

## **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 (Waiver of Fees and Charges) Regulations 2021***

#### **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.

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**

##### *Permission-related fees*

The *Great Barrier Reef Marine Park Regulations 2019* (the Principal Regulations) provide for the grant of permissions to use or enter the Marine Park, and for the charging of fees by the Authority in respect of such permissions in accordance with Part 12.

The Authority collects a fee to cover the cost of the time spent administering and assessing an application for a permission to use or enter the Marine Park for a commercial purpose. The Authority also collects fees for applications for exemptions from compulsory pilotage for this reason.

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 Great Barrier Reef tourism industry has been significantly affected by COVID-19 with necessary restrictions resulting in industry-wide closures. In response to requests from the Great Barrier Reef tourism sector for assistance to relieve financial pressures resulting from the coronavirus pandemic, a waiver of permission-related fees commenced on 1 June 2020 and was due to end on 30 June 2021, pursuant to the *Great Barrier Reef Marine Park Amendment (Coronavirus Economic Response Package) Regulations 2020*.

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 waiver ends on 30 June 2021, is unlikely. It is therefore necessary to extend the current waiver of permission-related fees in order to provide continued relief to the industry, and to other permission holders with operations in the Marine Park.

## *Environmental Management Charge*

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 Environmental Management Charge (EMC) is payable in accordance with Part VA of the Act. Part 13 of 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 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 (discussed below), 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 (discussed below) 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).

On 23 March 2020, the *Coronavirus Economic Response Package Omnibus Act 2020* was passed by Parliament as part of the Government’s response to the COVID-19 pandemic. One

of the measures in this Act was to amend the Principal Regulations to provide economic relief to the Great Barrier Reef tourism sector to waive the EMC from 1 April 2020 to 31 December 2020.

On 18 June 2020, the *Great Barrier Reef Marine Park Amendment (Coronavirus Economic Response Package) Act 2020* was passed to provide for a refund to permission holders for fixed EMC payable by permission holders, and a grant to permission holders for the EMC collected from visitors, equivalent to the amount of the EMC paid or owing to the Authority for the January to March 2020 quarter. The passing of this legislation provided relief in response to additional calls from the Great Barrier Reef tourism sector seeking further assistance, including (among other things) waiving the EMC payments for charges already collected for the 1 January 2020 to 31 March 2020 quarter, which fell due on 1 April 2020.

Subsequent to the passing of the above relief, further calls, due to the economic pressures faced by the Great Barrier Reef tourism sector, were made by tourism operators to further extend the waiver of the EMC. In response, the *Great Barrier Reef Marine Park Amendment (Environmental Management Charge) Regulations 2020* were made by the Governor-General in Council and commenced on 28 November 2020, extending the waiver of the EMC to 30 June 2021 in order to provide continued relief to the industry.

As mentioned above in relation to permission-related fees, there is still a continued need to provide financial relief to the tourism industry as a result of the COVID-19 pandemic. It is therefore necessary to extend the current waiver of the EMC (in addition to extending the current waiver of permission-related fees).

## **Purpose**

The primary objective of the *Great Barrier Reef Marine Park Amendment (Waiver of Fees and Charges) Regulations 2021* (the Amendment Regulations) is to extend the current waivers of permission-related fees and the EMC to 30 June 2022 in order to provide continued relief to industry in the Marine Park.

The provisions of the Amendment Regulations achieve this objective by amending the existing waiver provisions in the Principal Regulations as summarised below.

### *Permission-related fees*

- No application fee is payable for an application for a permission made during the period 1 July 2020 to 30 June 2022 (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.

#### *Environmental Management Charge*

- The amount of the STPC payable for a day in the period beginning on 1 April 2020 and ending on 30 June 2022 is nil;
- The amount of the 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 2022 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, 1 April 2021, 1 July 2021, 1 October 2021, 1 January 2022 and 1 April 2022 is nil; and
- The above provisions will self-repeal at the end of 30 June 2022.

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**

The Attorney-General's Department was consulted on the aspects of the *Great Barrier Reef Marine Park Amendment (Coronavirus Economic Response Package) Regulations 2020* 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 those Regulations, and are reflected in the Amendment Regulations.

Given the minor nature of the Amendment Regulations and the urgent need to have the extension of waivers in place by 1 July 2021, no public consultation was carried out. As mentioned above, the current waivers of permission-related fees and the EMC were put in place in response to requests from the Great Barrier Reef tourism industry. It is therefore anticipated that the extension of the waivers 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 44013).

## **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 (Waiver of Fees and Charges) Regulations 2021*

### **Section 1 – Name**

This section provides that the title of the Amendment Regulations is the *Great Barrier Reef Marine Park Amendment (Waiver of Fees and Charges) Regulations 2021*.

### **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 amend or repeal provisions in Part 12 (which deals with fees for applications for permissions to conduct certain activities in the Marine Park) and Part 13 (which deals with the EMC) of the Principal Regulations.

#### **Item [1] Subparagraphs 204A(1)(a)(ii) and 204B(1)(c)(i)**

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

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

Item 1 provides for subparagraphs 204A(1)(a)(ii) and 204B(1)(c)(i) to be amended so that references to the Waiver Period ending on '30 June 2021' are changed to '30 June 2022', in order for the current waiver to be extended by 12 months.

#### **Item [2] Paragraphs 205A(1)(b) and 207A(1)(b)**

*Section 205A – Coronavirus economic response*

The primary objective of 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 to conduct certain activities in the Marine Park (other than fees for applications for permissions, which are dealt with under Subdivision A of Division 2 of Part 12).

Item 2 provides for paragraph 205A(1)(b) to be amended so that references to the Waiver Period ending on '30 June 2021' are changed to '30 June 2022', in order for the current waiver to be extended by 12 months.

#### *Section 207A – Coronavirus economic response*

The primary objective of 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 a permission following a suspension period.

Item 2 provides for subparagraph 207A(1)(b) to be amended so that the reference to the Waiver Period ending on '30 June 2021' is changed to '30 June 2022', in order for the current waiver to be extended by 12 months.

#### **Item [3] 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 30 June 2021 is waived. Subsection (6) ensures that subsections 217(5) and (6) are repealed at the end of that period.

Item 3 provides for subsections 217(5) and (6) to be amended so that references to '30 June 2021' are changed to '30 June 2022', in order for the current waiver of the STPC to be extended by 12 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 3 amends subsections 219(3) and (4), and subsections 220(3) and (4), so that references to '30 June 2021' are changed to '30 June 2022', in order for the current waiver of part-day STPC to be extended by 12 months.

## **Items [4], [5], [6], and [7] Subsections 223(5) and 223(6), 224(5) and 224(6)**

*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 30 June 2021. 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 4, 5, 6 and 7 amend subsections 223(5) and (6), and subsections 224(5) and (6), so that:

- fixed charges are waived for the quarters commencing on 1 July 2021, 1 October 2021, 1 January 2022 and 1 April 2022 (Items 4 and 6); and
- references to ‘30 June 2021’ are changed to ‘30 June 2022’ (Items 5 and 7);

in order for the current waiver of the fixed charges to be effectively extended by 12 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 (Waiver of Fees and Charges) Regulations 2021***

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 Amendment (Waiver of Fees and Charges) Regulations 2021* (the Amendment Regulations) is to extend the current waivers of permission-related fees and the Environmental Management Charge (EMC) (due to expire on 30 June 2021) to 30 June 2022 in order to provide continued relief to the tourism industry operating in the Marine Park.

The provisions of the Amendment Regulations achieve this objective by amending the existing waiver provisions in the Principal Regulations as summarised below.

*Permission-related fees*

- No application fee is payable for an application for a permission made during the period 1 July 2020 to 30 June 2022 (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.

*Environmental Management Charge*

- The amount of the Standard Tourist Program Charge (STPC) payable for a day in the period beginning on 1 April 2020 and ending on 30 June 2022 is nil;
- the amount of the 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 2022 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, 1 April 2021, 1 July 2021, 1 October 2021, 1 January 2022 and 1 April 2022 is nil; and
- The above provisions will self-repeal at the end of 30 June 2022.

### **Human rights implications**

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

#### *Right to freedom of movement*

##### Permission-related fees

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 in the Marine Park 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.

#### Environmental Management Charge

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 into, and use of, 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.

### *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 in the 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 introduce 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 section 116 of the Principal Regulations. To address this, a requirement has been provided for in section 77 of the Principal Regulations to allow an applicant for a continuation to have 30 business days to rectify any failure to make a properly made application.

## **Conclusion**

The Amendment Regulations are compatible with human rights as they indirectly decrease existing restrictions on the right to freedom of movement (and the existing restrictions are reasonable, necessary and proportionate) and the increased engagement of fair trial and fair hearing rights is reasonable, necessary and proportionate.