

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 (Environmental Management Charge) 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 (Environmental Management Charge – General) Act 1983* and the *Great Barrier Reef Marine Park (Environmental Management Charge – Excise) Act 1993* impose that the EMC is payable in accordance with Part VA of the Act. Part 13 of the *Great Barrier Reef Marine Park Regulations 2019* (the Principal Regulations) provides for the amount of the EMC and how it is to be collected.

The EMC is a charge imposed on a number of different commercial operations in the Great Barrier Reef Marine Park (the Marine Park) under chargeable permissions as defined in section 3 of the Act and prescribed in section 211 of the Principal Regulations. Different types of the EMC are payable depending on the type of operation permitted.

The bulk of the revenue collected through the EMC is from a form of EMC referred to in the Principal Regulations as the standard tourist program charge (STPC). The STPC is generally required to be paid by a visitor who takes part in a tourist program under a chargeable permission. If not for the current EMC waiver, the current rate of the STPC would be:

- (a) \$7.00 per visitor (defined in section 5 of the Principal Regulations) for each day up to a maximum of 3 days (see sections 217 and 218 of the Principal Regulations); and
- (b) \$3.50 per visitor, for tours that are 3 hours or less, or tours that arrive late and depart early (see sections 219 and 220 of the Principal Regulations).

A tourist program operator, as the holder of a chargeable permission under which a visitor takes part in a tourist program, is required to collect the STPC from the visitor and remit the charge to the Authority in whichever of April, July, October or January is the month after the quarter in which the amount is collected (see sections 225 and 226 of the Principal Regulations).

Other types of the EMC are provided for in sections 223 and 224 of the Principal Regulations. These are often referred to by the Authority and by stakeholders as ‘fixed charges’. The charges provided for in section 223 are payable by the permission holder (as opposed to being payable by visitors). The charges in section 224 are payable by visitors (and are collected from visitors by the permission holders who then remit the charge to the Authority). In addition to waiving the STPC, the current waiver of the EMC is also a waiver of these other types of EMC.

The collected EMC revenue forms part of the Consolidated Revenue Fund. The Authority receives an appropriation out of the Consolidated Revenue Fund that is equivalent to the EMC collected for the purpose of the performance of the functions of the Authority (subsection 65A(2) of Act).

Due to the economic pressures faced by permission holders (including Great Barrier Reef tourism operators) as a result of the COVID-19 pandemic, a temporary waiver of the EMC is currently in place until 31 December 2020.

The Great Barrier Reef tourism industry has been significantly affected by COVID-19 with necessary restrictions resulting in industry-wide closures. Although the industry is beginning to experience an increase in some domestic tourism activity, there is continued uncertainty. Significant recovery of the industry before the temporary EMC waiver period ends on 31 December 2020 is unlikely.

Purpose

The primary objective of the *Great Barrier Reef Marine Park (Environmental Management Charge) Regulations 2020* (the Amendment Regulations) is to extend the current waiver of the EMC to 30 June 2021 in order to provide continued relief to the industry.

The provisions of the Amendment Regulations achieve this objective by amending the existing waiver provisions in the Principal Regulations so that:

- the amount of the STPC payable for a day in the period beginning on 1 April 2020 and ending on 30 June 2021 is nil;
- the amount of STPC payable for tours that are 3 hours or less, or tours that arrive late and depart early, for a tour on a day in the period beginning on 1 April 2020 and ending on 30 June 2021 is nil;
- the fixed EMC payable by permission holders and by visitors for the quarters beginning on 1 April 2020, 1 July 2020, 1 October 2020, 1 January 2021 and 1 April 2021 is nil; and
- the above waivers will self-repeal at the end of 30 June 2021.

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 the day after registration.

Consultation

Given the minor and urgent nature of the Proposed Regulations, no public consultation was carried out. The current waiver of the EMC was put in place in response to requests from the Great Barrier Reef Tourism Industry. It is therefore anticipated that the extension of the waiver will be welcomed by the industry.

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 42928).

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 (Environmental Management Charge) 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 the day after registration.

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 13 of the Principal Regulations, which deals with the EMC.

Item [1] Subsections 217(5) and (6), 219(3) and (4) and 220(3) and (4)

Section 217 – Full day amount

Section 217 of the Principal Regulations provides for the calculation of the full day amount of the STPC.

Subsection 217(5) of the Principal Regulations provides that the STPC for the period 1 April 2020 to 31 December 2020 is waived. Subsection (6) ensures that subsections 217(5) and (6) are repealed at the end of the waiver period.

Item 1 provides for subsections 217(5) and (6) to be amended so that references to '31 December 2020' are changed to '30 June 2021', in order for the current waiver of the STPC to be extended by 6 months.

Section 219 – Tours that are 3 hours or less, and section 220 – Tours that arrive late or depart early

Sections 219 and 220 of the Principal Regulations provide for the calculation of the STPC for tours that are 3 hours or less (section 219), and tours that arrive late or depart early (section 220). This type of the STPC is commonly referred to by the Authority and stakeholders as 'part day STPC'.

Subsections 219(3) and (4), and subsections 220(3) and (4), have the same effect as that explained above for subsections 217(5) and (6), with the only difference being that later subsections capture circumstances where part-day STPC would have otherwise been payable.

Item 1 amends subsections 219(3) and (4), and subsections 220(3) and (4), so that references to '31 December 2020' are changed to '30 June 2021', in order for the current waiver of part-day STPC to be extended by 6 months.

Items [2], [3], [4], and [5]

Section 223 – Charges payable by the holder of a chargeable permission, and section 224 – Charges payable by visitors

Sections 223 and 224 of the Principal Regulations provide for certain fixed quarterly charges to be paid by the holder of a chargeable permission (section 223), and by visitors to the Marine Park (section 224).

Subsections 223(5) and 224(5) provide that the fixed charges provided for under sections 223 and 224 are waived for the period 1 April 2020 to 31 December 2020. Subsections 223(6) and 224(6) provide that subsections 223(5) and (6), and subsections 224(5) and (6), are repealed at the end of the period to which they apply.

Items 2, 3, 4 and 5 amend subsections 223(5) and (6), and subsections 224(5) and (6), so that:

- fixed charges are waived for the quarters commencing on 1 January 2021 and 1 April 2021 (items 2 and 4); and
- references to '31 December 2020' are changed to '30 June 2021' (items 3 and 5);

in order for the current waiver of the fixed charges to be effectively extended by 6 months.

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 (Environmental Management Charge) 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 (Environmental Management Charge) Regulations 2020* (the Amendment Regulations) is to extend the current waiver of the EMC to 30 June 2021 in order to provide continued relief to the industry.

The provisions of the Amendment Regulations achieve this objective by amending the existing waiver provisions in the Principal Regulations so that:

- the amount of the STPC payable for a day in the period beginning on 1 April 2020 and ending on 30 June 2021 is nil;
- the amount of STPC payable for tours that are 3 hours or less, or tours that arrive late and depart early, for a tour on a day in the period beginning on 1 April 2020 and ending on 30 June 2021 is nil;
- the fixed EMC payable by permission holders and by visitors for the quarters beginning on 1 April 2020, 1 July 2020, 1 October 2020, 1 January 2021 and 1 April 2021 is nil; and
- the above waivers will self-repeal at the end of 30 June 2021.

Human rights implications

The Amendment Regulations engage the right to freedom of movement (International Covenant on Civil and Political Rights, article 12).

The funds received from the EMC are vitally important in the day-to-day management of the Marine Park and in improving its long-term resilience. The EMC is a charge associated with most commercial activities, including tourism operations, non-tourist charter operations, and construction and operation of facilities. For most standard tourism operations, Marine Park visitors participating in a tourist activity are liable to pay the charge to the holder of the chargeable permission for the relevant tourist program that the visitor is taking part in, who then remits the charge to the Authority. Other operations in the Marine Park such as those involving the hire of equipment, installation and operation of tourist facilities, underwater observatories, sewage outfalls and vending operations, attract quarterly EMC charges to the Authority. All funds received as EMC payments are applied directly to management of the Marine Park.

The EMC restricts the freedom of movement as without payment of the charge visitors to the Marine Park are not able to engage in activities that attract the charge in the Marine Park, and permission holders are not permitted to operate. This restriction is reasonable as it is consistent with the overall balancing of providing for entry, and use, to the Marine Park and is a small contribution to the protection and conservation of the environment. It is also a necessary and proportionate measure given that the funds are directed to the day-to-day management of the Marine Park and in improving its long-term resilience, and the funds are raised from the users of the Marine Park.

By extending the current waiver of the EMC, the Amendment Regulations indirectly decrease the restriction on freedom of movement by making EMC obligations less onerous for permission holders in the wake of the coronavirus pandemic, so that where possible permission holders may continue to operate, and visitors may continue to come to the Marine Park, without having to meet these obligations.

Conclusion

The Amendment Regulations are compatible with human rights as they indirectly decrease existing restrictions on human rights, and the existing restrictions are necessary, reasonable and proportionate.