

## **EXPLANATORY STATEMENT**

Select Legislative Instrument 2017 No. \_\_\_\_\_

Issued by the Authority of the Minister for the Environment and Energy

*Great Barrier Reef Marine Park Act 1975*

*Great Barrier Reef Marine Park Amendment (Whitsunday Plan of Management)  
Regulations 2017*

### **Authority**

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.

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.

### **Purpose and Operation**

The purpose of *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Regulations 2017* (the Regulations) is to make amendments to the *Great Barrier Reef Marine Park Regulations 1983* (the Principal Regulations) to complement amendments made to the *Whitsundays Plan of Management 1998* (the Plan) by the *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Instrument 2017* (the Amendment of the Plan).

The Regulations amend the Principal Regulations to support implementation of the Amendment of the Plan by:

- providing new definitions for terms used in the Plan, such as ‘no-anchoring area’, ‘private mooring’, ‘superyacht’, ‘superyacht anchorage’ and ‘transiting’;
- updating existing definitions that apply to the Plan, such as the definitions for ‘personal watercraft’, ‘special tourism permission’ and ‘special permission’;
- ensuring use of terminology in the Principal Regulations is consistent with, and complementary to, the Plan;
- rectifying minor typographical issues and repealing spent and unnecessary provisions;

- preventing the activity of reef walking from being carried out in the Whitsunday Planning Area;
- resolving potential conflicts between permissions currently in force and the Amendment of the Plan;
- amending the boundary of an existing designated anchorage, and providing for an additional two new designated anchorages, in the Whitsunday Planning Area; and
- providing for 21 new superyacht anchorages in the Whitsunday Planning Area.

Effective management of the Whitsunday Planning Area is achieved through periodic review of the Plan in response to new information and changing uses. The Plan has been reviewed and amended in 1999, 2002, 2005 and 2008. More recently, a review carried out between December 2014 and June 2017 highlighted the need for further amendments to the Plan. The Amendment of the Plan is intended to assist in achieving the objects of the Plan by addressing aspects of strategic sustainable management.

### **Documents incorporated by reference**

Item 2 of Schedule 1 of the Regulations incorporates one document by reference, being the *Transport Operations (Marine Safety) Act 1994* (Qld). The incorporation of this document by reference is consistent with section 14 of the *Legislation Act 2003*, as it is incorporated as in force on the commencement of the Regulations.<sup>1</sup>

### **Consultation**

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

---

<sup>1</sup> A copy of the *Transport Operations (Marine Safety) Act 1994* (Qld) is available at [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au).

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.

### **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 no. 19334).

Details of the Regulations are set out in [Attachment A](#).

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

The Regulations commence the day after registration on the Federal Register of Legislation.

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

## ATTACHMENT A

### Details of the *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Regulations 2017*

#### Section 1 – Name

This section provides that the title of the Regulations is the *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Regulations 2017*.

#### Section 2 – Commencement

This section contains a table which sets out the timetable for the commencement of the provisions of the Regulations. The table provides that the whole of the Regulations commence on the day after registration.

#### Section 3 – Authority

This section provides that the Regulations are made under the *Great Barrier Reef Marine Park Act 1975*.

#### Section 4 – Schedules

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

## Schedule 1 – Amendments

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

Item 2 inserts a new definition for ‘no-anchoring area’ into subregulation 3(1). The new definition provides that a no-anchoring area means an area described in Schedule 1B. The need for this change arises as a consequence of amendments made to the *Whitsundays Plan of Management 1998* (the Plan) by the *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Instrument 2017* (the Amendment of the Plan), which removes the list of no-anchoring areas from Schedule 5 of the Plan, and amends the definition of no-anchoring area in Schedule 9 of the Plan to refer to the definition given in the Regulations. Further information about the reason for this change is provided in the discussion of item 29.

### **Item [2] Subregulation 3(1) (definition of *personal watercraft*)**

Item 2 repeals and substitutes the definition of ‘personal watercraft’ in subregulation 3(1). The repealed definition gave personal watercraft the same meaning as in the *Transport Operations (Marine Safety) Regulation 2004* (Qld). The definition of personal watercraft has been relocated from that Regulation to the *Transport Operations (Marine Safety) Act 1994* (Qld) and has been modified slightly. The Authority’s intention is to adopt the latest definition contained in the *Transport Operations (Marine Safety) Act 1994* (Qld).

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

Item 3 inserts a definition for ‘private mooring’ into subregulation 3(1), being ‘a mooring other than a public mooring’. The need for this new definition arises as a consequence of the Amendment of the Plan, which inserts a definition for private mooring into Schedule 9 of the Plan that links to the new definition in the Regulations. The term ‘private mooring’ is used throughout the Plan but has not been previously defined. The reason for this definition being located in the Principal Regulations 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 Principal Regulations.

### **Item [4] Subregulation 3(1) (definition of *special tourism permission*)**

Item 4 repeals and substitutes the definition of ‘special tourism permission’ in subregulation 3(1). The new definition maintains the previous element of the definition, which applies where the Principal Regulations or a plan of management has imposed a limit on the number of such permissions that may be granted, but introduces a new element so that a plan of management can declare permissions to be special tourism permissions for the purposes of the Principal Regulations. The reason for this change is so that the Amendment of the Plan may insert a provision into the Plan declaring that certain relevant permissions are special tourism permissions. This will remove any uncertainty surrounding the status of these types of permissions and ensure the original intent of the Plan is achieved.

## **Item [5] Subregulation 3(1)**

Item 5 inserts new definitions for the terms ‘superyacht’, ‘superyacht anchorage’ and ‘transiting’ into subregulation 3(1).

### *Superyacht*

Superyacht is defined as meaning a high-value, luxury sailing or motor vessel in use for sport or pleasure. The need for this new definition arises as a consequence of the Amendment of the Plan, which inserts a definition for superyacht into Schedule 9 of the Plan that links to the new definition in the Principal Regulations. The reason for this definition being located in the Principal Regulations as opposed to the Plan is to ensure consistent use of terminology across Marine Park legislation.

While it is acknowledged that components of the definition such as ‘high-value’ and ‘luxury’ are subjective, this is not considered by the Authority to be problematic as under the new 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.

A note is included after the definition of superyacht stating that it does not matter whether the use of the vessel for sport or pleasure is private or commercial. This 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.

### *Superyacht anchorage*

Superyacht anchorage is defined as meaning an area described in Schedule 1A. The need for this new definition arises as a consequence of the Amendment of the Plan, which inserts a definition for superyacht anchorage into Schedule 9 of the Plan that links to the new definition in the Regulations. Further information about the reason for this change is provided in the discussion of item 29.

### *Transiting*

A definition for transiting has been included as a consequence of the Amendment of the Plan, which amends the definition of transiting in Schedule 9 of the Plan so as to link to the new definition in the Principal Regulations. The reason for this definition being located in the Principal Regulations as opposed to the Plan is to ensure consistent use of terminology across Marine Park legislation.

The new definition of transiting combines a number of elements that have previously been used in conjunction with the term in the Principal Regulations and the Plan. For example, ‘transiting’ is commonly referred to in conjunction with the words ‘by the most direct and reasonable route’ in the Principal Regulations and in the Plan. A requirement to travel by the most direct and reasonable route has now been built into the definition so that there is no longer a 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

longer a need to explicitly state this when there is a requirement for a vessel to be transiting.

#### **Item [6] Regulation 3A (heading)**

Item 6 repeals the heading to regulation 3A 'References to plans of management and laws of Queensland' and substitutes with a new heading 'References to laws of Queensland'. This new heading is required as a consequence of item 7.

#### **Item [7] Subregulation 3A(1)**

Item 7 repeals subregulation 3A(1), which previously stated that a reference in the Principal Regulations to the *Cairns Area Plan of Management 1998* (Cairns Plan), the *Hinchinbrook Plan of Management 2004* or the *Whitsundays Plan of Management 1998* is a reference to that Plan as in force on 18 December 2008, which is that is the date on which the last round of amendments to the Cairns and Whitsundays Plans commenced. It is likely that the reason for referring to this date was because any changes to the three plans of management made after this date would need to be carefully considered by the Authority and a policy developed as to whether consequential changes are needed to the Principal Regulations.

The Authority has decided it would be more appropriate for references in the Principal Regulations to the three plans of management to be read as references to those plans 'as in force from time to time'. In order to achieve this it is necessary to repeal subregulation 3A(1). In the absence of that provision a reference in the Principal Regulations to one of the three plans of management will be taken to be a reference to that plan as in force from time to time.

Each time a plan of management is amended, the Authority will as a matter of course consider whether consequential amendments are also needed to the Principal Regulations (for example, to update references to particular clauses which are to change).

#### **Items [8] and [9] Regulation 31 (paragraph (i) of the definition of *ship*)**

Regulation 31 contains the definition of a 'ship' for the purposes of the Zoning Plan. Prior to the amendments made by items 8 and 9, paragraph 31(i) excluded '*a super-yacht (that is, a vessel more than 50 metres in overall length used for private recreational activities)*' from the definition of a ship. The description of a superyacht given in paragraph 31(i) does not accord with the new definition of a superyacht inserted into subregulation 3(1) by item 5. To resolve this conflict items 8 and 9 amend paragraph 31(i) to simply refer to '*a vessel more than 50 metres in overall length used for private recreational activities*' and removes the reference to '*a super-yacht*'. It is not intended that this amendment will change the operation of r31(i).

#### **Item [10] Regulation 36 (paragraph (d) of the definition of *vessel or aircraft charter operation*)**

Item 10 amends paragraph 36(d) so that a reference to '*transiting through the Marine Park by the most direct and reasonable route to a place outside the Marine Park*' becomes a reference to '*transiting the Marine Park*'. This amendment is needed as a

consequence of the definition of transiting inserted into subregulation 3(1) by item 5 and is not intended to have any practical effect on the interpretation of paragraph 36(d).

### **Items [11], [12] and [13] Regulation 66A**

Items 11 and 12 make amendments to the transiting requirements contained in regulation 66A, which are needed as a consequence of the definition of transiting inserted into subregulation 3(1) by item 5 and is not intended to have any practical effect on the interpretation of regulation 66A. In particular, it is no longer necessary to state in subregulation 66A(3) that transiting must be by the most direct and reasonable route, or that a vessel must be propelled through the water in a forward direction and is not adrift as these elements are now built into the definition of transiting in subregulation 3(1).

### **Items [14] and [17] Regulation 88G**

Items 14 and 17 make amendments to regulation 88G which are intended to ensure that any new permissions proposed to be granted pursuant to new subclauses 1.27(3) or (4) of the Plan will be treated as special permissions under the Principal Regulations (and as a consequence, will be subject to the expression of interest process under Division 2A.3 of Part 2A of the Principal Regulations before such permissions can be granted).

### **Items [15] and [16] Subregulation 88G(5)**

Items 15 and 16 correct minor grammatical issues in paragraphs 88G(5)(f) and (g), and are not intended to change to operation of those paragraphs.

### **Item [18] At the end of Division 2A.10 of Part 2A**

Item 18 inserts a new regulation 88ZZA at the end of Division 2A.10 of Part 2A. The purpose of this new regulation 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 regulation is intended to complement new clause 1.30 of the Plan, 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. The new clause 1.30 of the Plan, coupled with new regulation 88ZZA of the Principal Regulations, is intended to increase protection to coral in the Whitsunday Planning Area.

Subregulation 88ZZA(1) provides that on and after the commencement of regulation 88ZZA, a permission that purports to give permission for the activity of reef walking in the Whitsunday Planning Area does not have the effect of giving permission for the activity of reef walking in the Whitsunday Planning Area. This is intended to mean 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.



Subregulation 88ZZA(2) is intended to clarify that subregulation 88ZZA(1) applies irrespective of when the permission was granted.

The Authority anticipates that some permissions captured by subregulation 88ZZA may allow for activities other than reef walking in the Whitsunday Planning Area. Subregulation 88ZZA(3) has been included to clarify that subregulation 88ZZA(1) does not affect the ability of a permission holder to carry out other conduct under a permission, other than the activity of reef walking in the Whitsunday Planning Area.

Subregulation 88ZZA(4) has been included to provide one exclusion to subregulation 88ZZA(1). It is the Authority's intention that one permission holder, Luxury Yachting Pty Ltd (ACN 051 993 992), 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). The justification for this is that the permission holder has significant experience at Langford Reef and has previously gone through an eligibility process under the Plan to retain a permission to carry out reef walking activities. The permission holder is required to cease reef walking at all other areas in the Whitsunday Planning Area other than Langford Reef (even where this is purportedly allowed under a permission held by the permission holder). If the permission holder applies for a replacement permission of the same kind beyond the current permission term then the activity of reef walking at Langford Reef will not be allowed in any replacement permission granted. If the permission holder attempts to transfer a replacement permission of the same kind after 31 May 2020 then the activity of reef walking at Langford Reef will not be included in the transfer. If the permission holder attempts to transfer permit G14/36918.1 (or part of this permit) before 31 May 2020 then the activity of reef walking will not be able to be transferred.

Subregulation 88ZZA(5) has been included to avoid any doubt about whether a further permission 'of the same kind' can be sought or granted pursuant to the requirements of subregulations 88H(1), 88ZC(1) or 88ZD(3). Subregulation 88ZZA(5) clarifies that 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 subregulations 88H(1), 88ZC(1) or 88ZD(3).

Subregulation 88ZZA(6) has been included to clarify that for the purposes of a transfer of a permission pursuant to regulation 88ZK, the new permission need not allow the activity of reef walking in the Whitsunday Planning Area in order to meet the requirement under subregulation 88ZK(3) for the new permission to be 'of identical effect and with identical conditions as the permission held by the transferor'.

### **Item [19] Regulations 170, 172 and 173**

Item 19 repeals regulations 170 and 173, which specify the date of effect of enforcement provisions for the *Shoalwater Bay (Dugong) Plan of Management* and the *Cairns Area Plan of Management 1998*. These provisions are spent and rely on repeal provisions of the Act. It is no longer a requirement under the Act to specify in regulations the commencement date of the enforcement provisions of a plan of management.

This item also repeals regulation 172, which for the purposes of Part 10 of the Principal Regulations provides that 'Plan' means the *Cairns Area Plan of Management 1998*. The reason for repealing this regulation is that there is no longer a need to shorten references to the *Cairns Area Plan of Management 1998* once regulation 173 is repealed.

#### **Item [20] Subregulations 174(1) and (2)**

Item 20 makes minor consequential amendments to subregulations 174(1) and (2) as a consequence of the repeal of regulation 172 by item 19.

#### **Item [21] Regulations 176 and 177**

Item 21 repeals regulations 176 and 177. Regulation 177 specifies the date of effect of enforcement provisions for the *Whitsundays Plan of Management 1998*. As mentioned above in the discussion of item 19, provisions such as this are spent and rely on repealed provisions of the Act. It is no longer a requirement under the Act to specify in regulations the commencement date of the enforcement provisions of a plan of management.

Regulation 176 provides that for the purposes of Part 11 of the Principal Regulations 'Plan' means the *Whitsundays Plan of Management 1998*. The reason for repealing this regulation is that there is no longer a need to shorten references to the *Whitsundays Plan of Management 1998* once regulation 177 is repealed.

#### **Item [22] Subregulations 178(1) and (2)**

Item 22 makes minor consequential amendments to subregulations 178(1) and (2) as a consequence of the repeal of regulation 176 by item 21.

#### **Item [23] At the end of Part 11**

Item 23 adds a new regulation 179 to the end of Part 11. The purpose of this regulation is to address concerns by the Authority about a potential scenario where a permission may be in force which prohibits conduct that, as a result of the Amendment of the Plan, is no longer prohibited by an enforcement provision in Part 2 of the Plan.

Permissions granted by the Authority will often contain conditions which mirror the provisions of the Plan. For example, a permission condition may mirror repealed clause 2.8 of the Plan by stating that the permission holder must not operate a high-speed vessel as part of a tourist program in a setting area unless that area is a setting 1 area or a designated motorised water sports area. Due to the Amendment of the Plan, a person may now operate a personal watercraft (which is a type of high speed-vessel) to transit a setting area as part of a tourist program in certain circumstances. This would create a situation where a permission condition expressly prohibits a permission holder from carrying out conduct which is now expressly allowed under the Plan.

New regulation 179 resolves the potential for conflict between permissions and the Amendment of the Plan. In the example given above, regulation 179 would operate so that the permission condition ceases to have effect to the extent that it would

otherwise have prevented the permission holder from operating a high-speed vessel to transit a setting area in the circumstances described in new subclause 2.8(2) of the Plan.

#### **Item [24] Regulations 180 and 181**

Item 24 repeals regulations 180 and 181. Regulation 181 specifies the date of effect of enforcement provisions for the *Hinchinbrook Plan of Management 2004*. As mentioned above in the discussion of items 19 and 21, provisions such as this are spent and rely on repealed provisions of the Act. It is no longer a requirement under the Act to specify in regulations the commencement date of the enforcement provisions of a plan of management.

Regulation 180 provides that for the purposes of Part 12 of the Principal Regulations 'Plan' means the *Hinchinbrook Plan of Management 2004*. The reason for repealing this regulation is that there is no longer a need to shorten references to the *Hinchinbrook Plan of Management 2004* once regulation 181 is repealed.

#### **Item [25] Subregulations 182(1), (2) and (4)**

Item 25 makes minor consequential amendments to subregulations 182(1), (2) and (4) as a consequence of the repeal of regulation 180 by item 24.

#### **Item [26] Division 3 of Part 3 of Schedule 1 (heading)**

Item 26 repeals and substitutes the heading of Division 3 of Part 3 of Schedule 1 to correct a grammatical error. The heading should refer to the 'Whitsunday Planning Area' without an 's' at the end of the word 'Whitsunday'.

#### **Item [27] Division 3 of Part 3 of Schedule 1 (table item 24)**

Division 3 of Part 3 of Schedule 1 contains the boundary descriptions for designated anchorages in the Whitsunday Planning Area. This item repeals and substitutes table item 24, which is the boundary description for the Funnel Bay designated anchorage. The substituted boundary description is realigned to be parallel with the coast and is approximately 75% larger than the repealed boundary description, so as to allow capacity for up to 2 large ships to anchor at the designated anchorage. The anchorage capacity can accommodate 2 large ships, which will allow for commercial growth in the region. Consequently, the Amendment of the Plan makes amendments to subclause 1.32(7) to allow up to 2 large ships to anchor at a time at the Funnel Bay designated anchorage.

#### **Item [28] Division 3 of Part 3 of Schedule 1 (at the end of the table)**

Item 28 adds 2 new designated anchorages to the Whitsunday Planning Area at South Hamilton and at North West Dent Island. The new designated anchorages provide better options for anchoring within vicinity of Hamilton Island during certain weather conditions.

## **Item [29] After Schedule 1**

Item 29 inserts Schedule 1A into the Principal Regulations, which contains the boundary descriptions for 21 new superyacht anchorages in the Whitsunday Planning Area. This amendment complements the Amendment to the Plan, which provides for conditions for using the new superyacht anchorages in clause 2.4 of the Plan.

The superyacht anchorages are located adjacent to areas which are popular with users of the Planning Area. The anchorages are appropriately located to manage potential conflict with other users of the Whitsunday Planning Area and to avoid sensitive marine ecosystems.

The specific locations of superyacht anchorages are listed in the Regulations because the Authority requires flexibility to add, remove and amend the locations of these anchorages as new information about the appropriateness of such anchorages becomes available, without the need for amendments to the Plan. Listing the superyacht anchorages in the Regulations allows them to be more effectively updated from time to time through Regulation amendments.

Additionally, item 29 inserts Schedule 1B into the Principal Regulations, which contains the boundary descriptions for no-anchoring areas. Presently the no-anchoring areas listed are all areas in the Whitsunday Planning Area however it is intended that in time the boundaries for other no-anchoring areas in the Marine Park will be listed in Schedule 1B.

Essentially the areas described in Schedule 1B are the same as the areas that were previously described in Schedule 5 of the Plan (which has been repealed by the Amendment of the Plan), except that minor changes have been made to reflect the current locations of the reef protection markers used in the Marine Park to identify these areas. Over time, the reef protection markers used in the Marine Park to identify these areas have been moved due to a number of reasons including to rectify Global Positioning System errors and movement or failure of the markers attachment to the seafloor. As a result, the areas that were previously described in repealed Schedule 5 of the Plan are no longer accurate.

An additional 2 no-anchoring areas have been included at Black Island and Dumbell Island.

The Authority requires flexibility to add, remove and amend the locations of no-anchoring areas without the need for amendments to the Plan. Relocation the descriptions of no-anchoring areas from the Plan into the Principal Regulations will allow no-anchoring areas to be more easily updated from time to time through regulation amendments.

**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 Amendment (Whitsundays Plan of Management) Regulations 2017***

The Regulations are 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 Regulations**

The purpose of the Regulations is to make amendments to the *Great Barrier Reef Marine Park Regulations 1983* (the Principal Regulations) to complement amendments made to the *Whitsundays Plan of Management 1998* (the Plan) by the *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Instrument 2017* (the Amendment of the Plan).

The amendments to the Principal Regulations will:

- Provide new definitions for terms used in the Plan, such as ‘no-anchoring area’, ‘private mooring’, ‘superyacht’, ‘superyacht anchorage’ and ‘transiting’;
- Update existing definitions that apply to the Plan, such as the definitions for ‘personal watercraft’, ‘special tourism permission’ and ‘special permission’;
- Ensure use of terminology in the Principal Regulations is consistent with, and complementary to, the Plan;
- Rectify minor typographical issues and repeal spent and unnecessary provisions;
- Prevent the activity of reef walking from being carried out in the Whitsunday Planning Area;
- Resolve potential conflicts between permissions currently in force and the Amendment of the Plan;
- Extend the boundary of an existing designated anchorage, and provide for an additional 2 new designated anchorages, in the Whitsunday Planning Area; and
- Provide for 21 new superyacht anchorages in the Whitsunday Planning Area.

Where a person (other than the Great Barrier Reef Marine Park Authority ((the Authority) acting in accordance with its functions and powers) contravenes a provision of Part 2 of the Plan, the criminal offence provision in subregulation 178(1) of the *Great Barrier Reef Marine Park Regulations 1983* (the Principal Regulations) applies. By providing for new definitions of terms used in the Plan, providing for new boundaries of no-anchoring areas, extending the boundary of an existing designated anchorage, providing for additional designated anchorages and providing for 21 new superyacht anchorages, the Regulations indirectly extend the scope of the criminal offence provision in subregulation 178(1) of the Principal Regulations.

Subregulation 178(2) of the Principal Regulations provides that strict liability applies to the offence under subregulation 178(1) (except in the case of a contravention of subclause 2.12(1) of the Plan, which states that a person must not damage coral). The penalty for the offence is 50 penalty units.

The Regulations commence the day after they are registered and will not have any retrospective application.

### **Human rights implications**

The following rights are engaged by the Regulations:

- The presumption of innocence (*International Covenant on Civil and Political Rights* ('ICCPR'), article 14(2));
- The right to freedom of movement (ICCPR, article 12); and
- The right to health (*International Covenant on Economic, Social and Cultural Rights* (ICESCR), article 12).

#### *The presumption of innocence*

The Regulations engage 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 subregulation 178(1) of the Principal Regulations engages the right to be presumed innocent in that it allows for the imposition of criminal liability without the need to prove fault.

Strict liability offences will not be inconsistent with the presumption of innocence provided that they pursue a legitimate aim and are reasonable, necessary and proportionate to that aim. The restriction the Regulations place on the presumption of innocence is necessary, reasonable and proportionate in the circumstances for the reasons set out below.

#### Necessity

The punishment of conduct that contravenes subregulation 178(1) of the Regulations without the need to prove fault is likely to significantly enhance the effectiveness and

efficiency of the Authority's enforcement regime by deterring persons from contravening Part 2 of the Plan. The presence of the strict liability offence provision appears to have already been successful in deterring contraventions of the Part 2 of the Plan to date, and expanding the scope of the provision to cover new types of conduct is expected to do the same.

Strict liability is necessary because the person who is alleged to have committed the strict liability offence is in the best position to identify their intention, and it will be difficult for the Authority to prove that a person knew (or was reckless as to the fact that) they had contravened a provision of Part 2 of the Plan.

### Reasonableness

It is intended that announcements will be made and information placed on the Authority's website to notify users of the Whitsunday Planning Area about the new requirements. It is reasonable to expect persons who voluntarily enter an area such as the Whitsunday Planning Area accept that their conduct will be subject to regulation and be required to demonstrate why they are not at fault where their conduct contravenes such regulations.

Despite the imposition of the strict liability offence provision, an accused person's right to a defence is maintained. Subregulation 178(3) expressly provides a defence to prosecution under subregulation 178(1) if the person is acting in accordance with a permission. In addition, a person would have access to defences under the *Criminal Code Act 1995* such as the defence of sudden or extraordinary emergency, or the defence 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.

### Proportionality

Contravention of the strict liability offence provision in subregulation 178(1) of the Principal Regulations is only punishable by a fine of 50 penalty units, which is proportionate with the restriction on the presumption of innocence.

### *The right to freedom of movement*

The Regulations engage the right to freedom of movement in article 12 of the ICCPR. Article 12(1) of the Covenant relevantly provides that 'everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement...'.

By providing for new definitions of terms used in the Plan, extending the boundary of an existing designated anchorage, providing for additional designated anchorages and providing for 21 new superyacht anchorages, the Regulations (when read in conjunction with the Plan) restrict the right to freedom of movement in minor ways. In particular, the establishment of these new definitions and areas for the purposes of the Plan allows the Plan to restrict people from operating vessels in the new areas unless certain requirements are met under the Plan.

These restrictions on the right to freedom of movement are proportionate to the need to protect public safety and the environment. The restrictions are the least intrusive means of achieving protection because they will still allow for persons to operate vessels in the areas, subject to reasonable conditions to facilitate orderly use of public spaces.

### *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 Human Rights Committee 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 Regulations promote the right to a healthy environment by increasing the protection and conservation of the Whitsunday Planning Area.

### **Conclusion**

The Regulations are compatible with human rights in that, to the extent that it limits human rights, those limitations are reasonable, necessary and proportionate.