

EXPLANATORY STATEMENT

Issued by the authority of the Minister for the Environment

Great Barrier Reef Marine Park Act 1975

Great Barrier Reef Marine Park Amendment (Coronavirus Economic Response Package) Regulations 2020

Legislative 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 (the Region).

Under subsection 66(1) of the Act, the Governor-General may make regulations, not inconsistent with the Act or with a zoning plan, prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Background

The *Great Barrier Reef Marine Park Regulations 2019* (the Principal Regulations) provide for (among other things) the grant of permissions to use or enter the Marine Park for certain purposes, and for the charging of fees by the Authority in respect of such permissions.

Despite the current coronavirus pandemic in Australia, permission applications continue to be received by the Authority, with many of these applications being for renewals of existing permissions that are due to expire.

The Australian Government has received requests from the Great Barrier Reef tourism sector for assistance to relieve the financial pressures that sector is currently facing as a result of the coronavirus pandemic, including (among other things) waiving permission-related fees, such as fees for applications for permissions and renewals of existing permissions.

Purpose

The primary objective of the *Great Barrier Reef Marine Park (Coronavirus Economic Response Package) Regulations 2020* (the Amendment Regulations) is to make amendments to the Principal Regulations to waive permission-related fees for the period 1 July 2020 to 30 June 2021 in order to provide urgent temporary relief from the financial pressures currently faced by Great Barrier Reef Marine Park permission holders and permission applicants, including tourism operators, as a result of the coronavirus pandemic.

The provisions of the Amendment Regulations achieve this objective by providing that:

- No application fee is payable for an application for a permission made during the Waiver Period;

- Where there is a change in assessment approach during the Waiver Period for an application for a permission made prior to the Waiver Period, no increase in fees is payable as a result of the change in assessment approach;
- No fee is payable for other permission-related requests and applications made during the Waiver Period (such as requests to vary existing applications for permissions);
- No application fee is payable for an application made during the waiver period for an exemption from the requirement to navigate with a pilot in the Marine Park; and
- No fee is payable for the reinstatement of a permission during the waiver period following a period of suspension for failure to comply with Environmental Management Charge obligations.

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

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

Commencement

The Amendment Regulations will commence on 1 July 2020.

Consultation

The Attorney-General's Department was consulted on the aspects of the Amendment Regulations relating to review rights and human rights. Suggestions made by the Attorney-General's Department in response to consultation were taken into account by the Authority in the development of the Amendment Regulations.

Given the urgent need for the Amendment Regulations no public consultation was carried out however, as mentioned above, the Amendment Regulations are in response to requests from the Great Barrier Reef tourism sector.

Regulatory Assessment

The Authority undertook preliminary regulatory assessment. Advice was received from the Office of Best Practice Regulation confirming that a regulation impact statement was not required (reference number 26472).

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in **Attachment B**.

Details of the *Great Barrier Reef Marine Park Amendment (Coronavirus Economic Response Package) Regulations 2020*

Section 1 – Name

This section provides that the title of the Amendment Regulations is the *Great Barrier Reef Marine Park Amendment (Coronavirus Economic Response Package) Regulations 2020*.

Section 2 – Commencement

This section sets out the timetable for the commencement of the provisions of the Amendment Regulations. The Amendment Regulations commence on 1 July 2020.

The commencement of the Amendment Regulations will coincide with the start date of the waiver period set out in Schedule 1.

Section 3 – Authority

This section provides that the Amendment Regulations are made under the Act.

Section 4 – Schedules

This section provides that each instrument specified in a Schedule to the Amendment 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 Amendment Regulations has effect according to its terms.

Schedule 1 – Amendments

The amendments made by Schedule 1 insert new provisions into Part 12 of the Principal Regulations, which deals with fees.

Item [1] At the end of Subdivision A of Division 2 of Part 12

Subdivision A of Division 2 of Part 12 of the Principal Regulations deals with fees for applications for permissions to conduct certain activities in the Marine Park.

Item 1 inserts two new sections at the end of Subdivision A, sections 204A and 204B.

Section 204A – Coronavirus economic response-applications made during waiver period

The primary objective of new section 204A is to temporarily waive the fees that are usually payable pursuant to section 202 of the Principal Regulations for applications for permissions.

Subsection 204A(1) is intended to confirm that no application fee is payable under section 202 for applications for permissions made during the ‘waiver period’, which is the period beginning on 1 July 2020 and ending on 30 June 2021. Permission applications made during the waiver period are referred to as ‘waiver period applications’.

An application for a permission must be properly made in accordance with section 76 of the Principal Regulations in order to attract the application fee waiver under section 204A(1). In circumstances where the Authority decides pursuant to section 77 of the Principal Regulations that an application for a permission is not properly made and as a result the Authority does not deal further with the application, the applicant would again need to make a new application and the Authority would need to accept that new application as having been properly made within the waiver period in order for the new application to attract a waiver of the application fee.

The decision of the Authority about whether an application is properly made is not subject to merits review. Such a decision has always been considered unsuitable for merits review because it is preliminary and procedural in nature, and merits review may lead to the proper operation of the administrative-decision making process being unnecessarily frustrated or delayed. The requirements for making a properly made application are clearly explained in guidelines, policies and in the permission application form (all of which are publically available on the Authority's website) therefore applicants are well informed of what is required to make a properly made application. A decision that an application is not properly made generally has no adverse consequences for an applicant, as they will not have paid an application fee at that point of the assessment process and the application may easily be amended to address defects and be resubmitted to the Authority. For this reason there would usually be no beneficial effects to merits review. However, this position is somewhat altered by the application of the temporary waiver of application fees, as a decision that an application is not properly made could now mean that the applicant may miss out on the fee waiver if the applicant does not have enough time to submit a new properly made application before the end of the waiver period. The lack of review rights in such instances is considered justified due to the urgent and temporary nature of the waiver. Applicants are encouraged to make applications as early as possible during the waiver period in order to allow time to address any non-conformities with applications. The Authority also intends to exercise its discretion to allow applicants opportunities to rectify incomplete applications (instead of making decisions that applications are not properly made) in cases where such applications are received close to the end of the waiver period.

EPBC referral deemed applications are explicitly referred to in paragraph 204A(1)(b) to make it clear how the waiver period is to apply to these types of applications. An EPBC referral deemed application is defined in section 5 of the Principal Regulations, and links to section 37AB of the Act. Section 37AB of the Act provides that where a certain type of proposed action is referred to the Minister for the Environment under the *Environment Protection and Biodiversity Conservation Act 1999*, and that action involves an activity that would also require a permission to use or enter the Marine Park, the referral is taken to be an application for a permission under the Principal Regulations. This is known as an 'EPBC referral deemed application'.

In the case of an EPBC referral deemed application, it is the date that the application is taken to be made under section 37AB of the Act that is relevant to determining whether the application is a waiver period application. In other words, a referral made to the Minister on any date between 1 July 2020 and 30 June 2021 which is an EPBC referral deemed application, will be a waiver period application, and no application fee under section 202 of the Principal Regulations will be payable for the application.

New subsection 204A(2) dis-applies section 203 to waiver period applications, so that the various notices provided for in section 203 of the fees payable for an application are not required to be given to an applicant. Instead of giving notices under section 203, it is the intention of the Authority that notices will be sent to applicants who have made waiver period applications to advise that no application fee is payable and to inform those applicants of the Authority's decision on the approach to be used by the Authority for assessing the relevant impacts of the proposed conduct.

New subsection 204A(3) is intended to confirm that once a waiver period application is made, no application fees under section 202 will attach to that application and no notice requirements will apply to the application under section 203, even where an event occurs at the end of the waiver period which would otherwise trigger a requirement to give the applicant notice requiring payment of a higher fee.

- *Example 1:* A waiver period application is made. On a date after the waiver period ends (i.e. after 30 June 2021) the Authority decides pursuant to subsection 91(2) of the Principal Regulations to change the assessment approach for the application. As a result of this decision, a higher application fee would normally apply under section 202 of the Principal Regulations, and section 203 would normally operate so that a notice is required to be given to the applicant requiring payment of the higher application fee. However, because the application is a waiver period application, subsection 204A(3) operates so that the higher fee is not payable, notwithstanding that the decision of the Authority to change the assessment approach for the application was made after the waiver period ends (after 30 June 2021).

New subsection 204A(4) ensures that in circumstances where a request is made to the Authority to vary a waiver period application, the fee that would normally be payable for making the request to vary is not payable irrespective of whether or not the request to vary the application is made during the waiver period.

- *Example 2:* A waiver period application is made. The applicant subsequently makes a request to the Authority to vary the application (and it does not matter whether the variation request is made before or after the end of the waiver period, 30 June 2021). As a result of the requested variation, the Authority is required to carry out a new or additional native title notification process, and/or a new or additional assessment of the waiver period application pursuant to Part 3 of the Principal Regulations. Normally this would trigger a requirement for the applicant to pay a fee for the variation request as set out in item 8 of the table in subsection 205(1) of the Principal Regulations. However, because of subsection 204A(4) the fee for requesting the variation is waived.

Section 204B Coronavirus economic response-increased fees resulting from a change in approach

New section 204B is intended to clarify how an application for a permission made prior to the waiver period should be treated during the waiver period in circumstances where a decision is made during the waiver period to change the assessment approach. In normal circumstances, a change in assessment approach may attract a higher permission application fee, and an applicant would be required to pay the difference between the original fee paid upon making the application, and the higher fee applicable as a result of

the changed assessment approach. However, the policy intent is that where such a change in assessment approach occurs during the waiver period, the requirement for the applicant to pay the difference between the original application fee and the higher fee is to be waived.

Subsection 204B(1) sets out the parameters within which section 204B applies to an application for a permission.

The first criterion under paragraph 204B(1)(a) is that the application for the permission must be one which was made before the commencement of the waiver period on 1 July 2020. Such an application would have triggered the requirement for the applicant to pay a fee for the application and, because the application was made prior to the waiver period, this application fee is not waived.

Secondly, under paragraph 204B(1)(b), there needs to have been a decision made by the Authority under subsection 91(2) of the Principal Regulations to change the assessment approach for the application.

Paragraph 204B(1)(c) provides for the two ways in which a change in assessment approach may arise:

1. An applicant may make a request to the Authority to vary an application for a permission, and in response to the requested variation, the Authority may subsequently make a decision under subsection 91(2) of the Principal Regulations to change the assessment approach. The policy intent is that where such a request to vary is made during the waiver period, any resulting increase in the permission application fee should be waived regardless of the date on which the Authority makes the decision to change the assessment approach.
2. The other way in which a change in assessment approach may arise is where the Authority makes a decision to do so pursuant to subsection 91(2) of the Principal Regulations without having received any request to vary the application from the applicant (because extra information becomes available to the Authority). The policy intent is that in this scenario any resulting increase in the application fee should only be waived where the Authority makes the decision to change the assessment process during the waiver period.

The decision of the Authority to change an assessment approach is not subject to merits review. Such a decision has always been considered unsuitable for merits review because it is preliminary and procedural in nature, and merits review may lead to the proper operation of the administrative-decision making process being unnecessarily frustrated or delayed. The assessment approaches that should attach to different types of applications are clearly explained in guidelines, policies and in the permission application form (all of which are publically available on the Authority's website) therefore applicants are well informed of what can be expected in terms of the likely assessment approach. Attaching review rights to decisions to change assessment approaches would be likely to jeopardise the Authority's ability to process applications in an expeditious manner. For this reason, the beneficial effects of merits review have always been considered to be outweighed by the cost of potentially frustrating the making of substantive decisions. However, this position is

somewhat altered by the application of the temporary waiver of application fees, as a decision to change the assessment approach (where no request has been made by the applicant to vary the application) which is delayed until after the end of the waiver period gives rise to some potential for an applicant to miss out on a waiver of the increased fee if the Authority delays in making its decision. The lack of review rights in such instances is considered justified due to the urgent and temporary nature of the waiver. Applicants are encouraged to make applications as early as possible during the waiver. The intention of the Authority is that where new information becomes available during the waiver period which may result in a decision to change the assessment approach, the Authority will act as quickly as is reasonably practicable to make its decision prior to the end of the waiver period so that applicants do not miss out on a waiver of any increase in fees as a result of undue delay by the Authority. Such decisions are rare, as the Authority is normally in close contact with applicants about their applications and would normally be provided with enough information to decide on the appropriate assessment approach from the outset (and would therefore not need to change the assessment approach unless the applicant made a request to significantly vary the application).

The final criterion for section 204B to apply to an application for a permission is set out in paragraph 204B(1)(d). This criterion establishes that section 204B applies only where the decision to change the assessment approach would normally result in an increase of the application fee amount. Section 204B is not intended to apply where, for instance, the assessment approach was changed to a lower level approach that would attract a lower fee (and this would be rare in any event).

Where all of the abovementioned criteria are met, subsection 204B(2) provides that the application fee increase is waived.

- *Example 3:* An application for a permission is made prior to the start of the waiver period (1 July 2020). The Authority determines that the application is to be assessed by public information package and sends a notice to the applicant pursuant to section 203 of the Principal Regulations, stating that the fee under item 3 of the table in subsection 202(6) of the Principal Regulations is payable for the application. On a date during the waiver period (1 July 2020 – 30 June 2021) the applicant makes a request to vary the application. In response to this request, the Authority makes a decision pursuant to section 91(2) of the Principal Regulations that the application is to be assessed by way of environmental impact statement. It does not matter whether the Authority makes its decision to change the assessment approach during or after the end of the waiver period because the request to vary was made by the applicant during the waiver period. The applicant is not required to pay the difference between the fee in item 5 of the table in subsection 202(6) of the Principal Regulations because the fee increase is waived. The applicant is however still required to pay the fee under item 3 of the table in subsection 202(6) because the application for the permission was originally made prior to the start of the waiver period.
- *Example 4:* An application for a permission is made prior to the start of the waiver period (1 July 2020). Similarly to example 3 above, the Authority determines that the application is to be assessed by public information package and sends a notice to the applicant pursuant to section 203 of the Principal Regulations, stating that the fee under

item 3 of the table in subsection 202(6) of the Principal Regulations is payable for the application. However contrary to example 3, the applicant does not make a request to vary the application. Rather, the Authority makes a decision under section 91(2) of the Principal Regulations to change the assessment approach to environmental impact statement in response to additional information it has received about the application. In this scenario, it will depend on whether the Authority made the decision to change the assessment approach during or after the waiver period as to whether the fee increase will be waived.

To avoid any doubt, subsection 204B(3) has been included to confirm that subsections 203(6) and 203(7) do not apply in relation to the decision to change the assessment approach. This is because it is not intended that the Authority should be required to give notice of a fee increase in circumstances where the fee increase is waived. Instead of giving notices under subsection 203(7) of the Principal Regulations, it is the intention of the Authority that notices will be sent to eligible applicants to advise that no increase in the application fee is payable and to inform applicants of the Authority's decision to change the assessment approach pursuant to section 91(2) of the Principal Regulations.

Item [2] At the end of Subdivision B of Division 2 of Part 12

Subdivision B of Division 2 of Part 12 of the Principal Regulations deals with fees (other than application fees) for applications and requests relating to permissions to conduct certain activities in the Marine Park.

Item 2 inserts a new section 205A at the end of Subdivision B.

Section 205A Coronavirus economic response

The primary objective of new section 205A is to temporarily waive the fees that are usually payable pursuant to section 205 of the Principal Regulations for applications and requests relating to permissions (other than fees for applications for permissions, which are dealt with under Subdivision A of Division 2 of Part 12).

New subsection 205A(1) is intended to confirm that no application fee is payable under section 205 of the Principal Regulations for applications and requests made during the 'waiver period', which is the period beginning on 1 July 2020 and ending on 30 June 2021.

- *Example 5:* An application for a permission is made prior to commencement of the waiver period (1 July 2020). The applicant subsequently makes a request during the waiver period to the Authority to vary the application. As a result of the requested variation, the Authority is required to carry out a new or additional native title notification process, and/or a new or additional assessment of the application pursuant to Part 3 of the Principal Regulations. Normally this would trigger a requirement for the applicant to pay a fee for the variation request as set out in item 8 of the table in subsection 205(1) of the Principal Regulations. However, because of subsection 205A(1) the fee for requesting the variation is waived.

New subsection 205A(2) dis-applies subsections 205(2) and (3) to applications and requests made under section 205 of the Principal Regulations during the waiver period, so that the requirements under those subsections for the Authority to give a notice of the fees payable,

and the requirement for such fees to be paid in accordance with the notice, do not apply. Instead of giving notices under subsection 205(2), it is the intention of the Authority that notices will be sent to persons who have made applications or requests during the waiver period to which section 205 would normally apply, to advise that no fees are payable in relation to such applications or requests.

Item [3] At the end of Subdivision C of Division 2 of Part 12

Subdivision C of Division 2 of Part 12 of the Principal Regulations deals with fees for applications for exemptions from compulsory pilotage in the Marine Park, and fees for reinstatement of permissions following a suspension period.

Item 3 inserts a new section 207A at the end of Subdivision C.

Section 207A Coronavirus economic response

The primary objective of new section 207A is to temporarily waive the fees that are usually payable pursuant to sections 206 and 207 of the Principal Regulations for applications for exemptions from compulsory pilotage in the Marine Park, and for reinstatement of permissions following a suspension period.

Subsection 207A(1) is intended to confirm that no fee is payable under section 206 of the Principal Regulations for an application for an exemption from compulsory pilotage made during the 'waiver period', which is the period beginning on 1 July 2020 and ending on 30 June 2021.

Subsection 207A(2) is intended to confirm that no fee is payable under section 207 for reinstatement of a permission that has been suspended (for a failure to comply with Environmental Management Charge obligations) if the Authority becomes satisfied of the matters referred to in paragraph 131(3)(a) of the Principal Regulations in relation to the permission during the 'waiver period'. This means that the applicability of the waiver of the reinstatement fee will depend on:

- The date that the Authority is satisfied under subparagraph 131(3)(a)(i) of the Principal Regulations that the charge, amount or penalty is paid; or
- If subparagraph 131(1)(f) applies, the date on which both subparagraph 131(3)(a)(i) of the Principal Regulations is satisfied and a properly completed return has been given to the Authority.

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 (Coronavirus Economic Response Package) Regulations 2020

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the disallowable legislative instrument

The primary objective of the *Great Barrier Reef Marine Park (Coronavirus Economic Response Package) Regulations 2020* (the Amendment Regulations) is to make amendments to the *Great Barrier Reef Marine Park Regulations 2019* (the Principal Regulations) to waive permission-related fees for the period 1 July 2020 to 30 June 2021 (the Waiver Period) in order to provide urgent temporary relief from the financial pressures currently faced by Great Barrier Reef Marine Park permission holders and permission applicants, including tourism operators, as a result of the coronavirus pandemic.

The provisions of the Amendment Regulations achieve this objective by providing that:

- No application fee is payable for an application for a permission made during the Waiver Period;
- Where there is a change in assessment approach during the Waiver Period for an application for a permission made prior to the Waiver Period, no increase in fees is payable as a result of the change in assessment approach;
- No fee is payable for other permission-related requests and applications made during the Waiver Period (such as requests to vary existing applications for permissions);
- No application fee is payable for an application made during the waiver period for an exemption from the requirement to navigate with a pilot in the Marine Park; and
- No fee is payable for the reinstatement of a permission during the waiver period following a period of suspension for failure to comply with Environmental Management Charge obligations.

Human rights implications

The Amendment Regulations engage the following rights:

- Right to freedom of movement (Article 12 of the International Covenant on Civil and Political Rights (ICCPR)); and
- Fair trial and fair hearing rights (Article 14, ICCPR).

Right to freedom of movement

Article 12 of the ICCPR provides that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose their residence. The right to freedom of movement is restricted by the process in the Principal Regulations for obtaining and maintaining permissions from the Authority to use or enter the Marine Park (which includes the imposition of fees for applications for permissions, and other permission-related applications and requests) by subjecting a person who seeks permission to use or enter the Marine Park for certain activities to a formal application and assessment process, and to the imposition of conditions on any permission granted.

An example of how this restriction currently operates under the Principal Regulations is as follows:

- A person wishes to conduct a tourist program in the Marine Park, whereby the person takes tourists to attractive tourist destinations using a vessel.
- The person is not able to do this 'as of right' and must therefore apply for and obtain a permission from the Authority in order to lawfully carry out the tourist program.
- The application process requires the person to complete an application form, submit this form to the Authority, and pay the relevant application fee.
- The Authority then carries out an assessment of the impacts of the proposed activity and makes a decision about whether or not to grant the permission sought, and whether to impose conditions on the permission.
- If the person is unhappy with the Authority's decision, the person can seek merits review or judicial review of the Authority's decision.
- The person's right to liberty of movement in the Marine Park is therefore restricted, because they cannot freely travel around the Marine Park using their vessel for the purpose of conducting a tourist program without obtaining the necessary permission.

It is reasonable to expect persons seeking to conduct certain activities to comply with the processes set out in the Principal Regulations for obtaining and maintaining permissions, including the requirement to pay fees to cover the costs to the Authority of administering permissions. Activities regulated in this way are activities which are more likely to have an adverse impact on the environment in the Marine Park, such as conducting harvest fisheries, developmental fishery programs, aquaculture operations, tourist programs, and conducting vessel and aircraft charters, are all activities which require permission due to their potential adverse impacts on the environment. It is reasonable to regulate these types of activities because the environment in the Marine Park is vulnerable to impacts associated with these activities if these activities are allowed to be conducted without regulation.

The fees provided for in the Principal Regulations for obtaining and maintaining permissions are no more onerous than necessary. This is because the fees have been set based on the partial-actual costs to the Authority of administering permissions.

The Amendment Regulations temporarily waive permission-related fees and promote the right to freedom of movement by making the process for obtaining and maintaining permissions less onerous for permission holders and applicants in the wake of the coronavirus pandemic. Where possible, activities in the Marine Park that require

permission may continue to be conducted or recommence (in cases where such activities have ceased), and new activities can be encouraged.

Fair trial and fair hearing rights

The Principal Regulations engage the fair trial and fair hearing rights in article 14 of the ICCPR. Article 14(1) relevantly provides that 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 Principal 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.

The Amendment Regulations further engage these rights because 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, can potentially impact on whether or not a waiver of fees will apply to the application. The potential impacts are as follows:

- A decision by the Authority that an application for a permission is not properly made could mean that the applicant may miss out on the fee waiver if the applicant does not have enough time to make a new properly made application before the end of the Waiver Period.
- Where an application for a permission is made prior to the Waiver Period and no request is made by an applicant to vary the application, a decision by the Authority to change the assessment approach for assessing the application which is delayed until after the end of the Waiver Period could cause an applicant to miss out on a waiver of the increased fee (i.e. a waiver of the difference between the application fee that was originally payable, and the new application fee that becomes payable as a result of the change in assessment approach).

Decisions about properly made applications, and the appropriate assessment approach to be applied to a permission application, have always been considered unsuitable for merits review because they are preliminary and procedural in nature. Merits review may also lead to the proper operation of the administrative-decision making process being unnecessarily frustrated or delayed.

It is reasonable for review rights to be limited in relation to the above decisions 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 required to make a properly made application and what can be expected in terms of the likely assessment approach.

If not for the temporary fee waiver, there would normally be no significant consequences resulting from the 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. For this reason, there would usually be no beneficial effects to merits review. While the Amendment Regulations introduces a potential impact in that an applicant could miss out on the fee waiver if their application for a permission is rejected, this is considered reasonable due to the urgent and temporary nature of the fee waiver. Applicants will be encouraged to make applications as early as possible during the waiver period in order to allow time to address any non-conformities with applications. The Authority also intends to exercise its discretion to allow applicants opportunities to rectify incomplete applications (instead of making decisions that applications are not properly made) in cases where such applications are received close to the end of the waiver period.

To mitigate the potential for an applicant to miss out on a waiver of a fee increase due to a change in assessment approach, the intention of the Authority is that where new information becomes available during the Waiver Period which may result in a decision to change the assessment approach, the Authority will act as quickly as is reasonably practicable to make its decision prior to the end of the waiver period so that applicants do not miss out on a waiver of any increase in fees as a result of undue delay by the Authority. Such decisions are rare, as the Authority is normally in close contact with applicants about their applications and would normally be provided with enough information to decide on the appropriate assessment approach from the outset (and would therefore not need to change the assessment approach unless the applicant made a request to significantly vary the application).

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. For this reason, the beneficial effects of merits review are considered to be outweighed by the cost of potentially frustrating the making of substantive decisions.

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.

Conclusion

The Amendment Regulations is compatible with human rights as it promotes the right to freedom of movement, and the increased engagement of fair trial and fair hearing rights is reasonable, necessary and proportionate.