

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 (Permission System) 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 primary purpose of the *Great Barrier Reef Marine Park Amendment (Permission System) Regulations 2017* (the Regulations) is to make amendments to the *Great Barrier Reef Marine Park Regulations 1983* (the Principal Regulations) to give effect to a number of the recommendations contained in the *Great Barrier Reef Region Strategic Assessment: Program Report* (Program Report), and to address relevant recommendations made by the Australian National Audit Office performance audit report No.3 2015-16 Regulation of Great Barrier Reef Marine Park Permits and Approvals.

Additionally, the Regulations address the need to update restrictions on the take of certain species contained in the Principal Regulations to reflect the latest scientific information about threats and vulnerability.

The main amendments made by the Regulations to the Principal Regulations are:

- inclusion of a definition of ‘relevant impacts’ of conduct proposed to be permitted by a permission and conduct permitted under a permission;
- changes to the definitions pertaining to limited impact research, to clarify the existing policy intent and to allow some additional minor research aids to be used;
- changes to lists of species which have limits on take to include species that have been listed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act);

- changes to adjust the number of individuals of some species able to be taken by limited impact research (in most cases these adjustments increase protection);
- introduction of five possible permission assessment approaches, being routine assessment, tailored assessment, public information package, public environment report and environmental impact statement;
- introduction of a requirement for the Authority to decide whether an application for a permission is properly made, and decide on the appropriate assessment approach for a properly made application;
- provision for the Authority to change a permission assessment approach if new information becomes available that justifies a change of approach;
- clarification of the circumstances under which a referral made under the EPBC Act is treated as an application for a permission under the Principal Regulations, is taken to have been withdrawn (and in some cases, subsequently taken to have been reinstated) under the Principal Regulations;
- changes to merge mandatory and discretionary considerations for deciding whether to grant a permission into one set of mandatory considerations, which more explicitly set out some of the matters that the Authority must have regard to in deciding whether to grant a permission;
- consequential changes to the provisions of Part 7 (fees) to specify the fees that are applicable to the new assessment processes for applications for permissions, and to allow the Authority to waive the fees for other applications and requests that involve minimal work by the Authority to process;
- introduction of a provision allowing the Authority to cause automated decisions to be made, and automated notices to be given, about permissions and fees through the operation of a computer program; and
- insertion of new definitions into subregulation 3(1) to support the above changes.

Documents incorporated by reference

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

- The *Great Barrier Reef Marine Park Zoning Plan 2003*, as in force from time to time, available from the Federal Register of Legislation at www.legislation.gov.au;

- 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 force from time to time available from www.gbrmpa.gov.au; and
- the *Fisheries Act 1994* (Qld) as in force from time to time, available from www.dilgp.qld.gov.au.

Subsection 66(13) of the Act authorises the Regulations to apply, adopt or incorporate these documents as in force from time to time (overriding section 14 of the *Legislation Act 2003*).

Consultation

The Authority conducted formal consultation on the proposed amendments to the Principal Regulations between 16 October 2015 and 18 December 2015. A total of 137 submissions were received by the Authority in response to the consultation. Overall, the public responses indicated general support for the proposed changes. Additional suggestions and issues raised by stakeholders have been taken into account by the Authority and have informed the development of the Regulations.

Targeted consultation was carried out with researchers on the amendments about limited impact research which confirmed the changes will have little impact on existing research.

Targeted consultation was carried out with individual scientists to inform the development of the parts of the Regulations relating to research and taxonomy, and with management agencies such as the Queensland Department of Agriculture and Fisheries to inform the development of definitions for marine plants and the setting of appropriate limits on take of species.

The Attorney-General's Department was consulted on the aspects of the Regulations relating to review rights. Suggestions made by the Attorney-General's Department in response to that consultation were taken into account by the Authority 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 numbers 19439 and 19440).

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 on 4 October 2017.

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

Details of the *Great Barrier Reef Marine Park Amendment (Permission System) Regulations 2017*

Regulation 1 – Name

This regulation provides that the title of the Regulations is the *Great Barrier Reef Marine Park Amendment (Permission System) Regulations 2017*

Regulation 2 – Commencement

This regulation sets out the timetable for the commencement of the provisions of the Regulations. The Regulations commence on 4 October 2017.

Regulation 3 – Authority

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

Regulation 4 – Schedules

This regulation 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 1 inserts new definitions into subregulation 3(1) of the *Great Barrier Reef Marine Park Regulations 1983* (the Principal Regulations) in order to support the amendments made by other items in Schedule 1 of the *Great Barrier Reef Marine Park Amendment (Permission System) Regulations 2017* (the Regulations).

Some of the definitions inserted by item 1 adopt definitions from the *Great Barrier Reef Marine Park Zoning Plan 2003* (the Zoning Plan) as in force from time to time. Subsection 66(13) of the *Great Barrier Reef Marine Park Act 1975* (the Act) authorises the Regulations to adopt provisions of the Zoning Plan as in force from time to time, even though the Zoning Plan is not a disallowable instrument as defined in the *Legislation Act 2003*.

Continuation application

Item 1 provides that continuation application has the meaning given by subregulation 88AA(5) (see below discussion of item 25, which inserts new subregulation 88AA(5)). It is necessary to define continuation application because the Regulations insert a number of new provisions into the Principal Regulations which contain special rules for making decisions about continuation applications.

EIS advertisement, EIS terms, PER terms, PIP advertisement notice and PIP terms

Item 1 provides that:

- EIS advertisement has the meaning given by subparagraph 88PM(1)(c)(ii);
- EIS terms has the meaning given by subregulation 88PM(1);
- PIP advertisement has the meaning given by subparagraph 88PI(1)(c)(ii);
- PER terms has the meaning given by subregulation 88PI(1); and
- PIP terms has the meaning given by subregulation 88PE(1).

(see below discussion of item 31, which inserts the above provisions). It is necessary to define the above terms because the Regulations insert a number of new provisions into Part 2A of the Principal Regulations which set out requirements for assessment of an application for a permission by public information package, public environment report and by environmental impact statement which include requirements relating to the above terms.

EPBC referral deemed application

Item 1 provides that an EPBC referral deemed application means a referral under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) of a proposal to take an action that, under section 37AB of the Act, is taken to be an application for a permission. Under the EPBC Act certain types of proposed actions are required to be referred to the Minister so he or she can decide whether his or her approval is needed to take the action and how to assess the impacts of the action to be able to make an informed decision whether or not to approve the action. This is known as an EPBC referral. It is necessary to define EPBC referral deemed

application because that term is used in regulations 88C (see discussion of item 26 below), regulations 88PC, 88PI, 88PK, 88PM, 88PN and 88PO (see discussion of item 31 below), 88Z (see discussion of items 38 and 39 below), regulation 183 (see discussion of item 86 below), regulation 185 (see discussion of item 87 below) and regulation 207 (see discussion of item 89).

Holding company and subsidiary

Item 1 provides that holding company and subsidiary have the same meaning as in the *Corporations Act 2001*. It is necessary to define holding company and subsidiary because those terms are used in subparagraphs 88Q(c)(iv), 88ZH(a)(iv) and 88ZO(1)(d) of the Principal Regulations (see below discussions of items 32, 43 and 45, which insert subparagraphs 88Q(c)(iv), 88ZC(a)(iv) and 88ZO(1)(d) into the Principal Regulations).

Proposed conduct

Item 1 provides that 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 Principal Regulations.

Queensland Planning Legislation

Item 1 provides that Queensland Planning Legislation means (a) the *Planning Act 2016* (Qld); or the *Planning Regulation 2017* (Qld); or the State Planning Policy as defined in Schedule 24 to the *Planning Regulation 2017* (Qld). The definition is needed for the new definition of limited research sampling in subregulation 19(2) of the Principal Regulations (see below discussion of item 11, which amends subregulation 19(2)).

The references in the definition of Queensland Planning Legislation to particular pieces of Queensland legislation are to that legislation as in force from time to time, because of:

- subregulation 3A(2), which is supported by subsection 66(13) of the Act, 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*.

Relevant Impacts

Item 1 provides that 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 Principal Regulations. 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 (regulation 88PC), consider the impacts of proposed conduct to inform a decision on whether to grant a permission (paragraph 88Q(g)), or consider whether unacceptable impacts are occurring to inform a decision on whether to modify permission conditions or suspend a permission (subregulation 88ZQ(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 commitments and bring the definition more into line 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 Principal Regulations (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.

Research project

Item 1 provides that 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. This is the same definition that was previously contained in regulations 19 and 20. The term research project is still used only in regulations 19 and 20 therefore relocating the definition is not intended to substantively change the operation of the Principal Regulations. Rather, the change is to remove duplication of definitions in regulations 19 and 20.

Items [2], [3], [4], [5], [6], [7] and [8] Subregulation 15(2) (table items 10, 25, 28, 33, 38 and 40; column headed "Common names")

These items amend a number of the common names for species listed in the table in regulation 15. Some of the common names that were previously listed in the table were outdated therefore it was necessary to update these to provide a more contemporary and consistent approach. Common names have been taken from the Codes for Australian Aquatic Biota database, which is consistent with the Australian Standard Fish Names List (Australian Fish Names Standard AS SSA 5300-2007).

Item [9] Subregulation 15(2) (table item 47)

Item 9 repeals and substitutes table item 47 of the table in regulation 15. This is necessary to meet current taxonomy and to include an additional common name descriptor.

Item [10] At the end of regulation 18

Item 10 inserts a note at the end of regulation 18 to clarify that limited collecting is a kind of fishing and collecting, and (in addition to the limitations set out on the definition of limited collecting in regulation 18) there are other limitations on fishing

and collecting set out in the definition of fishing and collecting in regulation 15. The reason for including this note is to prevent readers from assuming that the only limitations that apply to fishing and collecting are the limitations set out in regulation 18.

Item [11] Regulations 19 and 20

Item 11 repeals and substitutes regulations 19 and 20.

Regulation 19 – Limited impact research (extractive)-definition for Zoning Plan

Regulation 19 contains the definition of limited impact research (extractive) for the purposes of the Zoning Plan.

There is no longer a definition of research project contained in regulation 19 as this has been relocated to subregulation 3(1) to avoid the need to duplicate the definition in regulation 20 (see discussion of item 1 above).

There is no longer a definition of site contained in regulation 19 as the term site is no longer used in the regulation.

The new definition of limited impact research (extractive) provided in subregulation 19(1) is similar to the definition that was in old subregulation 19(2) however there are some important differences:

- The new definition maintains the requirement from the old regulation 19 that limited impact research (extractive) is research that involves either: the taking of a plant, animal or marine product by limited research sampling; or the installation and operation of minor research aids in a way that does not pose a threat to safety or navigation.
- The new definition no longer states that minor research aids must be used in accordance with old subregulation 19(5). Old subregulation (5) has not been replaced and instead, there is now a requirement that minor research aids be used in accordance with the research guidelines (if any). The reason for moving the limitations on the use of minor research aids into guidelines is because the limitations in old subregulation 19(5) were too prescriptive and difficult to update in a timely manner to take into account changes in technology and research practices.
- The new definition includes a new requirement that limited impact research (extractive) must not involve the installation and operation of minor research aids in a way that poses a threat to the environment. By way of example, this will mean that a minor research aid that is equipment for fastening another minor research aid (as described in paragraph (i) of the definition of minor research aid in subregulation 19(2)) can only be used for limited impact research (extractive) if it is not used in a way that poses a threat to the environment.
- The new definition amends the requirement under old paragraph 19(2)(b) that limited impact research (extractive) is research that is a component of an educational program or a research project that is conducted by an accredited

educational or research institution. The reference to educational program and to accredited educational institution has been removed. New paragraph 19(1)(b) now provides that limited impact research (extractive) is research that is a component of a research project that is conducted by an accredited research institution. The reasons for making this change are that:

- An accredited educational institution can undertake a limited educational program without permission in most zones of the Marine Park.
- If an educational institution has a desire to conduct an educational program and a research institution holds a permission to conduct the relevant educational program, then the educational institution can potentially obtain an authorisation to undertake the program under the research institution's permission.
- If there is a desire by a research institution or educational institution to conduct an educational program that involves take, the institution can apply to the Authority for a permission to do so. Such an application would not attract a fee therefore there is not expected to be any disadvantage to research institutions or educational institutions associated with the change.
- Including educational programs in the definition of limited impact research (extractive) provides scope for educational programs conducted by educational institutions to carry out the same level of take as carried out for a research project by a research institution, which the Authority considers to be inappropriate.
- The new definition maintains the requirement that applies where research is carried out in the scientific research zone from the old paragraph 19(2)(c) however the requirement has been slightly modified to reflect the fact that not all research stations are 'adjacent' to the scientific research zone. The new requirement that applies where research is being carried out in the scientific research zone refers to circumstances where there is a research station 'associated' with the area in which the research is being carried out (rather than 'adjacent' to the area).

A new definition of limited research sampling is provided in subregulation 19(2) for the purposes of regulation 19:

- The new definition includes a new requirement that the taking must be done in accordance with the research guidelines (if any). The reason for this is because it is not desirable for the Principal Regulations themselves to be overly prescriptive about the manner in which the taking must be done as this would be difficult to keep up to date. It is more appropriate to have the detailed requirements in guidelines so that the requirements can be easily updated on account of any changed research practices and/or advances in technology.
- The requirement from the old definition in subregulation 19(3) has been maintained so that the taking must either be done by hand, by the use of

hand-held implement that is not motorised and not pneumatically or hydraulically operated, or by the use of a minor research aid. However, this is now qualified by the new requirement (explained above) that the taking must be done in accordance with the research guidelines (if any). It is intended that the research guidelines will be published by the Authority at the same time that the Regulations commence which will provide additional guidance about the way take is to be carried out.

- The condition from old paragraph 19(3)(b) that explosives or chemicals are not used has not been carried over into the new definition. It is not necessary to explicitly state in the Principal Regulations that explosives or chemicals must not be used because of the requirement that taking can only be done in accordance with paragraph 19(2)(a).
- The limitation in old paragraph 19(3)(j) and (k) on the take of wet sediment and seawater has been carried over into new paragraph 19(b) and (c) however the reference to 'taken or collected' has been changed to only refer to 'taken'. The definition of take that applies to this provision (discussed below), is extremely wide and includes collecting. It is therefore unnecessary to refer to 'or collected'.
- The condition in old paragraph 19(3)(l), that required the relevant laws of the Commonwealth to be complied with, has not been carried over to the new definition. This condition was considered to be unnecessary.
- The condition in old paragraph 19(3)(i) has been maintained in new paragraphs 19(2)(d) and (e). Instead of referring to 'a plant species listed in Table 19-2', reference is made to 'taking of marine plants, as defined in the *Fisheries Act 1994 (Qld)* and the 'taking of organisms of marine taxa of the kingdom Chromista'. This avoids the added complication of the reader having to refer to a table. There were also some anomalies with old Table 19-2 because the common name for each item in the table did not accord with the relevant scientific name for each item. It was therefore not clear from the table whether the limit on take was intended to apply to all species in a particular division, or just to species with the common name specified. Additionally there have been taxonomic changes since the old Table 19-2 was drafted that have meant that in order to maintain coverage over all relevant algae, kingdom Chromista must be explicitly mentioned in new paragraph 19(2)(e).
- The condition in old paragraph 19(3)(i) that the taking must comply with Queensland Fisheries legislation has been maintained in new paragraphs 19(3)(d) and (e) however a new requirement has been included so that the taking must also now comply with Queensland Planning Legislation which was introduced in 2017.
- The conditions in old paragraphs 19(3)(c), (d), (e), (f), (g) and (h) have been maintained by paragraph 19(2)(f) and subregulation 19(3). Instead of referring to old Table 19-1, new subregulation 19(3) lists certain 'no take' species in paragraphs 19(3)(a) and (b), and contains a table which lists the remaining relevant species from old Table 19-1. Some changes have been made in the tables to update common names and species names. Some of the common

names that were previously listed in Table 19-1 were updated to provide a more contemporary and consistent approach and some scientific species names were corrected to reflect taxonomic classification updates and other minor changes. Most common names have been taken from the Codes for Australian Aquatic Biota database, which is consistent with the Australian Standard Fish Names List (Australian Fish Names Standard AS SSA 5300-2007). In order to provide some additional protection to a range of species that are important contributors to reef resilience, or for which the Authority has increased concerns about, adjustments have been made to existing take limits and new species have been included in the table in subregulation 19(3). For example, new limits have been applied to some herbivorous fishes, as they play an important part in keeping algae at an appropriate level on coral reefs and preventing algae from suppressing baby coral establishment. Conversely, the take limit on crown-of-thorns starfish have been loosened to allow researchers larger sample sizes of a common species that causes significant damage to coral during population outbreaks.

- A number of species of sharks and rays have been added to the table in subregulation 19(3) and given a no take limitation in acknowledgement of the fact that these are now protected species pursuant to regulation 29 (see discussion of items 19 and 20 below)
- Subparagraph 19(3)(a)(i) and Note 1 at the end of paragraph 19(3)(b) has been included to emphasise that no animals of a protected species are to be taken. If a species becomes a protected species in the future (for example, because a species becomes a listed marine species pursuant to paragraph 29(1)(b) of the Principal Regulations and paragraph (b) of the definition of protected species in section 3 of the Act), it does not matter if the table in subregulation 19(3) sets a higher limit on take of that species; the species must not be taken.
- A note has been included at the end of subregulation 19(2) to confirm that in the event that more than one condition applies to an activity, the most limiting condition must be 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.
- In the event that limits on the take of a particular species are not covered by subregulation 19(3), subregulation 19(4) will apply as a safety net. Subregulation 19(4) 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 particular research location. This is intended to have the same effect as old paragraph 19(3)(h).

A new definition of minor research aid is provided in subregulation 19(2) for the purposes of regulation 19. The new definition is mostly consistent with the old definition that was in old subregulation 19(4) however there have been some important changes:

- The references in old paragraph 19(4) of the Principal Regulations, shown in column 1 of the table below, have been changed as shown in column 2 of the

table below. The reason for most of the changes is to reduce the unnecessarily prescriptive nature of the definition of minor research aid so as to allow some flexibility in terms of how minor research aids may be used. The intention is that the new research guidelines referred to above will provide detailed requirements for use of minor research aids.

Old wording	New wording
apparatus and equipment authorised under Queensland fisheries legislation for recreational use	Apparatus, or equipment, authorised under Queensland fisheries legislation for recreational use
fish tags	a tag
stakes less than 12 mm in diameter	a stake
data loggers for attachment to marker buoys, bolts or dive weights	a data logger
non-fixed plankton nets	a non-fixed plankton net
water sampling devices that are not motorised nor pneumatically nor hydraulically operated	a water-sampling device
sediment sampling devices that are not motorised nor pneumatically nor hydraulically operated	a sediment-sampling device
sub-surface marker buoys less than 100 mm in diameter	a sub-surface marker buoy
surface marker buoys less than 200 mm in diameter	a surface marker buoy
non-fixed transect tapes and quadrats, but only if such tapes and quadrats are attended at all times	a non-fixed transect tape or quadrat

- The requirement in old paragraphs 19(4)(f) and (g) that water sampling and sediment sampling devices not be motorised nor pneumatically nor hydraulically operated has been removed. Although generally speaking these types of devices should not be motorised, or pneumatically nor hydraulically operated, there are some circumstances under which this may be allowed. For example, devices that are powered by a small number of sealed batteries (of a reasonably small size) and/or have small electrical or motorised parts such as timers, gears and small water pumps with low water flow rates may be allowed. So that the Authority need not be overly prescriptive about the types of things which may be allowed, the Authority has identified in subparagraphs (a)(i) – (vi) the minor research aids which may potentially be powered in limited circumstances, and has included a new overarching requirement in paragraph (a) of the definition to require these types of minor research aids to not be powered in a way that poses a threat to the environment. The intention is for the research guidelines, that explain the types of devices that the Authority considers would be allowable under this provision, will be published by the Authority at the same time that the Regulations commence.
- New minor research aids, being passive acoustic monitoring or survey equipment, equipment for conducting an underwater video survey, and clove in oil solution have been included in subparagraph (a)(v), subparagraph (a)(vi) and paragraph (h) of the definition respectively. These new additions are aids which the Authority considers to be acceptable for conducting limited impact research (extractive).
- Paragraph (i) of the definition has been included to allow equipment for fastening anything described in another paragraph of the definition. This is intended to allow things such as screws, bolts, and tie wire, and will be subject to the research guidelines which will explain the types of equipment allowed in more detail.

A new definition of research guidelines has been included in regulation 19, which provides that 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. It is the Authority's intention to make and publish research guidelines at www.gbrmpa.gov.au upon commencement of the Regulations.

The definition of location that was contained in old subregulation 19(1) has been maintained in new subregulation 19(2), however the new definition refers to a research location, in order to avoid confusion with the use of the term location elsewhere in the Principal Regulations. The new definition is effectively the same except it refers to an area of up to 1,000 hectares, instead of 10 square kilometres, for consistency with the *National Measurement Act 1960* and the *National Measurement Regulations 1999*, which provide for hectare as the Australian legal measurement unit for area.

A definition of take has been included in subregulation 19(2) to clarify that take has the meaning given in the Zoning Plan, which states that taking an animal, plant or marine product includes (a) removing, gathering, catching, capturing, killing,

destroying, dredging for, raising, carrying away, bringing ashore, interfering with and obtaining (by other means) the animal, plant or marine product; and (b) attempting to do anything mentioned in (a). Subsection 66(13) of the Act authorises the Regulations to adopt the Zoning Plan as in force from time to time, even though it is not a disallowable legislative instrument as defined in the *Legislation Act 2003*.

Regulation 20 Limited impact research (non-extractive) –definition for Zoning Plan

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

There is no longer a definition of research project contained in regulation 20 as this has been relocated to the definitions in subregulation 3(1) to avoid the need to duplicate the definition in regulation 20 (see discussion of item 1 above).

The new definition of limited impact research (non-extractive) provided in subregulation 20(1) is similar to the definition that was in old subregulation 20(2) however there are some important differences. Old paragraph 20(2)(a) provided that limited impact research (non-extractive) must include either (i) visual surveys (other than of cetaceans); or (ii) research that does not involve an activity that would, if it were not part of a research activity, require permission and (iii) social research that does not involve the conduct of archaeological excavations. New paragraph 20(1)(a) replaces old paragraph 20(2)(a) to reflect the current policy intent, which is as follows:

- Limited impact research (non-extractive) must never involve an activity that would require permission if it were not part of a research activity. This is now reflected in subparagraph 20(1)(a)(i). The wording of the old paragraph 20(2)(a) suggested that limited impact research (non-extractive) could involve visual surveys that would require a permission if they were not part of a research activity.
- Limited impact research (non-extractive) must never involve physical disturbance of the heritage value of a place (including physical disturbance of an artefact that is part of that value), as stated in subparagraph 20(1)(a)(ii). This new subparagraph replaces old subparagraph 20(2)(a)(iii), which was worded in a way which suggested limited impact research (non-extractive) could involve visual surveys that cause such physical disturbance. The new wording no longer refers to social research, as the type of research is not relevant. Rather, what is relevant is whether any physical disturbance is involved. The new wording no longer refers to archaeological excavations as this term is considered to be too narrow. Rather, any type of physical disturbance of the heritage value of a place should not be allowed, and this would include archaeological excavations.
- In all cases limited impact research (non-extractive) must not involve the take of a plant, animal or marine product, except in the circumstances described in old subregulation 20(3), where the use of transect tapes or quadrats in accordance with that subregulation could result in interference with a plant, animal or marine product (and would therefore fall within the definition of take). This is now reflected in subparagraph 20(1)(a)(iii).

- Limited impact research (non-extractive) need not expressly exclude visual surveys of cetaceans. The old subregulation 20(1) was drafted prior to the inclusion of Part 4A in the Principal Regulations, which is now considered by the Authority to provide adequate protection to cetaceans. Visual observations of cetaceans by accredited educational or research institutions may now be acceptable as part of limited impact research (non-extractive) if conducted in a low impact manner that is in accordance with Part 4A of the Principal Regulations.
- The new definition amends the requirement under old paragraph 20(2)(b) that limited impact research (non-extractive) is research that is a component of an educational program or a research project that is conducted by an accredited educational or research institution. The reference to educational program and to accredited educational institution has been removed. New paragraph 20(1)(b) now provides that limited impact research (non-extractive) is research that is a component of a research project that is conducted by an accredited research institution. The reasons for making this change are that:
 - An accredited educational institution can undertake a limited educational program without permission in most zones of the Marine Park.
 - An accredited research institution can conduct limited educational program under accreditation. This does not involve take.

The new definition of limited impact research (non-extractive) maintains the requirement that applies where research is carried out in the scientific research zone from the old paragraph 20(2)(c) however the requirement has been slightly modified to reflect the fact that not all research stations are 'adjacent' to the scientific research zone. The new requirement that applies where research is being carried out in the scientific research zone refers to circumstances where there is a research station 'associated' with the area in which the research is being carried out (rather than 'adjacent' to the area).

A definition of take has been included in subregulation 20(2) to clarify that take has the meaning given in the Zoning Plan, which states that taking an animal, plant or marine product includes (a) removing, gathering, catching, capturing, killing, destroying, dredging for, raising, carrying away, bringing ashore, interfering with and obtaining (by other means) the animal, plant or marine product; and (b) attempting to do anything mentioned in (a). Subsection 66(13) of the Act authorises the Regulations to adopt the Zoning Plan as in force from time to time, even though it is not a disallowable legislative instrument as defined in the *Legislation Act 2003*.

Items [12] – [18] Regulation 29 (table items 2 – 6, 8 and 10, column headed “Common name”)

Items 12 – 18 make updates to the common names and the spelling of one species name for species listed in the table in regulation 29. Some of the common names that were previously listed in the table were outdated, and it was necessary to update these to reflect a more contemporary and consistent approach. Most common names have been taken from the Codes for Australian Aquatic Biota database, which is

consistent with the Australian Standard Fish Names List (Australian Fish Names Standard AS SSA 5300-2007).

Items [19] and [20] Regulation 29 (after table items 10 and 11A)

Items 19 and 20 insert a number of species of sharks and rays into the table in regulation 29 which have recently been listed as listed migratory species within the meaning of the EPBC Act. These species already fall within the definition of protected species under paragraph 29(1)(b) of the Principal Regulations (and under subsection 3(1) of the Act) therefore including these species in the table does not change the current operation of the Principal Regulations and is merely for ease of interpretation.

Item [21] At the end of regulation 29

Item 21 inserts a note at the end of regulation 29 to prevent readers from coming to the conclusion that if a species is not listed in the table in regulation 29 then it is not a protected species. The note clarifies that there are other provisions in regulation 29 which may mean that a species is a protected species even if it is not listed in the table.

Item [22] Regulation 88A (heading)

Item 22 repeals the heading to regulation 88A, application for permission, and substitutes it with a new heading, how applications for permissions must be made. The new heading reflects the fact that if an application is not made in accordance with regulation 88A, then it will not be a properly made application under new regulation 88AA (see discussion of item 25 below).

Additionally, item 22 inserts a new subdivision heading, so that regulation 88A will sit in a separate subdivision entitled Subdivision 2A.2.1 –Making applications for permissions.

Item [23] Subregulation 88A(3) (note)

Item 23 repeals the note at the end of subregulation 88A(3), which previously stated that under paragraph 131(1)(a), the Authority must, as soon as practicable after receiving an application, notify an applicant of the fee payable for the application. This statement is no longer correct as the timing for notifying an applicant about fees under regulation 131 has been amended (see discussion of item 75 below).

Item [24] Subregulations 88A(4), (5) and (6)

Item 24 repeals subregulations 88A(4), (5) and (6). These subregulations dealt with circumstances where an application is not a properly made application, which is now dealt with under regulation 88AA (see discussion of item 25 below).

Item [25] After regulation 88A

Item 25 inserts a new subdivision entitled Subdivision 2A.22 –Deciding whether applications are properly made. Item 25 also inserts regulation 88AA, which is the only regulation that falls within Subdivision 2A.22.

Decision

Under subregulation 88AA(1) the Authority is required, after receiving an application for a permission, to decide whether the application was made in accordance with regulation 88A. In other words, the Authority must decide whether the application is a properly made application. Under the old subregulation 88A(4) there was no upfront requirement for the Authority to make this type of decision and potential existed for the Authority to make a decision that an application had not been properly made at any time during the assessment process. Because the Regulations introduce new assessment approaches and a requirement for the Authority to decide on which assessment approach applies to an application (see discussion of item 31 below), it is necessary to give closure on the issue of whether an application has been properly made before the Authority goes on to decide about the applicable assessment approach. There is no point in the Authority being required to decide on an assessment approach in circumstances where an application has not been properly made.

Notice of decision

Under subregulation 88AA(2), the Authority must give notice of its decision to the applicant. If the application was made under paragraph 88A(1)(a) the notice must be in writing. It may be appropriate in some circumstances, where an application has been made under paragraph 88(1)(b), for the Authority to give a verbal notice to an applicant under subregulation 88AA(2). For example, for an urgent application made by telephone in accordance with an approval from the Authority under paragraph 88A(1)(b), the Authority may decide that it is appropriate to give the applicant verbal notice during the telephone call that the application was made in accordance with regulation 88A.

Decision that application was not made in accordance with regulation 88A

Under subregulation 88AA(3), if the Authority decides that the application was not made in accordance with regulation 88A then generally the Authority must not deal further with the application. This consequence should not prejudice an applicant because no fees will have been paid by an applicant at this stage and the applicant will have the ability to rectify any defects and submit a new application to the Authority.

The only exception to the general rule that the Authority must not deal further with an application that is not properly made is in the case of a continuation application. This exception is provided for in paragraphs 88AA(3)(a) and (b). A continuation application is defined in subregulation 88AA(5) as an application for a permission that is of the same kind and relates to the same conduct as an earlier permission held by the applicant made in circumstances where the original permission has not yet ceased to be in force (or made in circumstances where even though the original permission had ceased to be in force the Authority decided under subregulation 88H(2) to treat the application as having been made before the original permission expired). The reason for this exception in paragraphs 88AA(3)(a) and (b) is to provide an applicant with the opportunity to rectify the defects in the continuation application so that the applicant's old permission can continue in force pursuant to regulation 88ZC (see also the discussion at item 41 of the consequential amendments made to regulation 88ZC).

Pursuant to paragraph 88AA(3)(b) an applicant in these circumstances will have 30 business days to rectify a defective application. This exception affords procedural fairness to applicants who may be adversely affected by a decision that an application has not been properly made, because the decision will mean that their old permission will not be able to continue to remain in force pursuant to regulation 88ZC.

Under subregulation 88AA(4), there are specific matters which must be stated in a notice of a decision that an application was not made in accordance with regulation 88A. Of particular importance, the notice must indicate generally the matters that caused the application not to be made in accordance with regulation 88A. 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 2A.2.3

Item 25 inserts a new subdivision after regulation 88AA entitled Subdivision 2A.2.3 – Withdrawal of applications. Regulations 88B – 88C fall within this subdivision.

Item [26] Regulations 88C and 88D

Item 26 repeals and substitutes regulations 88C and 88D.

Old regulation 88C set out the circumstances under which an EPBC referral deemed application is withdrawn. The old regulation was silent on a number of matters which are now more comprehensively dealt with in new regulation 88C.

Where a referral is not accepted under section 74A(1) of the EPBC Act (because the Minister is satisfied the action that is the subject of the referral is a component of a larger proposed action) the opening paragraph of subregulation 88C(1) in conjunction with item 1 of the table in that subregulation will mean that the application under the Principal Regulations will be taken to have been withdrawn at the time of the Minister making the decision under section 74A(1) of the EPBC Act.

Where the Minister decides that a referral is clearly unacceptable under section 74B of the EPBC Act (because it is clear that the action would have unacceptable impacts on a matter of national environmental significance), the opening paragraph of subregulation 88C(1) in conjunction with item 2 of the table in that subregulation will mean that the application under the Principal Regulations will be taken to have been withdrawn at the time of the Minister making the decision under section 74B of the EPBC Act. This is intended to have a similar effect to old subregulation 88C(3) however the new provision is triggered as soon as a decision is made that an action is clearly unacceptable, rather than after there has been a reconsideration of that decision. In the event that the Minister later reconsiders the decision and decides under paragraph 74D(4)(b) of the EPBC Act to reinstate the referral, subregulation 88C(2) in conjunction with item 1 of the table in that subregulation will mean that the application under the Principal Regulations will also be reinstated upon the making of the decision on reconsideration by the Minister. This is intended to have the same effect as old subregulation 88C(4).

Where the Minister decides to refuse to approve the taking of the action proposed by the referral pursuant to section 133 of the EPBC Act, the opening paragraph of subregulation 88C(1) in conjunction with item 3 of the table in that subregulation will mean that the application under the Principal Regulations will be taken to have been withdrawn at the time of the Minister making the decision under section 133 of the EPBC Act. This is intended to have the same effect as the old subregulation 88C(5).

Where the Minister accepts a request to vary a referral pursuant to section 156A of the EPBC Act in a manner which results in the varied referral no longer proposing use of or entry into the Marine Park that would require a permission under the Principal Regulations, the opening paragraph of subregulation 88C(1) in conjunction with item 4 of the table in that subregulation will mean that the application under the Principal Regulations will be taken to have been withdrawn at the time of the Minister making the decision under section 156A of the EPBC Act. However, if the Minister subsequently decides not to accept the varied proposal (and the original proposal therefore still stands), subregulation 88C(2) in conjunction with item 2 of the table in that subregulation will mean that the application under the Principal Regulations will be reinstated upon the making of the decision by the Minister not to accept the varied proposal.

Where the Minister declares in writing pursuant to section 155 of the EPBC Act that Chapter 4 of that Act no longer applies to an action (because the proponent failed to comply with a request to do something) resulting in the application lapsing, the opening paragraph of subregulation 88C(1) in conjunction with item 5 of the table in that subregulation will mean that the application under the Principal Regulations will be taken to have been withdrawn when the chapter ceases to apply (which will be the date specified in the declaration given by the Minister).

Where a proponent decides to withdraw a referral pursuant to section 170C of the EPBC Act, the opening paragraph of subregulation 88C(1) in conjunction with item 6 of the table in that subregulation will mean that the application under the Principal Regulations will be taken to have been withdrawn at the time of the referral being withdrawn (which would be when the proponent provides written notice to the Minister that the referral is withdrawn). This is intended to have the same effect as the old subregulation 88C(6).

Subregulation 88C(3) has been included to ensure that an application is not inadvertently reinstated under subregulation 88C(2) in circumstances where the application has been taken to be withdrawn for reasons not related to the EPBC Act under regulations 88PP (for failure to advertise an application for public comment) or 88PQ (for failure to comply with a request by the Authority for action on an assessment process).

Item [27] Before regulation 88E

Item 27 inserts a new subdivision before regulation 88E entitled Subdivision 2A.2.4 – Additional information. The only regulation which falls within this subdivision is regulation 88E, which allows the Authority to request additional information from an applicant in certain circumstances.

Item [28] Subregulation 88E(1)

Item 28 amends subregulation 88E(1) to broaden the application of the provision so that the Authority may request further information from an applicant to make any decision under Part 2A in relation to a permission, including a decision on whether an application is properly made and a decision on the applicable assessment approach. The old wording of subregulation 88E(1) only allowed the Authority to request further information from an applicant for the purposes of assessing the application for the permission.

Item [29] Paragraph 88E(2)(b)

Item 29 amends paragraph 88E(2)(b) to omit a reference to the *Integrated Planning Act 1997* (Qld), which has been repealed. Item 21 also inserts a new reference to the Queensland planning legislation, which effectively replaces the *Integrated Planning Act 1997* (Qld). Queensland planning legislation is defined in subregulation 3(1) (refer to discussion of item 1 above).

Item [30] At the end of regulation 88E

Item 30 adds a new subregulation 88E(4) at the end of regulation 88E. The effect of the new subregulation is that the Authority cannot request further information from an applicant if a decision has been made to assess the application using the routine assessment approach (unless that decision has been revoked and substituted with a new decision to apply a different assessment approach). The reason for this is because the routine assessment approach is intended to be applied only to applications which do not require any further information in order for the Authority to assess the application. The absence of the ability for the Authority to request further information is what sets the routine assessment approach apart from other types of assessment approaches.

Item [31] After Division 2A.3 of Part 2A

Item 31 inserts a new division after Division 2A.3 of Part 2A entitled Division 2A.3A – Assessment of impacts of proposed conduct. This new division deals with the steps that must be taken to assess an application once the Authority has made a decision that an application is a properly made application.

Subdivision 2A.3A.1 –Deciding on approach for assessment

The first subdivision in Division 2A.3A sets out a procedure for the Authority to decide on the appropriate approach for assessing a properly made application.

88PA Application of this subdivision

Regulation 88PA provides that subdivision 2A.3A.1 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.

88PB Authority must decide on approach for assessment

Subregulation 88PB(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. While these assessment approaches are not intended to be the same as the assessment approaches provided for under the EPBC Act, it is intended that the new assessment approaches will harmonise with the EPBC Act approaches. Further information about these assessment approaches is intended to be provided in guidelines and policies made publicly available on the Authority's website at www.gbrmpa.gov.au upon commencement of the Regulations.

It is intended that introduction of the routine assessment approach, in conjunction with new regulation 205A (discussed below in relation to item 88) will allow 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 intended to be 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 regulation 88E when conducting a tailored assessment.

Detailed procedural steps apply under the Principal Regulations to assessment by public information package, public environment report and environmental impact statement under subdivisions 2.A.3A.2 – 2A.3A.4 (see discussion of those subdivisions below).

Subregulation 88PB(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.

88PC Considerations in deciding on approach for assessment

Regulation 88PC sets out the matters that must be taken into account by the Authority in deciding on the applicable assessment approach.

Under paragraph 88PC(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 would be done once the assessment is underway. The information would include:

- information provided to the Authority by the applicant;

- if the application is taken to be an application because of section 37AB of the Act, information provided by the Minister or the Department of the Environment and Energy; and
- any other information available to the Authority relating to the relevant impacts of the proposed conduct.

Under subparagraph 88PC(b) the Authority must consider any limitations set out in the Principal Regulations which are likely to increase the complexity of the assessment required, such as the matters listed in regulations 88RA – 88W. For example, if the application is for a permission to take protected species then it may not be clear cut for the Authority to determine whether the criteria in regulation 88S is satisfied, which would mean something more than just a routine assessment is required.

Under paragraph 88PC(c) the Authority must consider any relevant policies published by the Authority under subsection 7(4) of the Act. The Authority intends to publish a range of policy documents on its website at www.gbrmpa.gov.au upon commencement of the Regulations which will include guidance on determining the appropriate assessment approach.

Under paragraph 88PC(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 intends to conduct assessments of applications that attract an assessment under the EPBC Act jointly with the Minister and the Department of the Environment and Energy. In light of this it would be extremely rare for the Authority to decide to adopt an assessment approach that does not harmonise with the approach being adopted under the EPBC Act.

Subdivision 2A.3A.2 – Assessment by public information package

The second subdivision in Division 2A.3A sets out the procedural steps that must be followed for an assessment by way of public information package.

Regulation 88PD Application of this Subdivision

Regulation 88PD confirms that subdivision 2A.3A.2 only applies in circumstances where the Authority has decided that assessment by public information package applies to an application for a permission. 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.

Regulation 88PE Publication of information and advertisement

Subregulation 88PE(1) requires the Authority to give an applicant written terms of reference (the PIP Terms). At a minimum, the PIP Terms must require the applicant to do the things set out in paragraph 88PE(a), the first sentence in subregulation 88PE(2), and subregulation 88PE(3). This is intended to effectively mirror the requirements set out in old regulation 88D, with the only significant difference being that the public comment period specified in the PIP Terms must not be less than 20

business days (rather than 'not less than 30 days' as set out in old subparagraph 88D(1)(b)). The reason for this change is to harmonise with the preliminary documentation assessment process under the EPBC Act.

Additionally, the Authority may decide to include in the PIP Terms other steps that must be taken by the applicant to seek comments about the application (pursuant to paragraph 88PE(b)) and/or require the publication of the public advertisement in other ways (pursuant to the second sentence in subregulation 88PE(2)). 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 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.

Subregulation 88PE(4) states that the Authority must publish the advertisement on its website. This is intended to mirror old subregulation 88D(3).

Regulation 88PF Dealing with response to publication of information and advertisement

The purpose of regulation 88PF is to clarify what the applicant must do after the public advertisement process is complete. Subregulation 88PF(1) confirms that the Authority can provide for this in the PIP Terms. Otherwise, the default position under subregulation 88PE(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.

Regulation 88PG Applicant to act in accordance with PIP terms

Regulation 88PG 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. This can occur under regulation 88PP (if the applicant does not publish the advertisement within the period specified in the PIP Terms), or under regulation 88PQ 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 regulations 88PP and 88PQ below.

Subdivision 2A.3A.3 –Assessment by public environment report

The third subdivision in Division 2A.3A sets out the procedural steps that must be followed for an assessment by way of public environment report.

Regulation 88PH Application of this subdivision

Regulation 88PH confirms that subdivision 2A.3A.3 only applies in circumstances where the Authority has decided that assessment by public environment report applies to an application for a permission. 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.

Regulation 88PI Terms of reference for public environment report

The requirements set out in regulation 88PI are generally based on the relevant provisions of the EPBC Act that relate to terms of reference for public environment reports, with the intention being to provide an equivalent process under the Principal Regulations that is capable of operating in harmony with the EPBC Act in cases where both pieces of legislation apply to a proposed action.

Subregulation 88PI(1) requires the Authority to give an applicant written terms of reference (the PER Terms). At a minimum, under paragraphs 88PI(a) – (c) the PER Terms must be for preparing a draft public environment report about the relevant impacts of the proposed conduct, obtaining the Authority's approval to publish the draft report and the publishing and advertisement of the draft report. The public comment period specified in the PER Terms must not be less than 20 business days, which is intended to harmonise with the public environment report assessment process under the EPBC Act.

Additionally, the Authority may decide to include in the PER Terms other steps that must be taken by the applicant to seek comments about the application (pursuant to paragraph 88PI(c)) and/or require the publication of the public advertisement in other ways (pursuant to the second sentence in subregulation 88PI(4)).

Under paragraphs 88PI(1)(e) – (f) the PER Terms must address how public comments are to be dealt with and include certain requirements for finalising and publishing the report.

Under subregulation 88PI(2) the PER Terms must set out requirements for the content and presentation of the draft report. This subparagraph is not intended to require the PER Terms to be highly prescriptive about the format of the report however it should allow the PER Terms to ensure that the format of the report meets an adequate standard.

Subregulation 88PI(3) imposes a requirement on the Authority in preparing the PER Terms 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 about whether or not to grant the permission sought pursuant to regulation 88X.

The first paragraph of subregulation 88PI(4) states that the PER Terms 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. This is intended to mirror old paragraph 88D(2)(b).

Subregulation 88PI(5) provides that the applicant must act in accordance with the PER Terms. The likely consequences of failing to act in accordance with the PER Terms is that the application for the permission will be taken to have been withdrawn. This can occur under regulation 88PP (if the applicant does not publish the advertisement within the period specified in the PER Terms), or under regulation 88PQ if the applicant has delayed in complying with the PER 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 regulations 88PP and 88PQ below.

Regulation 88PJ Publication of PER advertisement by Authority

Subregulation 88PJ requires the applicant to give the Authority a copy of the PER advertisement before the applicant publishes it. This is intended to have a similar effect to old paragraph 88D(2)(a).

Subregulation 88PJ(2) states that the Authority must publish the advertisement on its website. This is intended to mirror old subregulation 88D(3).

Regulation 88PK Alternative procedure for application covered by section 37AB of the Act

Regulation 88PK provides that where an application is an EPBC referral deemed application and PER guidelines under the EPBC Act, the Authority may decide to adopt those guidelines for the application instead of issuing PER Terms. 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 PER guidelines under the EPBC Act and therefore those guidelines are likely to address matters that are relevant to the application under the Principal Regulations.

Irrespective of whether or not PER Guidelines under the EPBC Act are adopted, the public environment report prepared under the Principal Regulations 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. 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 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.

Subdivision 2A.3A.4 – Assessment by environmental impact statement

The third subdivision in Division 2A.3A sets out the procedural steps that must be followed for an assessment by way of environmental impact statement.

Regulation 88PL Application of this Subdivision

Regulation 88PL confirms that subdivision 2A.3A.3 only applies in circumstances where the Authority has decided that assessment by environmental impact statement applies to an application for a permission. 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.

Regulations 88PM – 88PO

Regulations 88PM – 88PO are identical to regulations 88PI – 88PK except that they apply to assessment by environmental impact statement instead of assessment by

public environment report. The discussions of regulations 88PI – 88PK above therefore apply to regulations 88PM – 88PO.

It is intended that although the assessment approaches for public environment report and environmental impact statement are identical under the Regulations, applicants can expect the two approaches to differ in terms of the rigour of assessment that will be determined by PER Terms or EIS Terms. Generally the level of complexity and risk of proposed conduct can be expected to be higher in cases where assessment by way of environmental impact statement is required. Accordingly, the Authority intends that EIS Terms will require a higher degree of public consultation to be carried out by an applicant, and the environmental impact statement prepared by an applicant to be more complex and detailed than a public environment report, including a more detailed consideration of feasible and prudent alternatives to the proposed conduct.

Subdivision 2A.3A.5 – Application treated as withdrawn for delay in following assessment process

The fourth subdivision in Division 2A.3A sets out the circumstances under which an application may be taken to have been withdrawn or declared to have been withdrawn for failure to follow the requirements of subdivisions 2A.3A.2 – 2A.3A.4.

Regulation 88PP Withdrawal of applications for failure to advertise for public comment

Regulation 88PP provides that an application is taken to have been withdrawn if an applicant is required under Division 2A.3A to publish an advertisement inviting public comment and does not do so within the required timeframe. This regulation is intended to have the same effect as old subregulation 88D(4).

Regulation 88PQ Authority may require action on assessment process and declare application withdrawn for failure to comply

Regulation 88PQ is generally based on section 155 of the EPBC Act.

Under Subdivisions 2A.3A.2 – 2A.3A.4 there will be 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 (depending on the PER Terms or EIS Terms) 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. While it may not be appropriate to stipulate a timeframe for taking such steps in PER Terms or EIS Terms, 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, regulation 88PQ is intended to apply.

Under subregulation 88PQ(1), regulation 88PQ 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 2A.3A.2, 2A.3A.3 or 2A.3A.4) within a period that the Authority believes is reasonable.

What is reasonable will depend on the circumstances. Subparagraph 88PQ(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 2A.3A.2 (Assessment by public information package), Subdivision 2A.3A.3 (Assessment by public environment report) or Subdivision 2A.3A.4 (Assessment by environmental impact statement).

If the proposed conduct is 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's intention is to provide further guidance to applicants about what is reasonable in policy documents that will be published on the Authority's website www.gbrmpa.gov.au upon commencement of the Regulations.

If regulation 88PQ applies, subregulation 88PQ(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 three months. If the applicant does not then subsequently finalise and publish the report within three months, or satisfy the Authority that the assessment should continue notwithstanding the fact that the report has not been finalised and published within three months, 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 three months, such as evidence of circumstances that are beyond the applicant's control. The Authority's intention is to provide further guidance to applicants about circumstances which may satisfy the Authority that an application should continue in policy documents that will be published on the Authority's website www.gbrmpa.gov.au upon commencement of the Regulations.

Subregulation 88PQ(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).

Subregulation 88PQ(4) confirms that the declaration has effect for the purposes of Part 2A according to its terms and subregulation 88PQ(5) confirms that the Authority is required to give a copy of the declaration to the applicant. Unlike subregulation

155(4)(b) of the EPBC Act, there is no requirement for the declaration to be published.

Item [32] Regulations 88Q and 88R

Item 32 repeals old regulations 88Q (Consideration of applications –mandatory considerations) and 88R (Consideration of applications –discretionary considerations) and substitutes them with one set of mandatory considerations in new regulation 88Q that the Authority must consider in deciding whether to grant a permission on an application, and whether or not to impose and conditions on the permission. The new regulation is substantially the same as old regulations 88Q and 88R however some matters are now more explicitly required to be considered. Some duplication has been removed and the criteria have been rearranged to a more logical sequence that leads to a decision.

In its 2015 audit, the Australian National Audit Office (ANAO) found that delegates of the Authority often applied the old mandatory and discretionary criteria inappropriately by failing to provide reasons when a particular discretionary criterion was deemed by a delegate not to be relevant. Making all criteria mandatory is intended to rectify this problem by eliminating any doubt about whether a particular criterion needs to be considered.

The criteria have been rearranged because attempting to address each criterion in the order in which it appeared, and the sequential order of the old criteria, is not a logical sequence to follow.

To the extent that regulation 88Q may involve applying, adopting or incorporating an instrument or writing so as to attract section 14 of the *Legislation Act 2003*, subsection 66(13) of the Act authorises the Regulations to adopt the following as in force from time to time:

- a) laws of Queensland;
- b) any Commonwealth laws that are not Acts or disallowable legislative instruments as defined in the *Legislation Act 2003*; and
- c) any other instrument or writing as in force from time to time.

Paragraph 88Q(a) – objective of the zoning plan

Paragraph 88Q(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. This is intended to have the same effect as old paragraph 88Q(c).

Paragraph 88Q(b) – spatially explicit components of legislative instruments made under the Act

Paragraph 88Q(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. This is intended to capture things such as special management areas and whale protection areas which may be applicable

under the Principal Regulations, and restrictions which may be relevant under plans of management made pursuant to Part VB of the Act.

Paragraph 88Q(c) – suitable person requirements

Paragraph 88Q(c) 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. It is intended that paragraph 88Q(c) have a similar effect to old paragraph 88R(j).

One important change is that the Authority must consider the applicant's capacity to engage in and manage the proposed conduct to the satisfaction of the Authority under subparagraph 88R(c)(i). This essentially changes old paragraph 88R(e) into a suitability matter. The reason for this change is that capacity tends to be a matter relating to the applicant rather than to the proposed conduct. The prequalification under old paragraph 88R(e) that only made the criterion applicable to 'an undeveloped project the cost of which will be large' has been removed because there will often be circumstances where the applicant's capacity to manage certain conduct will be relevant even where the conduct proposed does not relate to a major project. Conversely, an applicant's ability to fund a major project may be feasible however their ability to then manage the impacts once the conduct is underway may be minimal.

The other main change is the addition of subparagraph 88Q(c)(vi) which requires the Authority to consider 'any other relevant matter'. The purpose of including this provision is to give the Authority greater certainty that it can consider other matters such as evidence that an applicant has previously engaged in unsafe practices relevant to the proposed conduct. Although matters such as this may have already been able to be considered under old paragraph 88Q(f) (any other matters relevant to the orderly and proper management of the Marine Park) or old paragraph 88R(k) (any other matters relevant to achieving the objects of the Act), the Authority would prefer to have an explicit ability to consider other matters related to suitability under subparagraph 88Q(c)(vi).

Paragraph 88Q(d) – duty to prevent or minimise harm

Paragraph 88Q(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. This is intended to have the same effect as old paragraph 88R(a).

Paragraph 88Q(e) – feasible and prudent alternatives

The addition of this new paragraph 88(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. For example, when considering a proposal to carry out capital dredging in the Marine Park as part of a new port development, the Authority may consider whether there are feasible and prudent alternatives to dredging, such as a

long jetty extending out into deeper waters, and perhaps whether there is a complete alternative to the proposed port development such as use of an existing port.

Paragraph 88Q(f) – written comments received

Paragraph 88Q(f) requires the Authority to consider any written comments received under Division 2A.3A in connection to the application. This is intended to have substantially the same effect as old paragraph 88Q(e).

Paragraph 88Q(g) – relevant impacts

Paragraph 88Q(g) requires the Authority to consider the relevant impacts of the proposed conduct. This is intended to have the same effect as old paragraphs 88Q(a), 88R(b) and 88R(c).

It is not necessary to replicate the wording of old paragraph 88Q(a) to the extent it referred to the impacts on the social, cultural and heritage values of the Marine Park, or a part of the Marine Park, because this is now covered in the new definition of relevant impacts.

It is not necessary to replicate the wording of old paragraph 88R(b) because the new definition of relevant impacts captures impacts on public appreciation, understanding and enjoyment of the Marine Park.

It is not necessary to replicate the wording of old paragraph 88R(c) because the new definition of relevant impacts includes, by referring to cumulative impacts, impacts of the conduct proposed to be permitted under the permission in the context of other conduct in the relevant area or nearby areas, or in the Marine Park, that is being undertaken, is planned, is in progress, or is reasonably foreseeable at the time of the Authority's consideration of the application.

Paragraph 88Q(h) – options for avoiding, mitigating and offsetting

Paragraph 88Q(h) requires the Authority to consider options for avoiding, mitigating and offsetting the relevant impacts of the proposed conduct. This is a hybrid of old paragraph 88Q(b), which referred to options for monitoring, managing and mitigating. Old paragraph 88Q(b) has now been split into paragraphs 88Q(h) and (i), and a new requirement to consider avoiding and offsetting has been added to paragraph 88Q(h).

Avoiding, mitigating and offsetting have been listed in paragraph 88Q(h) in order of importance. When considering relevant impacts of proposed conduct the avoidance of impacts is most important. 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.

It was considered appropriate to split consideration of avoiding, mitigating and offsetting from consideration of monitoring and managing because the first category is about stopping or decreasing potential relevant impacts whereas the second category is more about accepting that there will be some relevant impacts and coming up with options to keep watch over such relevant impacts and take additional management actions if unexpected relevant impacts occur. It is important for the

Authority to consider the first category separately to reduce the risk of skipping straight to the second category without first properly considering avoidance and mitigation options.

Paragraph 88Q(i) – options for monitoring and managing

Paragraph 88Q(i) requires the Authority to consider options for monitoring and managing the relevant impacts of the proposed conduct. This paragraph is intended to have the same effect as old paragraph 88Q(b) except, as discussed above, the reference to mitigating that was in the old paragraph has been moved into new paragraph 88Q(h).

Paragraph 88Q(j) – laws of the Commonwealth and Queensland

Paragraph 88Q(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).

Paragraph 88Q(k) – approval under the EPBC Act

If the proposed conduct requires an approval or permit under the EPBC Act, paragraph 88Q(k) requires the Authority to consider whether the approval or permit 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 or permit. Paragraph 88Q(k) is identical to old paragraph 88Q(d).

Paragraph 88Q(l) – approval under a law of Queensland

If the proposed conduct also requires an approval or a permission (however described) under a law of Queensland, paragraph 88Q(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 88Q(l) is identical to old paragraph 88R(f).

Paragraph 88Q(m) – plans and conservation advice under the EPBC Act

Paragraph 88Q(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 88Q(n) – international agreements

Paragraph 88Q(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. This is intended to have the same effect as old paragraph 88R(g).

Paragraph 88Q(o) – policies

Paragraph 88Q(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. This is intended to have a similar effect to old paragraph 88R(d).

The new paragraph 88Q(o) has been expanded so that instead of only capturing policies about the management of the Marine Park, policies about the environment, biodiversity or heritage values of the Marine Park are also captured. The reason for expanding the criterion in this way is because 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.

Additionally, to achieve equality with the EPBC Act, the Authority made a commitment under *Great Barrier Reef Region Strategic Assessment: Program Report* to consider other policies adopted by the Department responsible for the administration of the EPBC Act (currently the Department of the Environment and Energy) where these documents are about or relevant to the management of the Marine Park or its values. Paragraph 88Q(o) includes a reference to these policies in order to meet this commitment.

Paragraph 88Q(p) – any other matters

Paragraph 88Q(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. This new paragraph is intended to merge old paragraphs 88Q(f) and 88R(k) into one mandatory consideration.

Item [33] Subregulations 88S(3), 88T(2), 88U(4), 88V(6) and 88W(2)

Item 33 omits the words 'or may consider under regulation 88R' from subregulations 88S(3), 88T(2), 88U(4), 88V(6) and 88W(2). This amendment is needed as a consequence of the repeal of regulation 88R (see discussion of item 32 above).

Items [34] and [35] Regulation 88X

Items 34 and 35 reword regulation 88X to rectify a minor clerical error. Instead of 'a person' at the start of paragraph 88X(a), it is more appropriate to refer to 'a person' in the opening sentence of regulation 88X, as the reference attaches to both paragraphs 88X(a) and (b).

Item [36] At the end of paragraph 88X(b)

Item 36 inserts additional wording at the end of paragraph 88X(b) to make it clear that the applicant must comply with the requirements of Subdivisions 2A.3A.2, 2A.3A.3 or 2A.3A.4 before the Authority can be required to make a decision under

regulation 88X to grant or refuse an application for a permission. This effectively means that an applicant must comply with the applicable PIP Terms, PER Terms, PER guidelines, EIS Terms or EIS Guidelines pursuant to regulation 88PG, subregulation 88PI(5), paragraph 88PK(3)(b), subregulation 88PM(5) or paragraph 88PO(3)(b).

It was considered unnecessary to include a reference into paragraph 88X(b) to an invitation under regulation 88PQ. If the application is taken to be withdrawn because of that regulation, it will cease to be an application (as defined) so there will not be anything that regulation 88X will require the Authority to make a decision on.

Item [37] Subregulation 88Z(1)

Item 37 repeals subregulation 88Z(1). It is necessary to repeal this subregulation in light of the new definition of EPBC referral deemed application in regulation 3(1) (see discussion of item 1 above), which now captures the type of application referred to in old subregulation 88Z(1).

Items [38] and [39] Subregulations 88Z(2), (3) and (4)

Items 38 and 39 make changes to subregulations 88Z(2), (3) and (4) that are needed as a result of the repeal of 88Z(1) (see discussion of item 37 above) and the new definition of EPBC referral deemed application in regulation 3(1) (see discussion of item 1 above). The effect of these consequential changes is that instead of referring to a deemed application (which was defined in old subregulation 88Z(1), subregulations 88Z(2), (3) and (4) will now refer to an EPBC referral deemed application as defined in subregulation 3(1) of the Regulations.

Item [40] Paragraph 88ZC(1)(c)

Item 40 omits the requirement in paragraph 88ZC(1)(c) that the application not have been withdrawn under regulations 88B or 88C, and substitutes this with a requirement that the application not have been withdrawn under Division 2A.2 or Subdivision 2A.3A.5. Division 2A.2 now contains regulations 88B and 88C therefore the new reference to this Division continues to capture these regulations. New Subdivision 2A.3A.5 deals with other means by which an application for a permission may be taken to be withdrawn or declared by the Authority to be withdrawn. The intention in amending paragraph 88ZC(1)(c) is to capture all of the circumstances under which an application for a permission may be withdrawn.

Item [41] Paragraph 88ZC(1)(d)

Item 41 repeals and substitutes paragraph 88ZC(1)(d). The old paragraph referred to circumstances where 'the application is taken to have been withdrawn under regulation 88D or 88E'. The new paragraphs refers to circumstances where 'the application is withdrawn under Division 2A.2 or Subdivision 2A.3A.5'. The amendment to paragraph 88ZC(1)(d) is needed as a consequence of the fact that regulation 88E is now in Division 2A.2 and regulation 88D has been repealed and has effectively been replaced by regulation 88PP in Division 2A.3A.5.

Item [42] Paragraph 88ZE(2)(b)

Item 42 omits the reference in paragraph 88ZE(2)(b) to ‘preventing, minimising or mitigating the potential environmental impacts’ and substitutes this with a reference to ‘avoiding, mitigating or offsetting the relevant impacts’. The purpose of this amendment is to ensure that the wording of paragraph 88ZE(2)(b) more closely aligns with new paragraph 88Q(h).

Item [43] Regulation 88ZH

Item 43 repeals and substitutes regulation 88ZH, which sets out the mandatory considerations that the Authority must have regard to when considering an application to transfer a permission.

New paragraph 88ZH(a) replaces old paragraph 88ZH(1)(b) and (c), and old subregulation 88ZH(2). The old paragraphs and subregulation were based on old paragraphs 88R(e) and (j), which have been replaced by new paragraph 88Q(c) (refer to discussion of item 32 above). Consequentially, an amendment is needed to regulation 88ZH to mirror the new paragraph 88Q(c).

New paragraph 88ZH(b) replaces the part of old subparagraph 88ZH(1)(b) which required the Authority to consider whether the transferor owed any fee or other amount payable under the Act or the Principal Regulations. New paragraph 88ZH(b) is intended to have the same effect as the relevant component of the old subparagraph however it has been moved into a separate paragraph because it is not appropriate to require the Authority to consider the transferor as part of considering whether the transferee is a suitable person to hold the permission pursuant to new paragraph 88ZH(a).

New paragraph 88ZH(c) replaces old paragraph 88ZH(1)(a). The old paragraph was based on old paragraph 88Q(f), which has been replaced by new paragraph 88Q(p) (refer to discussion of item 32 above). Consequentially, an amendment is needed to regulation 88ZH to mirror the new paragraph 88Q(p).

Item [44] Regulation 88ZO (heading)

Item 44 repeals the heading to regulation 88ZO and substitutes it with a new heading which is similar to the old one except that it more appropriately reflects current drafting practices. The change to the heading is not intended to have any substantive impact.

Item [45] Subregulation 88ZO(1)

Item 45 repeals and substitutes subregulation 88ZO(1).

The opening sentence of subregulation 88ZO(1) is largely the same. Wording has been added to clarify that the subregulation is about whether the changed company is a suitable person to hold the permission. The words ‘subject to the conditions to which it was subject before the change in beneficial ownership of the company’ have been included because the provision refers to modification of permission conditions therefore it is necessary to clarify that the consideration of the changed company’s

suitability should be based on consideration of the old permission conditions (and not any new modified conditions).

The intention of replacing old paragraphs 88ZO(1)(a) – (d) with new paragraphs 88ZO(1)(a) – (f) is to ensure that regulation 88ZO is consistent with new paragraph 88Q(c) (refer to discussion of item 32 above).

In paragraph 88ZO(1)(b) reference has intentionally been made to ‘the company’ as opposed to ‘the changed company’. The reason for this is to ensure that the Authority is not limited to considering the changed company’s history in relation to environmental matters, and can also consider the company’s history prior to the change in beneficial ownership.

Items [46], [48], [49], [51], [53], [54] and [55]

These items rectify a number of minor inconsistencies with the way that the giving of notice is referred to in regulations 88ZQ, 88ZT and 88ZU. The changes are not intended to change the current operation of these provisions.

Item [47] Paragraph 88ZQ(1)(b)

Item 47 makes an update to paragraph 88ZQ(1)(b) to include a reference to relevant impacts (as opposed to impacts) in light of the new definition of relevant impacts (see discussion of item 1 above).

Item [50] Regulation 88ZS

Item 50 repeals regulation 88ZS, which provides for suspension or revocation by the Authority of a permission for bareboat operations. The Authority considers that suspension or revocation of a permission for bareboat operations can be undertaken through regulations 88ZQ and 88ZR therefore a separate regulation allowing for the suspension or revocation of permissions specifically for bareboat operations is unnecessary.

The requirements set out in old paragraphs 88ZS(1)(a) – (d) are generally reflected in the conditions of standard permissions granted by the Authority for bareboat operations. It is the Authority’s intention to continue to generally include these requirements as standard bareboat permission conditions.

Item [52] Paragraph 88ZU(1)(g)

Item 52 makes a minor change to paragraph 88ZU(1)(g) to make it clearer that the provision applies if permitted conduct is not engaged in in the Marine Park within 120 days after the date on this the permission is granted, unless the permission states otherwise. For example, if a permission for conduct of a tourist program is granted and the permittee has taken steps that are preparatory to engaging in conduct in the Marine Park (such as leasing an office, hiring staff and marketing future tours) this will not be sufficient. Unless the conduct that is permitted by the permission is engaged in in the Marine Park within 120 days, paragraph 88ZU(1)(g) will be triggered.

Item [56] Subparagraphs 88ZU(6)(a)(i) and (b)(ii)

Item 56 omits a reference to subregulation 88ZU(3) and substitutes this with a reference to subregulation 88ZU(5) in order to fix incorrect cross references.

Item [57] Subregulation 114(1)

Item 57 repeals and substitutes subregulation 114(1). The old subregulation contained a definition of permission specific to regulation 114 that was unnecessary and likely to cause confusion among readers. New subregulation 114(1) more appropriately defines as registerable instruments the things that were previously defined as permissions. The only changes are:

- the new definition includes accreditations (instead of an accredited TUMRA) so as to potentially capture accreditations of research and educational institutions; and
- the new definition does not include permits; permit is a term generally used by the Authority to refer to a physical document which may contain one or more permissions and it is not necessary to include this in the definition as it will fall within 'information related to' a registrable instruments under subregulation 114(3).

Items [58], [59] and [60] Regulation 114

Items 58, 59 and 60 make minor consequential amendments to regulation 114 that are necessary as a result of the changes made by item 57.

Items [61] and [62] Subregulation 126(1)

Items 61 and 62 make minor consequential amendments to subregulation 126(1) that are necessary as a consequence of the repeal of regulation 88ZS(1)(d). The amendments are not intended to substantially alter the operation of regulation 126.

Items [63], [64], [65], [70] and [71] Regulations 127 and 128

These items make amendments to regulations 127 and 128 to reduce potential confusion between the reference to 'an application for continuation of a permission' that appeared in the old wording of regulations 127 and 128 and 'a continuation application' as defined in subregulation 3(1) (refer to the discussion of item 1 above). The items also make amendments to remove references to 'an initial permission' from regulations 127 and 128, which are somewhat misleading as the fee that applied to an initial permission applied to other types of permissions which did not fall within what would ordinarily be understood to be an initial permission.

Under the old wording of subregulation 127 and 128 an application which met the definition of an 'application for continuation of a permission' would attract the fee in column 4 of table 128, and an application for any other permission would attract the fee for 'an initial permission' referred to in column 3 of table 128.

Items 63, 64, 65, 70 and 71 remove all references to 'an application for continuation of a permission' and instead simply describe the circumstances under which the fees in columns 3 and 4 of Table 128 apply.

Item [66] After subregulation 128(2)

Item 66 inserts a new subregulation 128(2A) which is necessary as a result of the introduction of the new assessment approaches (see discussion of item 31 above) to clarify which fee applies to an activity that requires assessment under both the EPBC Act and the Principal Regulations (i.e. an EPBC referral deemed application). The purpose of subregulation 128(2A) is to address certain situations which may arise where the proposed conduct is an EPBC referral deemed application.

Generally speaking the effect of subparagraph 128(2A)(a)(i), when read in conjunction with paragraph 128(1)(b), is that if an activity is to be assessed under the EPBC Act by way of public environment report but a different assessment approach applies under the Principal Regulations that would attract a lower fee than the fee in item 4 of Table 128, item 4 should be disregarded. For example, if the Authority decided under regulation 88PB to assess an application by way of public information package, item 3 of Table 128 would be relevant to determine the fee payable rather than item 4 of Table 128.

Generally speaking the effect of subparagraph 128(2A)(a)(ii), when read in conjunction with paragraph 128(1)(b), is that if an activity is to be assessed under the EPBC Act by way of environmental impact statement but a different assessment approach applies under the Principal Regulations that would attract a lower fee than the fee in item 6 of Table 128, item 6 should be disregarded. For example, if the Authority decided under regulation 88PB to assess an application by way of public environment report, item 4 of Table 128 would be relevant to determine the fee payable rather than item 6 of Table 128.

A situation where subparagraphs 128(2A)(a)(i) or (ii) apply would be extremely rare as the Authority intends to conduct assessments of EPBC referral deemed applications jointly with the Minister and the Department of the Environment and Energy.

Item [67] Subregulation 128(3)

Item 67 omits a reference in subregulation 128(3) to item 5 of Table 128 and substitutes this with a reference to item 7. This amendment is needed as a consequence of items 73 and 74, which repeal items 5 and 7 of Table 128, and insert a new item 7 which effectively applies in circumstances where old table items 5 or 7 would have previously applied (see discussion of those items below).

Items [68] and [69] Subregulations 128(3) and (4)

Item 68 inserts paragraph 128(3)(d) and 69 inserts new paragraph 128(4)(d). These items will ensure that the definition of public environment report for the purposes of items 4 and 7 in Table 128 includes a public environment report in accordance with Subdivision 2A.3A.3, and the definition of environmental impact statement for the

purposes of items 6 and 7 of Table 128 includes an environmental impact statement prepared pursuant to Subdivision 2A.3A.4 of the Regulations.

Item [72] Regulation 128 (table item 3, column headed “Activity”)

Item 72 makes an amendment to item 3 of Table 128 that is necessary as a consequence of the repeal of old regulation 88D and the inclusion of new subdivision 2A.3A.2 in the Principal Regulations (see discussion of items 26 and 31 above). Based on the old wording of item 3 of Table 128, item 3 was relevant to determining the fee payable for an application for a permission that required public notice to be given. Because of the repeal of old regulation 88D and the inclusion of new subdivision 2A.3A.2 in the Principal Regulations, the only time that public notice will be required to be given (other than for assessment by way of public environment report or environmental impact statement, which is dealt with in other items of Table 128) will be for an assessment by way of public information package. The amendment to item 3 of Table 128 reflects this by making the item relevant only to an activity whose impacts are to be assessed by public information package.

Items [73] and [74] Table 128

Items 73 and 74 repeal items 5 and 7 of Table 128, and insert a new item 7 which effectively applies in circumstances where old table items 5 or 7 would have previously applied. This is necessary to resolve a number of unintended consequences of the old table items.

Where a permission has previously been granted as a result of an assessment that was by way of public environment report or environmental impact statement and while that permission is in force the permission holder makes an application for a new permission to carry on the same activity in the same area, new table item 7 (when read in conjunction with the rest of regulation 128) is intended to have the following effect:

- If the assessment approach to be applied to the new application is the routine assessment approach or the tailored assessment approach, the activity meets one of the criteria in item 1 of Table 128 and the activity is not described in item 2 of the table, the relevant fee in column 4 of item 1 of the table applies. Due to old items 5 and 7 of the table this was not previously the case and one of the higher fees specified in those items would have applied instead.
- If the assessment approach to be applied to the new application is the routine assessment approach or the tailored assessment approach, and (irrespective of whether the activity is described in one of the criteria in item 1 of Table 128) the activity is described in item 2 of the table, the relevant fee in column 4 of item 2 of the table applies. Due to old items 5 and 7 of the table this was not previously the case and one of the higher fees specified in those items would have applied instead.
- If the assessment approach to be applied to the new application is the routine assessment approach or the tailored assessment approach, and the activity does not meet any of the criteria in items 1 and 2 of Table 128, the fee in column 4 of item 7 of the table applies. This maintains the existing position.

- If the assessment approach to be applied to the new application is public information package, the fee in column 4 of item 3 of Table 128 applies. This maintains the existing position.

Where a permission has previously been granted as a result of an assessment that was by way of public environment report and while that permission is in force the permission holder makes an application for a new permission to carry on the same activity in the same area, new table item 7 (when read in conjunction with the rest of regulation 128) is intended to have the following effect:

- If the assessment approach to be applied to the new application is public environment report the fee in column 4 of item 4 of Table 128 applies. This maintains the existing position. It should be noted that it would be highly unlikely that the Authority would decide a second assessment by public information package would be appropriate.
- If the assessment approach to be applied to the new application is environmental impact statement the fee in column 4 of item 6 of Table 128 applies. This maintains the existing position. It should be noted that it would be highly unlikely that the Authority would decide an assessment by environmental impact statement would be appropriate if the original permission had already been subject to an assessment by public environment report.

Where a permission has previously been granted as a result of an assessment that was by way of environmental impact statement and while that permission is in force the permission holder makes an application for a new permission to carry on the same activity in the same area, new table item 7 (when read in conjunction with the rest of regulation 128) is intended to have the following effect:

- If the assessment approach to be applied to the new application is public environment report the fee in column 4 of item 4 of Table 128 applies. This maintains the existing position. It should be noted that it would be highly unlikely that the Authority would decide that an assessment by public environment report would be appropriate if the original permission has already been subject to an assessment by environmental impact statement.
- If the assessment approach to be applied to the new application is environmental impact statement the fee in column 4 of item 6 of Table 128 applies. This maintains the existing position. It should be noted that it would be highly unlikely that the Authority would decide a second assessment by environmental impact statement would be appropriate.

Item [75] Subregulation 131(1)

Item 75 amends subregulation 131(1) so that the requirement for the Authority to give notice to an applicant for a permission of the applicable fee payable for the application does not arise until as soon as practicable after the Authority has made a decision on the approach to be used for assessment of the impacts of the proposed conduct (rather than as soon as practicable after the application has been received, which was the requirement under the old wording of subregulation 131(1)). This

amendment is necessary as a consequence of the inclusion of regulation 88PB in the Principal Regulations (see discussion of item 31 above), which places a new requirement on the Authority to decide on an applicable assessment process after receiving a properly made application.

Item [76] Subparagraph 131(1)(c)(i)

Item 76 repeals the reference to item 5 of Table 128 from subparagraph 131(1)(c)(i) which is necessary as a consequence of that table item having been repealed (see discussion of item 75 above).

Item [77] Paragraph 131(3)(b)

Item 77 makes an amendment to subregulation 131(3)(b), which applies in cases where an assessment of an application for a permission is carried out by way of public environment report or environmental impact statement. The amendment clarifies that even where an assessment fee of less than \$10,000 has been paid by the applicant to the Authority because of subparagraph 131(6)(b)(ii), once the public environment report or the environmental impact statement is made available for public comment in draft or final form, there remains an obligation on the Authority to give the applicant a notice requiring the applicant to pay, within 21 days, the amount of the fee that has not been paid.

Item [78] At the end of regulation 131

Item 78 inserts new subparagraphs 131(5) and (6) to deal with the payment of fees in circumstances where the Authority revokes and substitutes its decision about which assessment approach applies to a particular application for a permission.

The effect of the amendments is that in cases where the fee that is payable based on the new decision about the applicable assessment approach exceeds the old fee that was payable based on the old decision about the applicable assessment approach, the total amount that the applicant will be required to pay for fees will equate to the fee that applies to the new assessment approach. In such cases the Authority must, pursuant to subregulation 131(6), give a notice to the applicant requiring the applicant to pay a specified amount within 21 days. The amount payable will depend on any amount that has already been paid by the applicant, and the new fee that applies.

Paragraph 131(6)(a) provides that where the new fee is set by item 1, 2, 3, 7 or 8 of Table 128, the applicant must pay the difference between the new fee and any amount paid for the old fee.

An example of the operation of paragraph 131(6)(a) would be where the Authority originally decided that an application for a permission for an activity requiring the use of a facility or structure in the Marine Park was to be assessed by way of the tailored assessment process, and the applicant paid the fee applicable pursuant to item 2 of Table 128. If the Authority subsequently revoked and substituted its decision so that the assessment process was changed to public information package, the Authority would be required to give the applicant a notice as soon as practicable stating that the applicant must within 21 days pay the difference, between the fee applicable pursuant to item 3 and the fee already paid.

Subparagraph 131(6)(b)(i) applies where the new fee is set by item 4 (activity about which a public environment report is to be prepared) or item 6 (activity about which an environmental impact statement is to be prepared) of Table 128, and the applicant has not yet paid the fee that was applicable to the old assessment process. In such cases the applicant must pay \$10,000 in part payment of the new fee. The requirement under existing subparagraph 131(3)(d) and (e) will remain unchanged, so that once a public environment report or environmental impact statement is made available for public comment in draft or final form the Authority will be required to give the applicant a notice requiring the applicant to pay within 21 days the remainder of the fee that applies under item 4 or 6 of Table 128.

An example of the operation of subparagraph 131(6)(b)(i) would be where the Authority originally decided that an application for a permission was to be assessed by way of public information package, but the applicant had not yet paid the fee applicable pursuant to item 3 of Table 128. If the Authority subsequently revoked and substituted its decision so that the assessment process was changed to public environment report, the Authority would be required to give the applicant a notice as soon as practicable stating that the applicant must within 21 days pay \$10,000 in part payment of the fee applicable under item 4 of Table 128. Existing subparagraph 131(3)(d) and (e) would continue to apply so that once the public environment report was made available for public comment in draft or final form the Authority would be required to give the applicant a notice requiring the applicant to pay within 21 days the remainder of the fee applicable under item 4 of Table 128.

Subparagraph 131(6)(b)(ii) applies where the new fee is set by item 4 (activity about which a public environment report is to be prepared) or item 6 (activity about which an environmental impact statement is to be prepared) of Table 128, and the applicant already has paid the fee that was applicable to the old assessment process. In such cases the applicant must pay the difference between \$10,000 and the amount already paid in part payment of the new fee. The requirement under existing subparagraph 131(3)(d) and (e) will remain unchanged, so that once a public environment report or environmental impact statement is made available for public comment in draft or final form the Authority will be required to give the applicant a notice requiring the applicant to pay within 21 days the remainder of the fee that applies under item 4 or 6 of Table 128.

An example of the operation of subparagraph 131(6)(b)(ii) would be where the Authority originally decided that an application for a permission was to be assessed by way of public information package, and the applicant paid the fee applicable pursuant to item 3 of Table 128. If the Authority subsequently revoked and substituted its decision so that the assessment process was changed to public environment report, the Authority would be required to give the applicant a notice as soon as practicable stating that the applicant must within 21 days pay the difference between \$10,000 and the amount already paid, in part payment of the fee applicable under item 4 of Table 128. Existing subparagraph 131(3)(d) and (e) would continue to apply so that once the public environment report was made available for public comment in draft or final form the Authority would be required to give the applicant a notice requiring the applicant to pay within 21 days the remainder of the fee applicable under item 4 of Table 128.

Paragraph 131(5)(c) ensures that the requirements under subregulation 131(6) described above do not arise in circumstances where the old assessment approach was public environment report and the new assessment approach is environmental impact statement. In such cases there is already a requirement under existing subparagraph 131(1)(c)(ii) for the Authority to give the applicant a notice requiring the applicant to pay \$10,000 within 21 days in part payment of the applicable fee. That requirement continues to apply irrespective of the change in assessment process. Existing subparagraph 131(3)(d) and (e) would also continue to apply so that once the environmental impact statement is made available for public comment in draft or final form the Authority would be required to give the applicant a notice requiring the applicant to pay the remainder of the fee applicable under item 6 of Table 128.

Item [79] Before subregulation 134(1)

Item 79 inserts a subheading 'Applications or requests for which fees are generally payable' before subregulation 134(1) in order to indicate that subregulation 134(1) imposes a 'general' requirement, as there is now an exception to this general requirement (see discussion of item 85 below).

Item [80] Subregulation 134(1) (table item 4)

Item 80 omits the reference to paragraph 88ZS(1)(d) from table item 4 and replaces this with new wording so that the table item now applies to an application to the Authority for the replacement of an identification number, or the document evidencing an identification number, issued for the purposes of a permission to conduct a bareboat operation. This amendment is not intended to change the operation of the table item and is necessary as a consequence of the repeal of regulation 88ZS (see discussion of item 50 above).

Item [81] Before subregulation 134(2)

Item 81 includes a heading for subregulations 134(2) – (3A) 'Lapse of application or request if fee not paid within 10 business days' to indicate to the reader the content of those provisions.

Items [82] and [83] Regulation 134

Items 82 and 83 make amendments to regulation 134 to change references from working days to business days to ensure consistent use of terminology throughout the Principal Regulations.

Item [84] After subregulation 134(3A)

Item 84 inserts subregulation 134(3B), which provides that subregulations 134(2) and (3) do not apply if the Authority waives the fee under subregulation 134(6). Subregulations 134(2) and (3) cause an application or request to lapse if the applicable fee is not paid within a certain timeframe. Subregulation 134(6) is a new provision (see discussion of item 85 below) which allows the Authority to waive the applicable fees in certain circumstances. It would not be appropriate for an application or request to lapse in circumstances where the fee has been waived.

Item 84 also inserts a new heading before subregulation 134(4) 'indexation of fees' to indicate to the reader the content of subregulations 134(4) and (5).

Item [85] Subregulation 134(6)

Item 85 repeals and substitutes subregulation 134(6) with new subregulation 134(6) and (7). The old subregulation 134(6) contained a definition of working day that is no longer needed due to all references to working days having been changed to business days in regulation 134 (see discussion of item 82 and 83 above).

New subregulation 134(6) provides that the Authority may decide to waive a fee that would otherwise be payable under regulation 134, or refund a fee paid under regulation 134, for an application or request that involves minimal activity by the Authority to act on. This is intended to apply in circumstances where an application or request is received for a simple change that consumes little to no resources of the Authority to process. For example, the processing of an application to the Authority for a change to a vessel or aircraft listed on a vessel notification approval issued by the Authority for a permission may not require any assessment and may merely require an administrative change of the vessel or aircraft details (provided the new vessel or aircraft is substantially similar in size, etc. to the existing permitted vessel or aircraft).

New subregulation 134(7) has been included so that if an application lapses under subregulation 134(3) due to a failure to pay a fee for an application or request, the application is reinstated if the Authority subsequently decides under subregulation 134(6) to waive the relevant fee.

Item [86] Paragraph 183(1)(a)

Item 86 repeals and substitutes paragraph 183(1)(a) with the effect being that two types of decisions by the Authority are exempt from the general requirement under paragraph 183(1)(a) to publish on the Authority's website notice of a decision under Part 2A on an application for the grant of a permission. The two types of decisions which are exempt are:

- decisions by the Authority under regulation 88AA on whether an application was a properly made application; and
- decisions by the Authority under regulation 88PB on the approach that must be used for assessment of an application for a permission.

The flow on effect of a decision being exempt from publication under paragraph 183(1)(a) is that a person whose interests are affected by the decision is not able to request a reconsideration of the decision under regulation 185, 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. The Authority considers that the two types of decisions listed above are preliminary or procedural in nature and are therefore unsuitable for review. These decision are not substantive decisions, but instead facilitate the proper administration of applications under the Principal Regulations, and lead to the making of more substantive decisions under other provisions.

Item [87] Subparagraph 185(1)(a)(iv)

Item 87 repeals and substitutes subparagraph 185(1)(a)(iv). The old subparagraph essentially described a type of application for permission which is now defined in subregulation 3(1) as an EPBC referral deemed application (see above discussion of item 1). The new subparagraph refers to an EPBC referral deemed application instead of describing what is now effectively the content of the new definition in subregulation 3(1).

Item [88] After regulation 205

Item 88 inserts new regulation 205A into the Principal Regulations, which is intended to allow the Authority to make certain types of decisions, and give certain types of notices, automatically through the use of computer programs.

Subregulation 205A(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 2 (which is about permissions) or Part 7 (which is about fees). Subregulation 205A(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 subregulation (1). An example of how the Authority anticipates subregulations 205A(1) and (2) might operate 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 regulation 88AA stating that the application has been made in accordance with regulation 88A and stating that the routine assessment approach applies to the application pursuant to regulation 88PB (see above discussion of items 25 and 31).

Subregulation 205A(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. In such cases, subregulation 205A will allow the Authority to revoke a decision made, and/or a notice given, by the operation of a computer program and substitute the decision and/or notice with a new one.

Item [89] After Part 15

Item 89 inserts a new Part 16 into the Principal Regulations, which contains application, saving and transitional provisions that apply to the amendments made by the Regulations.

Amendments of Part 2

Subregulation 207(1) provides that regulations 19 and 20, as in force on and after 4 October 2017, apply in relation to research that occurs after 3 October 2018; or is a component of a research project conducted by a research institution that is accredited under regulation 7 and that the Authority is satisfied, on the basis of an

agreement (however described) made with the institution on or after 4 October 2017: has adopted practices and standards described in subregulation 7(1); and has a commitment described in that subregulation. The intended effect of this provision is that researchers will in most cases have 12 months lead-in time to prepare before the changes to regulations 19 and 20 take effect. However, it is anticipated that in some cases in order to obtain or maintain an accreditation pursuant to regulation 7 of the Principal Regulations an accredited research institution may choose to enter into an agreement, such as a memorandum of understanding, with the Authority prior to 4 October 2018 under which the research institution may make certain commitments in order to satisfy the Authority that the institution has adopted appropriate environmental practices and standards and has an ongoing commitment to improve those practices and standards. The Authority's intention is that any such agreement entered into from 4 October 2017 onwards will be based on meeting practices and standards that are consistent with the new regulations 19 and 20. It would therefore be appropriate for any research institution that enters into this type of agreement to also be expected to comply with the new regulations upon entering into the agreement.

Amendments of Parts 2A and 7

Subregulation 207(2) provides that the amendments of Part 2A (which relates to permissions) and Part 7 (which relates to fees) made by the Regulations apply in relation to applications received by the Authority on or after 4 October 2017 for permissions; and EPBC referral deemed applications taken under subsection 37AB(1) of the Act to have been made on or after 4 October 2017. Subregulation 207(2) has effect subject to subregulations 207(3), (4) and (6). Applications received by the Authority prior to 4 October 2017 and EPBC referral deemed applications taken under subsection 37AB(1) of the Act to have been received by the Authority prior to 4 October 2017 will be assessed based on the old provisions of the Principal Regulations as in force prior to the commencement of the Regulations.

Subregulation 207(3) provides that regulation 88C, as affected by the Regulations, applies to EPBC referral deemed applications taken under section 37AB of the Act to have been made before, on or after 4 October 2017. The intention of this subregulation is that even where an EPBC referral deemed application is taken to have been made prior to the commencement of the Regulations, the amended version of regulation 88C should apply. For example, if prior to the commencement of the Regulations the Minister accepted a request to vary a referral pursuant to section 156A of the EPBC Act in a manner which resulted in the varied referral no longer proposing use of or entry into the Marine Park that would require a permission under the Principal Regulations, the old regulation 88C did not contain a mechanism for the EPBC referral deemed application to be taken to have been withdrawn. Subregulation 207(3) will ensure that existing EPBC referral deemed applications to which this situation applies will be able to be taken to have been withdrawn pursuant to the new regulation 88C (specifically, because of the opening paragraph of subregulation 88C(1) in conjunction with item 4 of the table in that subregulation).

Subregulation 207(4) provides that the amendments of regulations 88ZQ, 88ZT and 88ZU by the Great Barrier Reef Marine Park Amendment (Permission System) Regulations 2017 apply in relation to permissions granted before, on or after 4 October 2017. The effect of this will be that irrespective of the date on which a

permission was granted, any future action by the Authority after commencement of the Regulations to modify, suspend or revoke a permission will need to be dealt with pursuant to the latest version of the Principal Regulations. This will ensure a consistent approach is taken by the Authority for all permissions in force on or after commencement of the Regulations.

Continuation of register kept under regulation 114

Subregulation 207(5) provides that the register kept under regulation 114, as in force immediately before 4 October 2017, continues in force as if it were kept under that regulation as amended by the Regulations. This is to ensure that the amendments to regulation 114 made by the Regulations do not inadvertently impact on the continuity of the register kept by the Authority prior to the commencement of the Regulations.

Waiver of fees

Subregulation 207(6) provides that subregulations 134(3B), (6) and (7), as in force on and after 4 October 2017, apply to fees for applications and requests received by the Authority on or after that day. The effect of this is that if an application or request is made under those subregulations prior to 4 October 2017, the old fee provisions will apply.

Use of computer programs to make decisions etc.

Subregulation 207(7) provides that regulation 205A applies in relation to decisions and notices required or permitted to be made or given on or after 4 October 2017, whether the decision or notice relates to things done before, on or after that day. The effect of this is that irrespective of the date of a particular event occurring that triggered the making of a decision or the giving of a notice by the Authority, if the decision is to be made or the notice is to be given after the commencement of the Regulations, regulation 205A will apply so that the decision can be made or notice can be given by way of a computer program.

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 (Permission System) 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 primary purpose of the *Great Barrier Reef Marine Park Amendment (Permission System) Regulations 2017* (the Regulations) is to make amendments to the *Great Barrier Reef Marine Park Regulations 1983* (the Principal Regulations) to give effect to a number of the recommendations contained in the *Great Barrier Reef Region Strategic Assessment: Program Report*, and to address relevant recommendations made by the Joint Parliamentary Committee of Public Accounts and Audit in *Report 456: Defence Major Equipment and Evaluation, and Great Barrier Reef Regulations*.

Additionally, the Regulations address the need to update restrictions on the take of certain species contained in the Principal Regulations to reflect the latest scientific information about threats and vulnerability.

The main amendments made by the Regulations to the Principal Regulations are:

- inclusion of a definition of ‘relevant impacts’ of conduct proposed to be permitted by a permission and conduct permitted under a permission;
- changes to the definitions pertaining to limited impact research, to clarify the existing policy intent and to allow some additional minor research aids to be used;
- changes to lists of species which have limits on take to include species that have been listed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act);
- changes to adjust the number of individuals of some species able to be taken by limited impact research (in most cases these adjustments increase protection);
- introduction of five possible permission assessment approaches, being routine assessment, tailored assessment, public information package, public environment report and environmental impact statement;

- introduction of a requirement for the Great Barrier Reef Marine Park Authority (the Authority) to decide whether an application for a permission is properly made, and decide on the appropriate assessment approach for a properly made application;
- clarification of the circumstances under which a referral made under the EPBC Act, treated as an application for a permission under the Principal Regulations, is taken to have been withdrawn (and in some cases, subsequently taken to have been reinstated) under the Principal Regulations;
- changes to merge mandatory and discretionary considerations for deciding whether to grant a permission into one set of mandatory considerations, which more explicitly set out some of the matters that the Authority must have regard to in deciding whether to grant a permission;
- consequential changes to the provisions of Part 7 (fees) to specify the fees that are applicable to the new assessment processes for applications for permissions, and to allow the Authority to waive the fees for other applications and requests that involve minimal work by the Authority to process;
- introduction of a provision allowing the Authority to cause automated decisions to be made, and automated notices to be given, about permissions and fees through the operation of a computer program
- insertion of new definitions into subregulation 3(1) to support the above changes.

The Regulations commence on 4 October 2017. The Regulations do not have 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);
- Fair trial and fair hearing rights (ICCPR, article 14);
- The right to privacy (ICCPR, article 17); 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 Regulations engage the presumption of innocence by making minor amendments to the existing strict liability offence in regulation 126 of the Principal Regulations. The imposition of strict liability in regulation 126 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. The amendments made to that provision are necessary as a consequence of the repeal of regulation 88ZS (suspension or revocation of permission –bareboat operations). The amendments do not substantially change the scope of the offence provision and therefore the scope of the existing restriction on the presumption of innocence is not substantially changed by the Regulations.

The amended regulation 126 provides as follows:

- (1) A person may display, on a vessel, an identification number issued by the Authority for a bareboat operation only if:
 - (a) the person is the holder of a permission for a bareboat operation, being a permission that is not suspended; and
 - (b) the vessel is of a kind that the permission allows to be used for the operation; and
 - (c) the conditions to which the permission is subject require the person to display the identification number on a vessel being operated under the permission.

Penalty: 50 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

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 Regulation places 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 126(1) without the need to prove fault appears to have already been successful in enhancing the effectiveness and efficiency of the Authority's enforcement regime by deterring persons from inappropriately displaying identification numbers issued by the Authority for bareboat operations. This is expected to continue.

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) that the person displayed, on a vessel, an identification number issued by the Authority for a bareboat operation, and that one or more of the circumstances in paragraphs 126(1)(a), (b) or (c) were not met.

Reasonableness

Licensing, including the requirement to carry or display identifiers, is a generally well understood regulatory regime in the community. It is reasonable to expect persons who voluntarily enter an area such as the Marine Park 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. 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 punishable by a relatively low 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...*'.

The right to freedom of movement is already restricted under the *Great Barrier Reef Marine Park Zoning Plan 2003* (the Zoning Plan) and the Principal Regulations to the extent that the various zones in the Marine Park may only be used or entered for certain purposes and to the extent that, in some circumstances, use or entry is only allowed with the written permission of the Authority. The Regulations further engage with the restriction on this right to the extent that they modify existing provisions of the Principal Regulations which limit the circumstances under which a person may use or enter the various zones in the Marine Park. In particular, the Regulations make changes to the rules for entering zones to carry out limited impact research, the process for obtaining a permission from the Authority to use or enter the Marine Park, the matters that the Authority must have regard to when deciding whether to grant a permission to a person to use or enter the Marine Park, and the circumstances under which such a permission may be modified, suspended or revoked.

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 necessary and proportionate to the protection and be the least intrusive means in producing the desired result.

Rules for entering zones to carry out limited impact research

The existing rules for carrying out limited impact research 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. It is reasonable to expect that persons wishing to enter the Marine Park to carry out research comply with rules which are necessary to protect the environment. These rules do not go beyond what is necessary to protect the environment by limiting the take of vulnerable species and limiting the use of research aids to prevent the use of equipment which could harm the environment.

The changes to the rules for carrying out limited impact research are relatively minor and do not substantially change the way that this activity can be conducted. It is unlikely that the changes will decrease the ability for researchers to enter the Marine Park therefore it is anticipated there will be no overall change to the existing restriction on freedom of movement in this regard.

Process for obtaining a permission from the Authority to use or enter the Marine Park

The existing process for obtaining permission from the Authority to use or enter the Marine Park 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, the Authority considers matters relevant to achieving effective management of the Marine Park and imposes conditions on permissions to achieve this.

The changes to the process for obtaining permissions includes the introduction of five possible assessment approaches, the introduction of a requirement for the Authority to decide whether an application for a permission is properly made and decide on an applicable assessment process for a properly made application, and the introduction of the ability for the Authority to cause some decisions on permission applications to be made automatically by the use of computer programs. It is expected that the changes will significantly alter the manner in which permission applications are processed by allowing many applications for low risk activities to be processed more expeditiously. Thus, the pre-existing interference on the right to freedom of movement created by the Zoning Plan and the Principal Regulations should be lowered by the Regulations as it will be easier for some people to obtain permissions than it was previously.

The changes to the matters that the Authority must have regard to when deciding whether to grant a permission involve the merging of mandatory and discretionary considerations into one set of mandatory considerations, and more explicitly describing some of these considerations. It is already the Authority's standard

practice to have regard to the considerations that were previously discretionary therefore making these considerations mandatory is not expected to significantly change the way that the Authority assesses applications for permissions. Likewise, the Authority already has regard to the matters that are now more explicitly described in the mandatory considerations therefore it is not expected that explicitly describing these matters will result in any significant changes to the manner in which the Authority assesses applications for permissions.

Circumstances under which permissions may be modified, suspended or revoked

The existing provisions in the Principal Regulations 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 subject to modified permission conditions, or may not be able to use or enter the Marine Park 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 Principal Regulations which deal with changes in circumstances that could pose a threat to the environment in the Marine Park. Such provisions of the Principal Regulations 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.

The changes to the circumstances under which a permission may be modified, suspended or revoked are relatively minor and are not expected to result in any increase in the number of permissions that may be modified, revoked or suspended by the Authority. Rather, the changes will further support the existing approach taken by the Authority in its application of the Principal Regulations.

Conclusion

Overall, the existing regulations are reasonable, necessary and proportionate to protecting the environment in the Marine Park. The amendments made by the Regulations are not expected to increase the pre-existing restrictions on the right to freedom of movement under the Principal Regulations and the Zoning Plan. If anything, the restrictions should be lessened by allowing for permissions to be processed more expeditiously.

Fair trial and fair hearing rights

The Regulations engage fair trial and fair hearing rights in article 14 of the ICCPR. Article 14(1) 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...*'

The Regulations engage these rights by limiting the circumstances under which a person may apply to the Authority for reconsideration of certain decisions made by the Authority, and by limiting the circumstances under which a person may seek review of these decisions by the Administrative Appeals Tribunal (AAT). Under regulations 185 – 187 of the Principal Regulations, a person generally has the right to seek internal reconsideration and external AAT review of decisions made on an

application for the grant of a permission. The Regulations limit this right so that decisions about whether an application for a permission is a properly made application, and decisions about which assessment approach should apply to an application for a permission, are not decisions that attract the right to merits review.

It is reasonable for review rights to be limited in this manner because 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 publically 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 limitation on review rights is necessary because if the Authority's decisions about minor procedural steps such as these are subject to challenge this would be likely to jeopardise the Authority's ability to process applications in an expeditious manner.

The limitation on review rights is proportionate to the need to process applications promptly and does not go any further than necessary. The Authority has identified that 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) is sought pursuant to regulation 88ZC of the Principal Regulations. To address this, a requirement has been provided for in regulation 88AA of the Regulations to allow an applicant for a continuation 30 business days to rectify any failure to make a properly made application.

The right to privacy

The Regulations engage the right to privacy in article 17 of the ICCPR. Article 17 provides that '*1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*' and '*2. Everyone has the right to the protection of the law against such interference or attacks.*'

Although article 17 of the ICCPR does not set out reasons for which the right to privacy may be limited it is argued that permissible limitations recognised in other articles, such as limitations which are necessary for the protection of public health, might be legitimate means 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. The use of the term arbitrary in the ICCPR means that interferences with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances.

The Principal Regulations already limit the right to privacy in regulation 114, which allows the Authority to keep a public register of permissions and related information, which may include personal information of permittees such as name, address and information about the permissions held. The publishing of the register of permissions

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. The publication of such information assists in achieving transparency and accountability in the making of decisions aimed at the protection of the environment in the Marine Park. It is reasonable to expect that a person who applies for permission to carry out an activity in a public area such as the Marine Park be prepared to have the details of their permission made publically available.

The Regulations make minor technical changes to regulation 114 so that it is not necessary to define the term 'permission' in that regulation. The amendments do not change the scope of the existing interference with the right to privacy.

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 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 allowing for a more streamlined and efficient permission system, and by ensuring protection of vulnerable species in the Marie Park is appropriately maintained.

Conclusion

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