserving the Marine Park in this case the paramount importance of protecting dugongs and turtles in the Marine Park.

The application of the civil penalty provisions in section 38BB of the Act in the Regulation may also potentially engage the criminal process rights under article 14 of the ICCPR if the civil penalty provisions could be classified as 'criminal' under human rights law. Although the civil penalty provisions are labelled as 'non-criminal' under domestic law, this is not determinative and the nature and severity of the provisions must be assessed.

Nature or Purpose of the Penalty

Under section 38BB proceedings are instituted by a public authority (being the Authority) with statutory powers of enforcement and a finding of culpability precedes the imposition of a penalty. This might make the penalties appear 'criminal' however, these factors are unlikely to be decisive.

Although the penalties under section 38BB are deterrent in nature and appear on their face to apply to the general public, in practice they only apply to a specific group (being persons who undertake activities in the Marine Park) in a regulatory capacity. In light of these factors it appears that the penalties are not criminal in nature or purpose.

Severity of the Penalty

On the face of it, the pecuniary penalty that can be imposed for a contravention of section 38BB appears to be quite high. Under 38BB for individuals, the pecuniary penalty that may be imposed is 5,000 penalty units for an aggravated contravention or 2,000 penalty units in any other case. The pecuniary penalty is higher than the pecuniary penalty that may be imposed for a corresponding criminal offence, which is only 2,000 penalty units for an aggravated contravention or 1,000 penalty units in any other case.

Despite this, the pecuniary penalty is justified taking into account the fact that the Marine Park requires significant regulation to protect the unique environment. The penalty for 38BB is proportionate to the potential damage that could occur due to a contravention of the Regulations and it does not carry a sanction of imprisonment for non-payment. These factors make the penalty less likely to be criminal.

Repeal of the Aquaculture Regulations

The Aquaculture Regulations are proposed to be repealed by Schedule 6 of the Instrument. They would otherwise have sunset on 1 October of 2019. There are adequate provisions in

the *Environmental Protection and Biodiversity Conservation Act 2000* that would apply to any proposed new aquaculture facilities that may impact the Marine Park. Accordingly, the Aquaculture Regulations are redundant.

The repeal of these Regulations does not engage any human rights.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights. To the extent that it limits human rights it does so in a way that is reasonable, necessary and proportionate.

ATTACHMENT C

<u>Old regulation</u>	<u>New section</u>
1	1
n/a	2
n/a	3
n/a	4
3	5
3A	6
3B	7
n/a	8
4	9
n/a	10
n/a	11
n/a	12
7	13
8	14
13	15
14	16
15	17
16	18
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31	32
32	33
33	34
34	35
35	36
35A	37
36	38
37	39
44	40
n/a	41
n/a	42
45	43
46	44
48	45
50	46

52	47
57	48
60	49
62	50
64	51
65A	52
66	53
67	54
68	55
69	56
72	57
73	58
n/a	59
73B	60
73BA	61
73C	62
73E	63
73G	64
79	65
80	66
81	67
82	68
83	69
84	70
85	71
86	72
87	73
n/a	74
88	75
88A	76
88AA	77
n/a	78
88B	79
88C	80
88F	81
88G	82
88I	83
88J	84
88K	85
88L	86
88M	87
n/a	88
88N	89
88PA	90
88PB	91
88PC	92
88PD	93
88PE	94
88PF	95

88PG	96
88PH	97
88PI	98
88PJ	99
88PK	100
88PP	101
88PQ	102
88Q	103
88RA	104
88S	105
88T	106
88U	107
88V	108
88VA	109
88W	110
88X	111
88Y	112
88Z	113
88ZA	114
88ZB	115
88ZC	116
88ZE	117
88ZF	118
88ZG	119
88ZH	120
88ZI	121
88ZJ	122
88ZK	123
88ZL	124
88ZM	125
88ZN	126
88ZO	127
88ZP	128
88ZQ	129
88ZR	130
88ZT	131
88ZU	132
88ZV	133
n/a	134
88ZW	135
88ZX	136
88ZY	137
88ZZ	138
88ZZA	139
89A	140
89B	141
89D	142
89E	143
n/a	144

89F	145
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89H	147
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89N	153
89O	154
89P	155
89R	156
89S	157
89T	158
89U	159
93A	160
93B	161
93C	162
93D	163
93E	164
93G	165
n/a	166
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133B	207
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205A	252
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Consultation on Regulations

Significant stakeholder consultation on the old regulations has been conducted over the last 12 years which has informed regular amendments. These amendments have helped to ensure the old regulations remained efficient and effective in achieving their intended purpose. No further consultations were considered necessary for the Instrument as the outcomes of the previous consultations support a conclusion that the old regulations are operating efficiently and effectively, remain fit-for-purpose and do not require substantial amendments. Accordingly the Instrument is proposed to be re-made in substantially the same form.

Plan of Management Amendments 2007/2008

Plan of Management provisions

Consultation was conducted in 2008 in relation to amendments to the *Cairns Area Plan of Management 1998* (CAPOM) and the *Whitsundays Plan of Management 1998* (WPOM). First, indirect stakeholder consultation was undertaken in the course of consulting on amendments as the amendments are required primarily as a consequence of amendments to those plans.

Under sections 39ZE and 39ZG of the *Great Barrier Reef Marine Park Act 1975* (the Act), the Authority is required to notify the public of the preparation of an amendment of a Plan of Management and invite interested persons to make written submissions in relation to the amended plan. In early 2007, the Authority undertook detailed public consultation in relation to the proposed amendments. This included specific consultation relating to the following proposals impacting the *Great Barrier Reef Marine Park Regulations 1983*:

- to move the lists of cruise ship anchorages from the CAPOM and WPOM to the old regulations;
- to assess applications for permissions for the operation of mooring facilities and a heli-pontoon facility in the Cairns Planning Area by an expression of interest process before making decisions to grant permissions of those kinds;
- to remove clause 2.16 of the CAPOM, which regulated collecting and fishing in Lizard Island Locality 1, and replace it with Special Management Area provisions under the old regulations; and
- to move all the enforcement provisions relating to interactions with whales from the CAPOM and WPOM to the old regulations.

Whale provisions

To the extent that the old regulations also implement aspects of the Authority's *Operational Policy on Whale and Dolphin Conservation in the Great Barrier Reef Marine Park*, as amended on 13 April 2007 (Whale Policy) (available at <http://www.gbrmpa.gov.au/>) – for example, by managing the activity of swimming-with-whales through regulations, and limiting the numbers of permissions for swimming-with-whales activities in the *Cairns Planning Area* under regulations – the Authority consulted stakeholders in the following ways:

- prior to the development of the revised Whale Policy, the Authority liaised with the Department of the Environment and Water Resources (as it was then known), Queensland's Environmental Protection Agency and Queensland Parks and Wildlife;
- the Authority conducted several presentations and held discussions with the Port Douglas, Cairns and Capricorn Coast Local Marine Advisory Committees;
- discussions were also held with the Port Douglas, Cairns and Whitsunday tourism industry, including operators and industry representative bodies; and
- the Authority conducted a formal public consultation phase between 10 November 2006 and 14 January 2007.

Bareboat provisions

In relation to the amendments impacting the bareboat provisions of the old regulations, the Authority conducted the following further stakeholder consultation:

- amendments to the definitions of 'bareboat' and 'bareboat operation' are consequent upon amendments to the WPOM and also the Authority's policy, *Managing Bareboat Operations in the Great Barrier Reef Marine Park – July 2006*. That policy was developed in close collaboration with Queensland Parks & Wildlife, Maritime Safety Queensland, various tourism industry associations (eg Association of Marine Park Tourism Operators, Whitsunday Bareboat Operators Association and the Whitsunday Charter Boat Industry Association), individual bareboat operators and the Chair of the Whitsundays Local Marine Advisory Committee;
- the amendment enabling the Authority to publish a Register of appropriately qualified persons on the Internet, was sought after seeking advice from two industry working groups on this issue: the Bareboat Industry Working Group (2005) and the Tourism and Recreation Reef Advisory Committee (2006). Both groups supported the move to an online register; and
- the amendment increasing permission holders' insurance requirements to a minimum of \$10 million was sought after consulting industry stakeholders at the 23rd Tourism and Recreation Reef Advisory Committee meeting in February 2007.

2009 Amendments

The 2009 amendments to the old regulations to reduce complexity were primarily consequential changes flowing from amendments to the Act to implement the recommendations in the 2006 Review of the *Great Barrier Reef Marine Park Act 1975* Review Panel Report.

Extensive stakeholder consultation was carried out as part of the 2006 review. The review panel met with key groups of interested persons in Cairns, Townsville, Brisbane, Sydney and Canberra. A total of 36 consultation meetings were held with the board and senior management of the agency, reef advisory committees, local marine advisory committees, commercial fishing bodies, seafood processing and marketing bodies, representatives of recreational fishers, tourism organisations, the Queensland Government, conservation organisations, research and academic organisations, port authorities, the Australian Maritime Safety Authority, Federal Parliamentarians, the Chief Executive Officer of the Murray-Darling Basin Commission and the former Deputy Secretary of the Department of Agriculture, Fisheries and Forestry. The review panel carefully considered 277 substantive submissions to the Review (which are available in the Review Panel Report) made from a range of interested parties, and took these recommendations into account when it made its recommendations.

Specific consultation on the amendments was also undertaken with the Queensland Government. Relevant stakeholders, including industry groups and Traditional Owner Groups were consulted and provided with opportunities to meet with the agency and discuss the Regulation amendments.

Netting restrictions in the Bowling Green Bay Special Management Area

The 2011 amendments made in response to an increase in net-related dugong deaths were prepared in consultation with the (then) Department of Sustainability, Environment, Water, Population and Communities, Fisheries Queensland (a service of the Department of Employment, Economic Development and Innovation), the Queensland Boating and Fisheries Patrol, the Queensland Seafood Industry Association, the Queensland Department of Environment and Resource Management and Queensland Parks and Wildlife Service in April – May 2011. The outcome of these consultations was that the amendments were supported by these organisations as an ongoing measure to protect dugong.

Consultation also took place with the local fishers working in the area affected by the amendments through discussions with representatives in April – June 2011. This consultation greatly assisted with minimising the impacts on fishing activities in the area while still providing for increased protection for dugong.

The restrictions that apply to netting activities as a result of the amendments reflect best practice netting standards being developed through a Fisheries Research and Development Corporation research project and associated consultation with the local fishing community.

Amendments regarding misuse of moorings and public infrastructure

Consultation on the 2013 amendments made to clarify and expand the existing misuse of moorings provisions occurred in April 2009, May 2013 and June 2013 with the Queensland Parks and Wildlife Service, who jointly manage and deliver the Field Management Program for the Great Barrier Reef World Heritage Area with the agency. In April 2009 the Authority also raised the idea of making the amendments with the Authority's Tourism and Recreation Reef Advisory Committee, which is a committee of Marine Park stakeholders such as tourist operators, recreational users and Traditional Owners, established to provide advice to the agency on operational issues. Both the Queensland Parks and Wildlife Service and the Tourism and Recreation Reef Advisory Committee were supportive of the amendments. The amendments were prepared in consultation with the Criminal Justice Division of the Department of Justice and Attorney-General and the Commonwealth Director of Public Prosecutions. From a prosecution and enforcement perspective, those organisations took no issue with the amendments.

Amendments to require an assessment of heritage values in the Outlook Report and to rectify typographical issues and other minor amendments

In 2008 the objects of the Act were amended to take into account the need for protection and conservation of heritage values, as well as meeting Australia's international responsibilities relating to world heritage. In June 2012 the United Nations Organization for Education, Science and Culture (UNESCO) World Heritage Committee urged the Australian Government to include an explicit assessment of outstanding universal value of the Great Barrier Reef within future Outlook Reports. In response to the 2008 amendment to the objects of the Act and to the 2012 UNESCO World Heritage Committee recommendations, amendments to the Regulations were made in 2013 to prescribe that an assessment of heritage values must be contained in the Great Barrier Reef Marine Park Outlook Report (the Outlook Report). Additionally, as part of the same amendment package, amendments were made to the Regulations to rectify typographical errors and other minor issues.

The agency consulted with the Wildlife, Heritage and Marine Division of the former Department of Sustainability, Environment, Water, Population and Communities, and the agency's Reef Advisory Committees and Local Marine Advisory Committees on amending the Regulations to include the new provision relating to the Outlook Report. All comments received were considered by the agency and there were no objections to the proposal.

Minor amendments to the provisions of the Regulations relating to enforcement powers and criminal and civil penalty provisions were prepared in consultation with the Criminal Justice Division of the Department of Justice and Attorney-General and the Commonwealth Director of Public Prosecutions. From a prosecution and enforcement perspective, those organisations took no issue with the amendments.

Great Barrier Reef Region Strategic Assessment and Program Report

On 11 August 2014 Strategic Assessment Programs proposed by both the agency and Queensland Government were endorsed under part 10 of the *Environmental Protection and*

Biodiversity Conservation Act 1999. The Programs arose from a comprehensive strategic assessment of the Great Barrier Reef World Heritage Area and adjacent coastal zone carried out by the agency and the Queensland Government in accordance with section 146 of the EPBC Act. The assessment examined whether the appropriate planning processes and management arrangements are in place to ensure development occurs sustainably and does not impact unacceptably on matters of national environmental significance, including the outstanding universal value of the Great Barrier Reef World Heritage Area. The assessment helped to identify, plan for and manage existing and emerging risks to ensure ongoing protection and management of the unique environmental values of the Great Barrier Reef World Heritage Area and adjacent coastal zone.

As part of the assessment a joint consultation process was carried out by the agency and Queensland Government from 1 November 2013 to 31 January 2014. Comments were invited from the general public and specific stakeholders were targeted through mail-outs and meetings. 6616 submissions were received. Of these, 6008 were petition-style campaign submissions, 376 were survey submissions and 232 submissions were received by email or post.

It was recognised in the submissions that the Marine Park is generally well managed, with good outcomes resulting from working with industry. A considerable proportion of submissions expressed strong agreement with recommended improvements being proposed, including changes to the Regulations. These recommendations have been implemented, including the changes to the permissions component of the Regulations. There were a number of other recommendations, suggestions and support for management improvement ranging from broadening partnership to increasing compliance. Some

concerns raised regarding disposal of dredge spoil material in the Marine Park were addressed through subsequent amendments to the Regulations in 2015.

Amendments to bait netting provisions to complement changes to Queensland legislation

In November 2014 amendments were made to the Regulations to close a perceived loophole in the legislation that allowed bream, whiting and flathead to be targeted lawfully when conducting commercial bait netting operations in the Commonwealth and Queensland Conservation Park Zones (CPZ). While commercial bait netting is allowed in CPZ without a relevant permission from the agency or Queensland Government, it was never intended that it extend to the taking of these demersal species, which are key recreational food fish and not bait species. The amendments complemented similar provisions enacted by Queensland in 2012 for the Great Barrier Reef Coast Marine Park and other State Marine Parks.

Consultation carried out on the amendments dates back to May 2008. In 2008 the agency recommended that the former East Coast Inshore Fin Fish Management Advisory Committee (a group established by the Queensland government consisting of members of the fishing industry) approve of a proposal which, among other things, included the proposed amendments. The Committee was generally supportive of the proposal.

The Queensland Government conducted extensive consultation with commercial and recreational fishers in 2011 before implementing the changes to its legislation. As part of this consultation a discussion paper and other information was released which mentioned that the agency had been consulted on the amendments and may consider implementing complementary arrangements in the future. The agency was informed by the Queensland Government that the majority of submissions received in response to the discussion paper were generally supportive of the proposed amendments.

The Criminal Justice Division of the Department of Justice and Attorney-General and the Commonwealth Director of Public Prosecutions were also consulted on the amendments. From a prosecution and enforcement perspective, those organisations took no issue with the amendments.

Declaration of 2 Maritime Cultural Heritage Protection Special Management Areas

In 2015 the Regulations were amended to add a new type of Special Management Area (the Maritime Cultural Heritage Protection Special Management Area) and declare two areas in the Marine Park to be part of this new Special Management Area. The purpose of the amendments was to protect cultural heritage in general, and in particular, the heritage value of two Royal Australian Air Force (RAAF) Catalina aircraft wrecks (RAAF Catalina A24-24 and RAAF Catalina A24-25) located in two different areas of the Marine Park.

In 2014 the agency consulted with commercial trawler fishers, recreational fishers, dive operators, holiday accommodation owners, Fisheries Queensland, descendants and relatives of those lost in the plane wreckages, the RAAF, wreck finders, recreational divers, members of the public, the Returned Services League District President, the Australian Hydrographic Service, community advisory bodies, a World War II historian and the Queensland Seafood Industry Association on the proposed amendments. Feedback was received indicating that those consulted were generally in support of the amendments being progressed.

Ban on capital dredge spoil dumping

In 2015 amendments were made to the Regulations to:

- prohibit the agency from granting permissions for the dumping of more than 15,000 cubic metres of capital dredge spoil material in the Great Barrier Reef Marine Park (Marine Park)
- revoke an *existing permission* granted by the agency that, if not revoked, would allow in future the uncontained disposal of 3,000,000 cubic metres of capital dredge spoil material in the Marine Park.

One identified risk to the Great Barrier Reef is the disposal and re-suspension of dredge spoil material, which can potentially impact water quality, hydrodynamics and benthic fauna and flora. The purpose of the amendments were to improve water quality in the Marine Park, increase protection and conservation of the plants and animals of the Marine Park (including protected species; and therefore, improve the Great Barrier Reef's overall World

Heritage values by decreasing the potential impacts of dumping of capital dredge spoil material.

From 2013 to 2015 the issue of disposal of dredge material was the subject of significant public consultation and advice to the agency. This included the 13 week formal public consultation period for the Great Barrier Reef Region Strategic Assessment, the 6 week formal public consultation period on the draft Reef 2050 Long Term Sustainability Plan, and the provision of advice to the agency by members of reef and marine advisory committees. Through these processes the agency received submissions and advice relating to the management of the impacts of dredge spoil disposal, which informed the development of the Regulation.

Prior to the finalisation of the amendments, the agency carried out more detailed consultation on the specifics of the amendments. This involved a formal public consultation period from 16 March 2015 to 27 March 2015. A description of the draft policy and an invitation to provide submissions during the consultation period was given through the agency's website, media releases issued by the agency and the then Minister for the Environment, and the sending of targeted consultation letters and emails to key stakeholders such as members of the tourism industry, recreational boating clubs, Traditional Owners, government agencies, ports and resources sectors, scientists, conservation groups and members of Reef and local marine advisory committees.

A total of 7,725 submissions were received in response to the March 2015 public consultation (96 individual submissions and 7,629 submissions in response to three types of campaigns run by the World Wildlife Fund, Fight for the Reef and Greenpeace). The submissions are publicly available on the agency's website (apart from 1 submission which cannot be released for privacy reasons). Common themes raised in the submissions included concerns that the limitation on dumping should extend beyond the Marine Park, should apply to more types of dredge spoil material, should not contain an exception for the dumping of amounts of capital dredge spoil material less than 15,000 cubic metres and should apply to the activity of dredging. On the other end of the scale, some submissions raised concerns that limiting dumping in the Marine Park could result in worse environmental outcomes caused by increased dumping in coastal areas, that there should be an exception for dumping of volumes of capital dredge spoil material larger than 15,000 cubic metres and that dumping should not be limited where the impacts can be appropriately managed and are supported by the best available science.

No significant changes were made to the proposed amendments following the formal public consultation. A more detailed description of the consultation that was carried out and the outcomes of the consultation are contained in the Regulation Impact Statement available at: <http://ris.dpmc.gov.au/2015/06/26/ban-on-the-disposal-of-capital-dredge-spoil-material/>.

Proposed improvements to the permissions system

Between 16 October 2015 and 18 December 2015, the agency conducted public consultation on improving its permission system. As part of this consultation comments were specifically sought on ways to improve the permissions component of the Regulations.

The permissions system is one of the most fundamental components of the Regulations and has a significant impact on the use and enjoyment of the Marine Park by stakeholders. Although the consultation was carried out for the purpose of the permissions assessment and decision enhancement project, the consultation has also been vital in assisting to assess the overall fitness-for-purpose of the Regulations.

The methods used to conduct the consultation included:

- contacting permission holders and applicants from the past 3 years and inviting them to share their experiences with the permissions system and provide suggestions for improvements
- advertising the public consultation period a public consultation document describing the changes being considered on the agency's website
- emailing and posting more than 2,400 direct invitations to stakeholders to participate in the consultation process, including Local Marine Advisory Committees, Reef Advisory Committees and other networks
- hosting public information sessions in Townsville, Cairns and Airlie Beach.

People were encouraged to provide written comments by:

- completing a short written survey at an information session
- sending a letter submission
- sending an email submission or
- completing an anonymous online survey.

A total of 137 responses were received. Overall, the public responses indicated general support for the improvements being proposed by the agency. Additional suggestions and issues raised by stakeholders have been taken into account by the agency and have informed the development of policy to amend the Regulations. The findings of the consultation and the steps the agency proposes to take to address public comments are set out in detail in the consultation response document at <http://www.gbrmpa.gov.au/zoning-permits-and-plans/permits/improving-permissions>.

Whitsundays Plan of Management amendments 2017

Targeted consultation with stakeholders, including Traditional Owners, recreational users, the Authority's advisory committees and the tourism industry was carried out between December 2014 and June 2017, and shaped both the drafting of the Amendment of the Plan and the Regulations.

On 6 March 2017 exposure drafts of the Amendment of the Plan and the Regulations were published on the Authority's website and public notice was given inviting the public to make comments on these instruments. The public notice was published in the Commonwealth Government Notices Gazette, Courier Mail, Whitsunday Times, Mackay Daily Mercury, Bowen Independent and on the Authority's website. Upon publication of the exposure drafts of the instruments the Authority carried out a comprehensive

consultation process to raise community awareness and understanding of the proposed amendments. Emails were sent to permission holders; public information sessions were held in Airlie Beach; meetings were held with Traditional Owners, industry, conservation groups and the Authority's advisory committees; information brochures were distributed to local Whitsundays business and posted in public access points (such as the local library); statements were released to the media, and posts published by the Authority in social media.

A total of 52 comments were received by the Authority in response to the release of the exposure drafts. These submissions were received through online surveys, emails and by post. 61% of the submissions received were from organisations or representative bodies and 38% of the submissions were from individuals. The comments received primarily raised arguments both for and against a number of proposals contained in the Amendment of the Plan. Very few of the comments were relevant to the Regulations. Some of the comments relevant to the Regulations related to the proposal in the exposure draft of the Regulations about preventing the activity of reef walking from being carried out in the Whitsunday Planning Area. These comments were taken into account by the Authority and the Regulations have been altered accordingly. Other comments relevant to the Regulations related to the 21 new superyacht anchorages for the Whitsunday Planning Area. These comments were taken into account in the development of the Regulations.

Consultation for the Hammerhead Shark Regulations

In 2017 an amendment was identified as necessary to allow for entry and use of the Marine Park for the take of hammerhead sharks under regulation 69 in order to maintain consistency in environmental legislation.

The Threatened Species Scientific Committee, an independent committee of conservation scientists that provides the Minister for the Environment and Energy with advice on matters relating to listing, conservation and recovery of threatened species and ecological communities, and listing and abatement of key threatening processes, undertook public and expert consultation on a draft assessment in June/July 2014. The Authority undertook additional consultation with the Department of Environment and Energy regarding their views about maintaining consistency in environmental legislation and aligning the species protection mechanisms within the Marine Park. The Authority also participated in a stakeholder working group consisting of Queensland State Government, Marine Park users and local industry. The amendments did not affect the existing use of the Marine Park and remedied the unintended consequence of a Conservation Dependent listing, as such it was determined that no additional consultation was necessary.