



*Marine Parks Act 2004*

# Marine Parks Regulation 2017

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Queensland

# Marine Parks Regulation 2017

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# Marine Parks Regulation 2017

## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Marine Parks Regulation 2017*.

### 2 Commencement

This regulation commences on 1 September 2017.

### 3 Definitions

The dictionary in schedule 6 defines particular words used in this regulation.

## Part 2 Provisions about areas within marine park

### 4 Zones within marine park generally

- (1) A marine park may be comprised of 1 or more of the following zones—
  - (a) general use zone;
  - (b) habitat protection zone;
  - (c) conservation park zone;
  - (d) buffer zone;
  - (e) scientific research zone;
  - (f) marine national park zone;
  - (g) preservation zone.

[s 5]

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- (2) A marine park may also include a zone of a name and nature corresponding to a zone of the Commonwealth marine park.
- (3) The classes of zones mentioned in subsection (1) are listed in ascending order of the level of protection they must be given under the zoning plan applying to the marine park.

## **5 Estuarine conservation zone in GBR Coast Marine Park**

- (1) Despite section 4, the GBR Coast Marine Park may also include an estuarine conservation zone.
- (2) The estuarine conservation zone in the marine park falls between the habitat protection zone and the conservation park zone in the order of the level of protection that must be given to classes of zones under the zoning plan applying to the marine park.

## **6 Objects for zones**

The objects to be achieved for a zone mentioned in section 4(1) or 5 are stated in schedule 1.

## **7 Areas that are highly protected areas**

For the Act, schedule, definition *highly protected area*, paragraph (b), a zone classified as a buffer zone or a scientific research zone is a highly protected area.

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## **Part 3                      Permissions to enter or use                                          marine park**

### **Division 1                      Application for permission**

#### **8                      Requirements for application**

- (1) A person may apply to the chief executive for the grant of a permission for a marine park or a part of a marine park.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be supported by enough information to enable the application to be decided, including the information mentioned in schedule 2; and
  - (c) comply with any other requirements for the application under a zoning plan applying to the marine park.

### **Division 2                      Considering and deciding                                          application for permission**

#### **9                      Fee must be paid**

- (1) This section applies to an application for a permission for which a fee is payable if the fee does not accompany the application.
- (2) The chief executive must, by notice—
  - (a) ask the applicant to pay the fee within a stated period of at least 60 business days after receiving the notice; and
  - (b) advise the applicant that if the fee is not paid within the stated period, the chief executive may refuse to decide the application under this section.
- (3) The chief executive may refuse to decide the application until the fee is paid.

## **10 Matters to which chief executive must have regard**

In considering an application for a permission for a marine park or a part of a marine park, the chief executive must have regard to all of the following—

- (a) the potential impact of the conduct proposed to be permitted under the permission (the *proposed conduct*) on the environment and on the cultural resources of the marine park or part;
- (b) options for monitoring, managing and mitigating the potential impact of the proposed conduct on the environment and on the cultural resources of the marine park or part;
- (c) if the proposed conduct will take place in an area to which a zoning plan applies—the objects of the area as set out in the zoning plan;
- (d) any written submissions received about the application in response to any public notice of the application given under section 15;
- (e) any other matters relevant to the orderly and proper management of the marine park.

## **11 Other matters to which chief executive may have regard**

(1) In considering an application for a permission for a marine park or a part of a marine park, the chief executive may also have regard to the following—

- (a) the effect that the grant of the permission will have on public appreciation, understanding, and enjoyment of the marine park;
- (b) the potential impact of the conduct proposed to be permitted under the permission (the *proposed conduct*) on 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 chief executive's consideration of the application,



- whether or not related to or a consequence of the proposed conduct;
- (c) any policy or guideline issued by the chief executive about the management of the marine park or the performance of the chief executive's functions under the Act;
  - (d) if the application for the permission relates to an undeveloped project the cost of which will be large—the capacity of the applicant to satisfactorily develop and manage the project;
  - (e) if the proposed conduct also requires an approval or a permission under a law of the State or a law of the Commonwealth or another State—
    - (i) whether the approval or permission has been granted and, if so, its terms; or
    - (ii) whether the approval or permission is likely to be granted and, if granted, its likely terms;
  - (f) any relevant intergovernmental, Australian or international agreement, code, instrument, protocol or standard;
  - (g) any relevant law of the State or of the Commonwealth, or a relevant instrument;
  - (h) any relevant recovery plan, wildlife conservation plan, threat abatement plan or approved conservation advice under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth), or any conservation plan under the *Nature Conservation Act 1992*;
  - (i) whether the applicant for the permission is a suitable person to hold the permission, having regard to—
    - (i) the applicant's history in relation to environment matters; and
    - (ii) if the applicant is a body corporate—the history of its executive officers in relation to environment matters; and

- (iii) if the applicant is a company that is a subsidiary of another company (the *parent body*)—the history of the parent body and its executive officers in relation to environment matters; and
  - (iv) whether the applicant owes any amount payable under the Act;
  - (j) the likely cumulative effect of the applicant's proposed use and other uses on a marine park;
  - (k) any other matters relevant to achieving the purpose of the Act.
- (2) In this section—
- relevant instrument***, for a marine park or a part of a marine park, means—
- (a) a management plan applying to the marine park or part; or
  - (b) a management statement or management plan under the *Nature Conservation Act 1992* applying to a protected area under that Act that is within or adjacent to the marine park or part; or
  - (c) a management plan under the *Recreation Areas Management Act 2006* applying to a recreation area under that Act that is within or adjacent to the marine park or part; or
  - (d) a plan of management under the Commonwealth Act applying to an area of the Commonwealth marine park that is within or adjacent to the marine park or part; or
  - (e) a coastal plan under the *Coastal Protection and Management Act 1995* applying to the coastal zone under that Act that is within or adjacent to the marine park or part; or
  - (f) any other instrument made under an Act that the chief executive considers is relevant.

*Example of an instrument for paragraph (f)—*

an instrument about the management of the environment

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## **12 Chief executive's power to require further information or document**

- (1) Before deciding an application for a permission, the chief executive may, by notice given to the applicant, ask the applicant to give the chief executive, within the reasonable period of at least 20 business days stated in the notice, any further information or document the chief executive reasonably requires to decide the application.
- (2) The chief executive may require the information or document to be verified by a statutory declaration.
- (3) The applicant is taken to have withdrawn the application if the applicant does not comply with the request.
- (4) The chief executive may extend the period within which the information or document must be given.

## **13 Amending application**

If the chief executive agrees, the applicant may amend the application before the chief executive has finished considering it.

## **14 Requirements if environmental impact statement requested by chief executive**

- (1) This section applies if the chief executive has, under section 12, asked the applicant to give the chief executive an environmental impact statement about the applicant's proposed use for the marine park, or the part of a marine park, the subject of the application.
- (2) The EIS process under the *Environmental Protection Act 1994* applies for the environmental impact statement as if the proposed use were a project to which chapter 3, part 1 of that Act applies.
- (3) The applicant must pay the costs of preparing the environmental impact statement.
- (4) In this section—

*EIS process* see the *Environmental Protection Act 1994*, schedule 4.

## **15 Chief executive may request public notice of application**

- (1) This section applies if the chief executive considers the grant of a permission may—
  - (a) have a significant impact on the use and non-use values of a marine park or a part of a marine park; or
  - (b) restrict the reasonable use or enjoyment of a part of a marine park by persons other than the applicant for the permission.
- (2) The chief executive may give the applicant a notice stating—
  - (a) the applicant must give public notice of the application for the permission within a stated period; and
  - (b) the information that must be included in the notice the subject of the public notice; and
  - (c) the number of times, being not more than 2, the public notice must be given.
- (3) The applicant must give the public notice and ensure it—
  - (a) includes the stated information; and
  - (b) invites interested persons to make written submissions to the chief executive, in relation to the application—
    - (i) at an address stated in the notice; and
    - (ii) within a stated period of at least 30 business days.
- (4) Before deciding whether or not to grant the permission, the chief executive must consider any written submissions received by the chief executive in response to the public notice within the stated period.
- (5) The applicant is taken to have withdrawn the application if the applicant does not comply with—
  - (a) a notice given under subsection (2); or

- (b) the requirements for giving the public notice under subsection (3).

## **16 Deciding application**

- (1) The chief executive must consider each application for a permission and, within a reasonable period, decide—
  - (a) to grant the permission, with or without conditions; or
  - (b) to refuse to grant the permission.
- (2) Subsection (3) applies if the application is for a new permission to commence immediately after an existing permission of the same type expires.
- (3) Without limiting subsection (1), the chief executive may decide to refuse the application if the chief executive reasonably believes—
  - (a) the existing permission was obtained on the basis of incorrect or misleading information; or
  - (b) the holder of the existing permission has contravened a condition of the permission.

## **17 Only suitable person can hold permission**

The chief executive may grant a permission only if the chief executive is satisfied the applicant is a suitable person to hold the permission.

## **18 Restriction on grant of permission for commercial whale watching program**

- (1) The chief executive may grant a permission authorising the conducting of a commercial whale watching program in the Great Sandy Marine Park only if there are fewer than 20 current authorities applying for the marine park.
- (2) The chief executive may grant a permission authorising the conducting of a commercial whale watching program in the

Moreton Bay Marine Park only if there are fewer than 3 current authorities applying for the marine park.

- (3) However, the chief executive can not grant a permission authorising the conducting of a commercial whale watching program in the Point Lookout area within the Moreton Bay Marine Park unless—
  - (a) the applicant for the permission is—
    - (i) the registered native title body corporate for the area or a part of the area; or
    - (ii) a traditional owner for the area or a part of the area whom the registered native title body corporate for the area or part considers to be an appropriate person to conduct the program in the area; or
    - (iii) a corporation, an executive officer of which is a traditional owner for the area or a part of the area whom the registered native title body corporate for the area or part considers to be an appropriate person to conduct the program in the area; and
  - (b) there is no current authority applying for the marine park that authorises the conducting of a commercial whale watching program in the area.
- (4) Also, the chief executive may grant a permission authorising the conducting of a commercial whale watching program in the Point Lookout area within the Moreton Bay Marine Park if—
  - (a) there are 3 current authorities applying for the marine park; and
  - (b) the applicant for the permission is—
    - (i) the holder of 1 of the current authorities; and
    - (ii) a person mentioned in section 18(3)(a); and
  - (c) there is no current authority applying for the marine park that authorises the conducting of a commercial whale watching program in the area.
- (5) In this section—

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**current authority** means—

- (a) a permission in force under the Act; or
- (b) an authorisation under a commercial activity agreement.

**Point Lookout area**, within the Moreton Bay Marine Park, means the area bounded by a line starting at the intersection of the marine park boundary on the eastern side of Moreton Island and the parallel of latitude 27°18.000' south (at about the point of 27°18.000' south, 153°25.484' east) then running progressively—

- (a) east along the parallel of latitude 27°18.000' south to the intersection with the limit of coastal waters of the State (at about the point of 27°18.000' south, 153°35.352' east); and
- (b) generally southerly along the limit of coastal waters of the State to the intersection with the parallel of latitude 27°33.000' south (at about the point of 27°33.000' south, 153°33.142' east); and
- (c) west along the parallel of latitude 27°33.000' south to the intersection with the marine park boundary on the eastern side of North Stradbroke Island (at about the point 27°33.000' south, 153°29.512' east); and
- (d) generally northerly along the marine park boundary on the eastern side of North Stradbroke Island to the intersection with the meridian of longitude 153°27.297' east (at about the point of 27°23.338' south, 153°27.297' east); and
- (e) northerly along the geodesic to the intersection of the marine park boundary on the eastern side of Moreton Island and the parallel of latitude 27°20.370' south (at about the point of 27°20.370' south, 153°26.293' east); and
- (f) generally northerly along the marine park boundary on the eastern side of Moreton Island to the starting point.

*Note—*

The latitudes and longitudes mentioned in this section are worked out using the Geocentric Datum of Australia, commonly called ‘GDA94’, notified in the Commonwealth Government Gazette No. GN 35 on 6 September 1995, at page 3369.

***registered native title body corporate*** see the *Native Title Act 1993* (Cwlth), section 253.

***traditional owner***, for an area of the Moreton Bay Marine Park, see the *Marine Parks (Moreton Bay) Zoning Plan 2008*, schedule 4.

## 19 Restriction on grant of permission authorising feeding of dolphins

- (1) The chief executive may grant a permission authorising the feeding of dolphins in a marine park or a part of a marine park only to a person who holds—
  - (a) a 2006 relevant permission for the marine park or part; or
  - (b) an existing relevant permission for the marine park or part.
- (2) The term of the permission granted to a person under subsection (1) must start immediately after the expiry of the 2006 relevant permission or the existing relevant permission held by the person.
- (3) In this section—

***2006 relevant permission***, for a marine park or a part of a marine park, means a permission that—

- (a) was granted under the 2006 regulation, section 16; and
- (b) authorises the feeding of dolphins in the marine park or part.

***existing relevant permission***, for a marine park or a part of a marine park, means a permission that—

- (a) was granted under section 16; and



- (b) authorises the feeding of dolphins in the marine park or part.

## **20 Permission can not be granted if plan restricts the grant**

The chief executive can not grant a permission for a marine park, or a part of a marine park, that is inconsistent with a zoning plan or management plan applying to the marine park.

*Example of inconsistency—*

A zoning plan or management plan applying to the marine park provides that permissions for the park may be granted for particular purposes. The proposed permission is for, or includes, a purpose other than those purposes.

## **21 Restriction on grant of permission about insurance**

- (1) The chief executive may grant a permission to a person only if the chief executive considers there is adequate insurance cover for the activities proposed to be conducted under the permission.
- (2) However, subsection (1) does not apply if the chief executive considers insurance cover is not required having regard to the nature of the activities, including whether insurance is commonly available for the activities.

## **22 Steps to be taken after application decided**

- (1) If the chief executive decides to grant a permission, the chief executive must, as soon as practicable after making the decision, give the applicant—
- (a) the permission; and
- (b) if a condition imposed by the chief executive is stated on the permission—an information notice about the decision to impose the condition.
- (2) Subsection (1)(b) does not apply for a condition that the applicant has requested or permitted in the application.

*Example for subsection (2)—*

The applicant has applied for a permission to authorise the conducting of a commercial activity in a marine park for 30 persons and the chief executive grants the permission subject to the condition that the permission only authorises its holder to conduct the commercial activity for 30 persons.

- (3) Without limiting the conditions the chief executive may impose on a permission, the chief executive may impose either of the following conditions on a permission—
  - (a) a condition that provides for an indemnity for the State against any liability for loss or damage that is suffered by any person and is caused, whether directly or indirectly, by the activities conducted under the permission;
  - (b) a condition that provides for the compensation or reimbursement of any loss or expense incurred by the State in relation to activities conducted under the permission.
- (4) If the chief executive decides to refuse the application, the chief executive must, as soon as practicable after making the decision, give the applicant an information notice about the decision.

## **Division 3                      Form of permission**

### **23                      Permission to be written**

- (1) A permission granted under this part must be written.
- (2) The chief executive may use 1 document for the grant of 2 or more permissions under this part.
- (3) Also, the chief executive may use an instrument that has been used for the grant of a Commonwealth permission for the grant of a permission under this part.

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## **24 Matters to be stated on permission**

A permission granted under this part must state each of the following—

- (a) the date it was granted;
- (b) if it does not commence on the date it was granted—its commencement date;
- (c) either its term or its expiry date;
- (d) the holder's name and, if the holder is a corporation, its ABN or ACN;
- (e) the holder's place of business;
- (f) the marine park or the part of a marine park that may be entered or used under the permission;
- (g) if a part of a marine park that is within a zone or designated area is to be entered or used under the permission—the name of the zone or designated area;
- (h) the purpose for which the entry or use is authorised;
- (i) if the permission authorises the holder to take natural or cultural resources in the marine park—the natural or cultural resources that may be taken under the permission;
- (j) any conditions imposed by the chief executive on the permission.

## **Division 4 Amendment, suspension or cancellation of permission**

### **Subdivision 1 Non-immediate amendment**

#### **25 Amendment by chief executive**

- (1) This section applies if—

- (a) the chief executive reasonably believes a permission should be amended; and
- (b) the proposed amendment is a minor amendment.
- (2) The chief executive may amend the permission by giving the holder of the permission notice of the amendment.
- (3) The notice must state the reasons for the amendment.
- (4) Sections 28 and 29 do not apply to the amendment.
- (5) The amendment takes effect on the later of the following days—
  - (a) the day the notice is given to the holder;
  - (b) the day of effect stated in the notice.
- (6) The effect of the amendment does not depend on the amendment being noted on the permission.

*Note—*

See, however, section 34.

- (7) In this section—

***minor amendment*** means an amendment that—

- (a) omits a condition, if the omission does not adversely affect the holder's interest; or
- (b) corrects an error; or
- (c) makes another change, other than a change of substance, that does not adversely affect the holder's interests.

## **26 Amendment by application**

- (1) The holder of a permission may apply to the chief executive for an amendment of the permission.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be supported by enough information to enable the application to be decided, including the information mentioned in schedule 2; and

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- (c) comply with any other requirements for the application under a zoning plan applying to the marine park; and
  - (d) be made at least 10 business days before the holder of the permission intends the amendment to take effect.
- (3) However, the chief executive may consider an application for an amendment even if the application does not comply with subsection (2).
  - (4) If the chief executive decides to make the amendment, the chief executive must give the holder notice of the amendment.
  - (5) The amendment takes effect on the later of the following days—
    - (a) the day the notice is given to the holder;
    - (b) the day of effect stated in the notice.
  - (6) The effect of the amendment does not depend on the amendment being noted on the permission.

*Note—*

See, however, section 34.

- (7) If the chief executive decides to refuse the application, the chief executive must as soon as practicable after making the decision give the holder an information notice about the decision.

## **27 Chief executive's power to require further information or document**

- (1) Before deciding an application for an amendment of a permission, the chief executive may, by notice given to the applicant, ask the applicant to give the chief executive, within the reasonable period of at least 20 business days stated in the notice, any further information or document the chief executive reasonably requires to decide the application.
- (2) The chief executive may require the information or document to be verified by a statutory declaration.
- (3) The applicant is taken to have withdrawn the application if the applicant does not comply with the request.

- (4) The chief executive may extend the period within which the information or document must be given.

## **28 Other non-immediate amendment**

The chief executive may, by complying with section 29, amend a permission—

- (a) if the chief executive reasonably believes—
- (i) the permission was obtained because of incorrect or misleading information; or
  - (ii) the holder of the permission has contravened a condition of the permission; or
  - (iii) the holder of the permission is not, or is no longer, a suitable person to hold the permission; or
  - (iv) the amendment is necessary having regard to the purpose of the Act; or
- (b) if the holder of the permission has failed to—
- (i) pay a prescribed fee by the day or within the period during which the fee must be paid; or
  - (ii) give the chief executive information required to be given under the Act for the permission, by the day or within the period during which the information must be given; or
- (c) if the holder is convicted of an offence against the Act and the activities of the holder that led to the conviction are relevant to the holder's ability to conduct activities under the permission in a competent and ethical way; or
- (d) to secure the safety of a person or a person's property; or
- (e) to conserve or protect the natural or cultural resources in a marine park; or
- (f) if the area to which the permission applies is declared, after the grant of the permission, as a restricted access area; or

- (g) for a permission forming a part of a joint permission—if the Commonwealth permission forming the other part of the joint permission has been, or is about to be—
  - (i) amended to an extent that it is no longer consistent with the permission granted under the Act; or
  - (ii) replaced with another permission that is not consistent with the permission granted under the Act.

## **29 Procedure for non-immediate amendment**

- (1) If the chief executive proposes to make an amendment under section 28, the chief executive must give the holder a notice stating each of the following—
  - (a) the proposed amendment;
  - (b) the ground for the proposed amendment;
  - (c) an outline of the facts and circumstances forming the basis for the ground;
  - (d) an invitation to make written submissions, within a stated period of at least 20 business days after the notice is given, about why the proposed amendment should not be made.
- (2) The chief executive may amend the permission if, after considering any written submissions made within the stated period, the chief executive still believes the amendment should be made—
  - (a) in the way stated in the notice; or
  - (b) in another way, having regard to the submissions.
- (3) If the chief executive amends the permission, the chief executive must give the holder an information notice about the decision.
- (4) The amendment takes effect on the later of the following days—
  - (a) the day the information notice is given to the holder;

[s 30]

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- (b) the day of effect stated in the information notice.
- (5) The effect of the amendment does not depend on the amendment being noted on the permission.

*Note—*

See, however, section 34.

- (6) If the chief executive decides not to make the amendment, the chief executive must as soon as practicable after making the decision give the holder notice of the decision.

## **Subdivision 2      Immediate amendment or suspension**

### **30      Immediate amendment or suspension for safety or conservation**

- (1) This section applies if—
  - (a) the chief executive reasonably believes a permission should be amended or suspended—
    - (i) to secure the safety of a person or a person's property; or
    - (ii) because of a cyclone or other natural disaster; or
    - (iii) to conserve or protect the natural or cultural resources in the marine park to which it applies; or
  - (b) the area to which a permission applies is declared, after the grant of the permission, to be a restricted access area.
- (2) The chief executive must, in writing, or verbally if practicable, or by signs, advise the holder of the permission that, until the chief executive otherwise decides—
  - (a) the permission is amended in the way the chief executive advises; or
  - (b) the permission is suspended to the extent the chief executive advises.



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- (3) If the chief executive acts under subsection (2), the amendment or suspension takes effect immediately after the holder is advised of the amendment or suspension and continues until the chief executive decides the reason for the amendment or suspension no longer exists.
  - (4) The effect of an amendment under this section does not depend on the amendment being noted on the permission.

*Note—*

See, however, section 34.

- (5) The chief executive must as soon as practicable after the amendment or suspension ends—
  - (a) in writing, or verbally if practicable, or by signs, advise the holder of the permission that the amendment or suspension no longer applies; and
  - (b) put a notice on the department’s website advising that the amendment or suspension no longer applies.

### **31 Immediate amendment or suspension for failure to pay fee**

- (1) This section applies if—
  - (a) the holder of a permission has failed to pay a prescribed fee required to be paid for the permission, by the day or within the period during which the fee must be paid; and
  - (b) the chief executive has given the holder a notice stating that—
    - (i) the holder must pay the fee by a day, at least 10 business days after the holder receives the notice, stated in the notice; and
    - (ii) if the holder does not pay the fee by the stated day, the chief executive may amend or suspend the permission under this section; and
  - (c) the holder does not pay the fee by the stated day.
- (2) The chief executive may amend or suspend the permission.

- (3) If the chief executive acts under this section—
- (a) the chief executive must give the holder of the permission an information notice about the decision; and
  - (b) if the action is suspension, the notice must state the suspension period; and
  - (c) the amendment or suspension takes effect on the later of the following days—
    - (i) the day the notice is given to the holder;
    - (ii) the day of effect stated in the notice; and
  - (d) if the action is suspension, it continues until the earlier of the following—
    - (i) the day the holder pays the outstanding fee;
    - (ii) the end of the suspension period stated in the notice.
- (4) The effect of an amendment under this section does not depend on the amendment being noted on the permission.

*Note—*

See, however, section 34.

### **Subdivision 3      Non-immediate suspension or cancellation**

#### **32      Non-immediate suspension or cancellation**

The chief executive may, by complying with section 33, suspend or cancel a permission—

- (a) for a reason for which the permission may be amended or suspended under section 30; or
- (b) for a reason for which the permission may be amended or suspended under section 31; or

- (c) if the purpose for which the entry or use of a marine park or a part of a marine is authorised under the permission is prescribed as a prohibited purpose for the marine park or part; or
- (d) if the chief executive reasonably believes—
  - (i) the permission was obtained because of incorrect or misleading information; or
  - (ii) the holder of the permission has contravened a condition of the permission; or
  - (iii) the holder of the permission is not, or is no longer, a suitable person to hold the permission; or
- (e) if the holder is convicted of an offence against the Act and the activities of the holder that led to the conviction are relevant to the holder's ability to conduct activities under the permission in a competent and ethical way; or
- (f) if the holder of the permission has failed to give the chief executive information required to be given under the Act for the permission, by the day or within the period during which the information must be given; or
- (g) if the chief executive reasonably believes the activities being conducted under the permission are having an unacceptable impact on—
  - (i) the natural or cultural resources in a marine park; or
  - (ii) the use and non-use values of a marine park; or
- (h) if the chief executive reasonably believes the activities being conducted under the permission are threatening public health or safety; or
- (i) for a permission authorising the use of a structure, vessel, vehicle or aircraft in a marine park—if the chief executive reasonably believes the structure, vessel, vehicle or aircraft is not, or is no longer, appropriate for use under the permission; or

- (j) for a permission forming a part of a joint permission—if the Commonwealth permission forming the other part of the joint permission has been, or is about to be—
  - (i) amended to an extent that it is no longer consistent with the permission granted under the Act; or
  - (ii) replaced with another permission that is not consistent with the permission granted under the Act; or
  - (iii) suspended or cancelled; or
- (k) if the chief executive reasonably believes the suspension or cancellation is necessary to ensure the fair and equitable access to the marine park to which the permission applies.

*Example for paragraph (k)—*

Environmental factors have affected the availability of public access to the marine park for which the permission is granted and the permission currently restricts the currently available public access to the marine park.

### **33 Procedures for non-immediate suspension or cancellation**

- (1) If the chief executive proposes to take action (the *proposed action*) under section 32, the chief executive must give the holder of the permission a notice stating each of the following—
  - (a) the proposed action;
  - (b) the ground for the proposed action;
  - (c) an outline of the facts and circumstances forming the basis for the ground;
  - (d) if the proposed action is suspension of the permission—the proposed suspension period;
  - (e) an invitation to make written submissions, within a stated period of at least 20 business days after the notice

is given, about why the proposed action should not be taken.

- (2) If, after considering any written submissions made within the stated period, the chief executive still considers the ground to take the proposed action exists, the chief executive may decide—
  - (a) if the proposed action was to suspend the permission—  
to suspend it for not longer than the proposed suspension period; or
  - (b) if the proposed action was to cancel the permission—  
either to cancel it or to suspend it for a period.
- (3) If the chief executive decides to suspend or cancel the permission, the chief executive must give the holder an information notice about the decision.
- (4) A decision to suspend or cancel the permission takes effect on the later of the following days—
  - (a) the day the information notice is given to the holder;
  - (b) the day of effect stated in the information notice.
- (5) If the chief executive decides not to take the proposed action, the chief executive must as soon as practicable after making the decision give the holder notice of the decision.
- (6) If a permission is suspended because of the conviction of a person for an offence and the conviction is quashed, the suspension period ends on the day the conviction is quashed.
- (7) If a permission is cancelled because of the conviction of a person for an offence and the conviction is quashed, the cancellation has no further effect.

## **Subdivision 4 Other provisions about permissions**

### **34 When holder of amended permission must return permission**

- (1) The chief executive may, by notice given to the holder, ask the holder of a permission that has been amended under this division to return the permission to the chief executive by a day, at least 10 business days after the day the holder receives the notice, stated in the notice.
- (2) The holder must, unless the holder has a reasonable excuse, return the permission to the chief executive by the stated day.  
Maximum penalty—20 penalty units.
- (3) The chief executive must as soon as practicable after receiving the permission—
  - (a) note the amendment on the permission; and
  - (b) give the permission back to the holder.

### **35 When holder of suspended permission must return permission**

- (1) The chief executive may, by notice given to the holder, ask the holder of a permission that has been suspended under this division to return the permission to the chief executive by a day, at least 10 business days after the day the holder receives the notice, stated in the notice.
- (2) The holder must, unless the holder has a reasonable excuse, return the permission to the chief executive by the stated day.  
Maximum penalty—20 penalty units.
- (3) The chief executive must give the permission back to the holder on or before the day the period of suspension ends.

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**36 When holder of cancelled permission must return permission**

The holder of a permission that has been cancelled under this division must, unless the holder has a reasonable excuse, return the permission to the chief executive within 10 business days after the cancellation takes effect.

Maximum penalty—20 penalty units.

**37 Requirement to notify chief executive of particular changes and ask for amendment**

(1) This section applies to the holder of a permission if a change to either of the following happens—

- (a) the holder's name;
- (b) the holder's place of business.

(2) The holder must before, or immediately after, the change happens—

- (a) give the chief executive a notice stating the nature of the change; and
- (b) apply to the chief executive for an amendment of the permission to reflect the change.

Maximum penalty—10 penalty units.

*Note—*

For amending a permission by application, see section 26.

**38 Replacing permission**

(1) The holder of a permission may apply to the chief executive for the replacement of a damaged, destroyed, lost or stolen permission.

(2) The application must be written.

(3) The chief executive must grant the application if the chief executive is satisfied the permission has been—

- (a) damaged in a way that requires its replacement; or

- (b) destroyed, lost or stolen.
- (4) If the chief executive grants the application, the chief executive must give the holder another permission to replace the damaged, destroyed, lost or stolen permission.
- (5) If the chief executive refuses the application, the chief executive must give the applicant an information notice about the decision within 10 business days after the decision is made.

### **39 Surrender of permission**

- (1) The holder of a permission may surrender it by returning it and giving a notice of surrender to the chief executive.
- (2) A permission surrendered under subsection (1) no longer has effect from—
  - (a) the day for surrender stated in the notice; or
  - (b) if a day for surrender is not stated in the notice—the day the notice is received by the chief executive.

### **40 Existing permission taken to be in force while new application is considered**

- (1) This section applies if—
  - (a) the holder of a permission makes an application for a new permission of the same type; and
  - (b) the new permission is intended to commence immediately after the expiry of the existing permission.
- (2) The existing permission is taken to continue in force from the day it would otherwise have expired (the *original expiration day*) until the day on which the earliest of the following happens—
  - (a) the chief executive grants the new permission;
  - (b) the chief executive decides to refuse the application and gives the applicant an information notice about the decision;



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- (c) the applicant is taken to have withdrawn the application under section 12.
  - (3) If the chief executive grants the new permission—
    - (a) the existing permission is taken to have expired on the original expiration day; and
    - (b) the new permission is taken to have commenced immediately after the existing permission's original expiration day; and
    - (c) for the period during which the existing permission is taken to have continued in force under subsection (2), the new permission is taken to be subject to the same conditions and authorise the same activities as the existing permission.
  - (4) Subsection (2) does not stop the existing permission from being suspended or cancelled under this regulation.

## **Division 5                    Carrying out activities under permission**

### **Subdivision 1            Effect of grant of permission**

#### **41            Activities authorised under permission generally**

- (1) A permission granted under this part authorises the holder of the permission to enter and use the marine park, or the part of a marine park, stated on the permission for conducting the activity stated on the permission.
- (2) To remove any doubt, it is declared that the authorisation mentioned in subsection (1) is subject to the following—
  - (a) the authorisation does not exist during a period the permission is suspended under division 4;
  - (b) the authorisation ceases to exist if the permission is cancelled under division 4.

## **42 Term of permission**

- (1) A permission is granted for the term stated on it.
- (2) Subject to section 40, the permission expires at the end of the term.

## **43 How authorisation may be given to other persons**

- (1) This section applies if a permission includes a condition that the holder of the permission may authorise another person to enter and use a marine park, or a part of a marine park, for conducting an activity that is authorised under the permission for a stated period.
- (2) The holder of the permission may give the authorisation only by giving the other person a notice stating the following—
  - (a) the name of the person to whom the authorisation is given;
  - (b) the date on which the authorisation was given and the period to which the authorisation applies;
  - (c) the marine park, or the part of a marine park, that may be entered or used for conducting the activity;
  - (d) the nature of the activity;
  - (e) the conditions of the permission that are relevant to conducting the activity.

## **44 Effect of authorisation given under permission under s 43**

- (1) A person to whom an authorisation under a permission is given under section 43(2) may enter and use the marine park, or the part of the marine park, stated in the authorisation for conducting the activity stated in the authorisation during the period stated in the authorisation.
- (2) The person is taken to be conducting the activity under the permission.

- (3) If the holder of the permission is also conducting the activity under the permission, the activity authorised under the permission, and the conditions of it, apply as if the activity conducted by the person and the activity conducted by the holder were conducted by the same person under the permission.

*Example for subsection (3)—*

A permission authorises the taking of 500 animals of a species in a marine park.

The total number of animals of that species that may be taken under the permission is 500.

The number of animals of that species taken by the holder and the number of animals of that species taken by a person to whom the holder gives an authorisation under section 43(2) must be added together to work out the number of animals of that species that have been taken under the permission.

## **Subdivision 2      Inspection of permission**

### **45      Permission or authorisation must be available for inspection**

- (1) A person conducting an activity under a permission must—
- (a) have the following available for inspection—
    - (i) for the holder of the permission—the permission or a copy of the permission;
    - (ii) for a person to whom an authorisation is given under section 43—the authorisation or a copy of the authorisation; and
  - (b) if asked by an inspector, produce the permission, authorisation or copy for inspection by the inspector, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) For this section, a copy of the relevant details of a permission is taken to be a copy of the permission.

(3) In this section—

*relevant details*, of a permission, means the details needed to identify each of the following matters—

- (a) if the number for the permission is stated on the permission—the number;
- (b) the name of the holder of the permission;
- (c) the term of the permission;
- (d) the marine park, or the part of a marine park, to which the permission applies;
- (e) the activity authorised under the permission.

## **Division 6                      Transfer of permission**

### **46            Application to transfer permission**

- (1) The holder of a permission, including a permission continued in force under section 40, may, under this division, transfer the permission to another person.
- (2) The holder and the proposed transferee must apply to the chief executive to approve the transfer.
- (3) The transfer application must be—
  - (a) in the approved form; and
  - (b) signed by the holder and the proposed transferee; and
  - (c) given to the chief executive at least 20 business days before the day on which the transfer is intended to take effect; and
  - (d) if the permission forms a part of a joint permission and the holder of the permission has not, under the Commonwealth Act, paid a fee for the transfer of the Commonwealth permission that forms the other part of the joint permission—accompanied by the relevant transfer fee.

(4) This section does not apply to a permission that has been suspended under this regulation.

(5) In this section—

*relevant transfer fee*, for a permission that forms part of a joint permission, means an amount that is the same as the amount of the fee that is payable under the Commonwealth Act for the transfer of the Commonwealth permission that forms the other part of the joint permission.

*Note—*

For the amount of the fee that is payable for the transfer of a Commonwealth permission, see the *Great Barrier Reef Marine Park Regulations 1983* (Cwlth), section 134.

#### **46A Restriction on particular transfers**

The holder of a permission that authorises the conducting of a commercial whale watching program in the Point Lookout area within the Moreton Bay Marine Park may transfer the permission only to a person mentioned in section 18(3)(a).

#### **47 Considering transfer application**

In considering a transfer application, the chief executive must have regard to each of the following—

- (a) whether the proposed transferee is a suitable person to hold the permission;
- (b) whether the holder of the permission, or the proposed transferee, owes any fee or other amount payable under the Act;
- (c) if the permission authorises the conducting of a commercial whale watching program in the Point Lookout area within the Moreton Bay Marine Park—whether the proposed transferee is a person mentioned in section 18(3)(a);

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- (d) if the application relates to an undeveloped project, the cost of which will be significant—the capacity of the proposed transferee to satisfactorily develop the project;
- (e) all matters relevant to ensuring the orderly and proper management of the marine park to which the permission applies.

#### **48 Chief executive's power to require further information**

- (1) Before deciding a transfer application, the chief executive may, by notice given to the holder of the permission or the proposed transferee, ask the holder or proposed transferee to give the chief executive any further information the chief executive reasonably requires to decide the application.
- (2) The holder and proposed transferee are taken to have withdrawn the application if the request is not complied with within the reasonable period of at least 20 business days stated in the notice.
- (3) The chief executive may extend the period within which the information must be given.

#### **49 Deciding transfer application**

- (1) The chief executive must decide a transfer application within 20 business days after the chief executive—
  - (a) receives the application; or
  - (b) if the chief executive has asked for further information under section 48—receives the information.
- (2) The chief executive may approve the transfer of a permission only if the chief executive is satisfied the proposed transferee is a suitable person to hold the permission.
- (3) If the chief executive refuses to approve the transfer, the chief executive must give the holder of the permission and the proposed transferee an information notice about the decision.

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## 50 Steps to be taken after transfer approved

- (1) This section applies if the chief executive decides to approve the transfer of a permission under section 49.
- (2) The chief executive must cancel the permission and give the proposed transferee a new permission—
  - (a) authorising the same activity as the cancelled permission immediately before it was cancelled under this section; and
  - (b) with a term—
    - (i) starting on the later of the following days (the *transfer day*)—
      - (A) the day the application is decided;
      - (B) the day stated in the application for the approval of the transfer as the day on which the transfer is to take effect; and
    - (ii) ending on the day the cancelled permission would have ended if it were not cancelled under this section; and
  - (c) subject to the same conditions as the cancelled permission immediately before it was cancelled under this section.
- (3) Despite subsection (2)(c), the chief executive may impose a new or different condition on the new permission if—
  - (a) the proposed transferee consents to the new or different condition; or
  - (b) it is a condition that provides for an indemnity for the State against any liability for loss or damage that is suffered by any person and is caused, whether directly or indirectly, by the activities conducted under the permission; or
  - (c) it is a condition that provides for the compensation or reimbursement of any loss or expense incurred by the State in relation to activities conducted under the permission.

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- (4) The holder of the permission cancelled under subsection (2) must return it to the chief executive before the end of the day after the transfer day.

## **51 Authorisations under transferred permission**

- (1) This section applies if—
  - (a) an authorisation is given under a permission under section 43; and
  - (b) the permission is transferred to another person (the *transferee*) under this division.
- (2) The authorisation continues in effect as if the authorisation were given by the transferee.

# **Part 4 Commercial activity agreements**

## **Division 1 Restrictions about and contents of agreements**

### **52 Chief executive may enter into agreement**

- (1) The chief executive may, for the State, enter into an agreement (a *commercial activity agreement*) with a person authorising the person to enter and use a marine park or a part of a marine park for conducting a commercial activity in the marine park or part.
- (2) The chief executive may enter into the agreement in any 1 or more of the following ways—
  - (a) by using an expression of interest process under division 2 for entering into the agreement;
  - (b) by using an application process under division 3 for entering into the agreement;



- (c) by entering into the agreement with the holder of a permission that authorises the holder to enter and use the marine park or part for conducting the activity in the marine park or part.
- (3) The commercial activity agreement may be combined with either or both of the following—
  - (a) a commercial activity agreement entered into by the person under the *Nature Conservation (Administration) Regulation 2017*, section 83;
  - (b) a commercial activity agreement entered into by the person under the *Recreation Areas Management Act 2006*, section 69.

### **53 Restrictions on entering into agreement—conservation of marine park**

- (1) A commercial activity agreement must be consistent with—
  - (a) the Act; and
  - (b) each zoning plan and management plan applying to the marine park to which it applies; and
  - (c) the use and non-use values of the marine park to which it applies.
- (2) A commercial activity agreement can not—
  - (a) authorise a person to enter or use a marine park, or a part of a marine park, for a prohibited purpose for the marine park or part; or
  - (b) create an interest in tidal land in a marine park; or
  - (c) authorise the carrying out of major earthworks, or the installation of a permanent structure, in a marine park.
- (3) In this section—

***major earthworks*** means earthworks that cause a major disturbance to the natural or cultural resources in a marine park.

*Examples of major earthworks—*

construction of a drainage channel, dredging

**54 Restrictions on entering into agreement—suitability of other party**

The chief executive may enter into a commercial activity agreement with a person only if the chief executive is satisfied the person is a suitable person to be a party to the agreement.

**55 Restrictions on entering into agreement—insurance**

- (1) The chief executive may enter into a commercial activity agreement with a person only if the chief executive is satisfied there is adequate insurance cover for the activities authorised under the agreement.
- (2) However, subsection (1) does not apply if the chief executive considers insurance cover is not required having regard to the nature of the activities, including whether insurance is commonly available for the activities.

**56 Content of agreement**

- (1) A commercial activity agreement must be written and include each of the following details—
  - (a) the name of the marine park to which it applies;
  - (b) if the agreement applies to a zone or designated area of a marine park—the name of the zone or area;
  - (c) the date the agreement is entered into;
  - (d) its term;
  - (e) the name of the person with whom it is entered into and, if the person is a corporation, its ABN or ACN;
  - (f) the person's place of business;
  - (g) the activities authorised under the agreement;
  - (h) any conditions of the agreement;

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- (i) the amount payable to the State under the agreement, or a way of working out the amount.
  - (2) Subsection (1) does not limit the matters that may be included in the agreement.
  - (3) The parties to the agreement may, by agreement, amend it at any time.

*Note—*

See also division 5 for provisions about amendment, suspension and cancellation of commercial activity agreements.

## **57 Mandatory conditions of agreement**

- (1) This section applies if the chief executive reasonably believes a commercial activity agreement should be subject to a condition that will assist in achieving the purpose of the Act.

*Note—*

See section 5 of the Act for the Act's purpose and how it is to be achieved.

- (2) The chief executive must not enter into the agreement unless—
  - (a) the agreement is made subject to the condition; and
  - (b) the agreement identifies the condition as a conservation condition and states that a breach of the condition is an offence against section 58.

## **58 Compliance with conservation conditions**

- (1) A person acting under a commercial activity agreement must comply with each conservation condition of the agreement.

Maximum penalty—80 penalty units.

- (2) In this section—

***conservation condition***, of a commercial activity agreement, means a condition that, under section 57, is identified as a conservation condition of the agreement.

## **Division 2                      Expression of interest process**

### **59            Application of division**

This division applies if the chief executive decides to use an expression of interest process for entering into a commercial activity agreement for the conducting of a commercial activity in a marine park or a part of a marine park.

### **60            Invitation for expressions of interest**

- (1) The chief executive may invite expressions of interest for a commercial activity agreement for the activity for the marine park or part from—
  - (a) only the holders of a permission authorising the conducting of the activity in the marine park or part; or
  - (b) the members of the public the chief executive reasonably believes would be interested in submitting an expression of interest for the agreement.
- (2) The invitation must be made in the way the chief executive considers appropriate having regard to the need to ensure the persons to be invited to submit an expression of interest—
  - (a) are made aware that the process is being conducted; and
  - (b) have enough time to make an appropriate expression of interest.
- (3) The invitation must state each of the following—
  - (a) the commercial activity and the marine park, or the part of a marine park, that will be the subject of the agreement;
  - (b) if the commercial activity is a prescribed commercial activity for the marine park or part—
    - (i) that the commercial activity is a prescribed commercial activity for the marine park or part; and

- (ii) that, under section 127, a person may conduct the prescribed commercial activity in the marine park or part only under a commercial activity agreement;
- (c) if the expression of interest process is open to only the holders of a permission authorising the conducting of the activity for the marine park or part—that only those holders may submit an expression of interest for the agreement;
- (d) how the expression of interest may be submitted to the chief executive;
- (e) when the expression of interest must be submitted to the chief executive;
- (f) that details of each of the following are available at a stated place—
  - (i) the matters the chief executive will consider to decide whether to enter into the agreement;
  - (ii) any proposed conditions of the agreement that are likely to impact on the conducting of the activity under the agreement.

## **61 Requirements for expression of interest**

An expression of interest for a commercial activity agreement must be—

- (a) written; and
- (b) submitted in the way, and by the day and time, stated in the invitation under section 60.

## **62 Requirements for process**

- (1) Subject to the restrictions about entering into a commercial activity agreement mentioned in division 1, any process the chief executive considers appropriate may be used to decide which expressions of interest should be further negotiated toward a commercial activity agreement.

- (2) However, in considering an expression of interest, the chief executive must have regard to—
  - (a) the matters the chief executive is required to have regard to in considering an application for a permission for the activity; and
  - (b) any other matter the chief executive reasonably considers relevant.

*Note—*

See part 3 for the matters the chief executive must have regard to in considering an application for a permission for conducting a commercial activity in a marine park.

### **63 Chief executive may request further information**

- (1) Without limiting section 62(1), the chief executive may, by notice given to the submitter of an expression of interest, ask the submitter to give the chief executive further reasonable information within the reasonable period of at least 20 business days stated in the notice.
- (2) If the submitter does not, without reasonable excuse, give the chief executive the further information by the stated day—
  - (a) the expression of interest is taken to have been withdrawn; and
  - (b) the chief executive must give the submitter a notice stating that—
    - (i) under this section the expression of interest is taken to be withdrawn; and
    - (ii) the submitter may submit another expression of interest.
- (3) The chief executive may extend the period within which the information must be given.

**64 Amending expression of interest**

If the chief executive agrees, the submitter of an expression of interest may amend it before the chief executive has finished considering it.

**65 Notice to unsuccessful submitters**

The chief executive must, within 10 business days after making a decision under section 62, give each unsuccessful submitter of an expression of interest notice of the decision.

**Division 3 Application process**

**66 Application of division**

This division applies if the chief executive decides to use an application process for entering into a commercial activity agreement for conducting a commercial activity in a marine park or a part of a marine park.

**67 Applying for agreement**

- (1) A person may apply to the chief executive for a commercial activity agreement for conducting a commercial activity in a marine park or a part of a marine park.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be supported by enough information to enable the application to be decided, including the information mentioned in schedule 2; and
  - (c) comply with any other requirements for the application under a zoning plan applying to the marine park.

## **68 Matters to which chief executive must have regard**

In considering the application, the chief executive must have regard to—

- (a) the matters the chief executive is required to have regard to in considering an application for a permission for the activity; and
- (b) any other matter the chief executive reasonably considers relevant.

*Note—*

See part 3 for the matters the chief executive must have regard to in considering an application for a permission for conducting a commercial activity in a marine park.

## **69 Chief executive may request further information**

- (1) The chief executive may, by notice given to the applicant, ask the applicant to give the chief executive further reasonable information within the reasonable period of at least 20 business days stated in the notice.
- (2) If the applicant does not, without reasonable excuse, give the chief executive the further information by the stated day—
  - (a) the application is taken to have been withdrawn; and
  - (b) the chief executive must give the applicant a notice stating—
    - (i) under this section, the application is taken to be withdrawn; and
    - (ii) the applicant may make a new application.
- (3) The chief executive may extend the period within which the information must be given.

## **70 Amending application**

If the chief executive agrees, the applicant may amend the application before the chief executive has finished considering it.



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## **71 Chief executive may request public notice of application**

- (1) This section applies if the chief executive considers entering into a commercial activity agreement and the subject of the application may restrict the reasonable use of a marine park, or a part of a marine park, by persons other than the applicant.
- (2) The chief executive may give the applicant a notice stating—
  - (a) the applicant must give public notice of the application within a stated period; and
  - (b) the information that must be included in the notice the subject of the public notice; and
  - (c) the number of times, being not more than 2, the public notice must be given.
- (3) The applicant must give the public notice and ensure it—
  - (a) includes the stated information; and
  - (b) invites interested persons to make written submissions to the chief executive, in relation to the application—
    - (i) at an address stated in the notice; and
    - (ii) within a stated period of at least 20 business days.
- (4) Before deciding whether or not to further negotiate toward entering into the agreement, the chief executive must consider any written submissions received by the chief executive in response to the public notice within the stated period.
- (5) The applicant is taken to have withdrawn the application if the applicant does not comply with—
  - (a) a notice given under subsection (2); or
  - (b) the requirements for giving the public notice under subsection (3).

## **72 Negotiating application for agreement**

- (1) The chief executive must consider each application for a commercial activity agreement and decide—

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- (a) to negotiate the signing of a commercial activity agreement for the application; or
  - (b) to refuse to negotiate the signing of a commercial activity agreement for the application.
- (2) The chief executive must give the applicant a notice of the decision within 10 business days after making the decision.
  - (3) If the decision is a refusal under subsection (1)(b), the notice must be an information notice.

### **73 Steps to be taken after application decided**

- (1) If, after negotiation, the chief executive decides to enter into a commercial activity agreement, the chief executive must, as soon as practicable after making the decision, enter into the agreement with the applicant.
- (2) If, after negotiation, the chief executive decides to refuse to enter into the commercial activity agreement, the chief executive must, within 10 business days after making the decision, give the applicant an information notice about the decision.

## **Division 4 Requirements applying to and nature of agreements**

### **74 Term and review of agreements**

- (1) A commercial activity agreement must not be for a term longer than 10 years from the day the agreement starts.
- (2) The agreement may allow for the term of the agreement to be extended at any time, as long as the term of the agreement is not, at any time, longer than 10 years.
- (3) The agreement may also provide for—
  - (a) a review of the agreement to be conducted at stated intervals; and

- (b) the matters to be considered at the review.

## 75 Nature of agreement

A commercial activity agreement—

- (a) authorises the party to the agreement other than the chief executive (the *other party* to the agreement) to enter and use the marine park, or the part of a marine park, stated in the agreement for conducting, subject to the conditions stated in the agreement, the commercial activity stated in the agreement; and
- (b) may be transferred in the way mentioned in division 6.

## Division 5 Amendment, suspension and cancellation of agreement by chief executive

### 76 Immediate amendment or suspension for safety or conservation

- (1) This section applies if—
  - (a) the chief executive reasonably believes a commercial activity agreement should be amended or the authorisation under it suspended—
    - (i) to secure the safety of a person or a person's property; or
    - (ii) because of a cyclone or other natural disaster; or
    - (iii) to conserve or protect the natural or cultural resources in the marine park to which the agreement applies; or
  - (b) the area to which a commercial activity agreement applies is declared, after the agreement was entered into, to be a restricted access area.

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- (2) The chief executive must, in writing, or verbally if practicable, or by signs, advise the other party to the agreement that until the chief executive otherwise decides—
  - (a) the agreement is amended in the way the chief executive advises; or
  - (b) the authorisation under the agreement is suspended to the extent the chief executive advises.
- (3) If the chief executive acts under subsection (2), the amendment or suspension takes effect immediately after the other party is advised of the amendment or suspension and continues until the chief executive decides the reason for the amendment or suspension no longer exists.
- (4) The effect of an amendment under this section does not depend on the amendment being noted on the agreement.
- (5) The chief executive must as soon as practicable after the amendment or suspension ends—
  - (a) in writing, or verbally if practicable, or by signs, advise the other party that the amendment or suspension no longer applies; and
  - (b) put a notice on the department's website advising that the amendment or suspension no longer applies.

## **77 Non-immediate amendment**

The chief executive may, by complying with section 78, amend a commercial activity agreement—

- (a) for a reason for which the agreement may be amended or suspended under section 76; or
- (b) if the chief executive reasonably believes—
  - (i) the agreement was entered into on the basis of incorrect or misleading information; or
  - (ii) the other party to the agreement has contravened a condition of the agreement; or

- (iii) the other party to the agreement is not, or is no longer, a suitable person to be a party to the agreement; or
  - (iv) the amendment is necessary having regard to the purpose of the Act; or
- (c) if the other party to the agreement is convicted of an offence against the Act and the activities of the other party that led to the conviction are relevant to the other party's ability to conduct activities under the agreement in a competent or ethical way.

## **78 Procedure for non-immediate amendment**

- (1) If the chief executive proposes to make an amendment under section 77, the chief executive must give the other party to the agreement a notice stating each of the following—
- (a) the proposed amendment;
  - (b) the ground for the proposed amendment;
  - (c) an outline of the facts and circumstances forming the basis for the ground;
  - (d) an invitation to make written submissions, within a stated period of at least 20 business days after the notice is given, about why the proposed amendment should not be made.
- (2) If, after considering any written submissions made within the stated period, the chief executive still considers the amendment should be made, the chief executive may amend the agreement—
- (a) in the way stated in the notice; or
  - (b) in another way, having regard to the submissions.
- (3) If the chief executive amends the agreement, the chief executive must give the other party an information notice about the decision.

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- (4) The amendment takes effect on the later of the following days—
  - (a) the day the information notice is given to the other party;
  - (b) the day of effect stated in the information notice.
- (5) The effect of the amendment does not depend on the amendment being noted on the agreement.
- (6) If the chief executive decides not to make the amendment, the chief executive must as soon as practicable after making the decision give the other party notice of the decision.

## **79 Amendment by application**

- (1) The other party to a commercial activity agreement may apply to the chief executive for an amendment of the agreement.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be supported by enough information to enable the application to be decided, including the information mentioned in schedule 2; and
  - (c) comply with any other requirements for the application under a zoning plan applying to the marine park.
- (3) If the chief executive decides to make the amendment, the chief executive must give the other party notice of the amendment.
- (4) The amendment takes effect on the later of the following days—
  - (a) the day the notice is given to the other party;
  - (b) the day of effect stated in the notice.
- (5) The effect of the amendment does not depend on the amendment being noted on the agreement.
- (6) If the chief executive decides not to make the amendment, the chief executive must, as soon as practicable after making the

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decision, give the other party an information notice about the decision.

## 80 Non-immediate cancellation or suspension

The chief executive may, by complying with section 81, cancel a commercial activity agreement or suspend an authorisation under a commercial activity agreement—

- (a) for a reason for which the agreement may be amended under section 76; or
- (b) if the purpose for which entry or use of a marine park, or a part of a marine park, is authorised under the agreement is prescribed as a prohibited purpose for the marine park or part; or
- (c) if the chief reasonably believes the activities being conducted under the agreement are having an unacceptable impact on the use and non-use values of a marine park; or
- (d) if the chief executive reasonably believes the activities being conducted under the agreement are threatening public health or safety; or
- (e) if the chief executive reasonably believes the cancellation or suspension is necessary to ensure the fair and equitable access to the marine park to which it applies.

*Example for paragraph (e)—*

Environmental factors have affected the availability of public access to the marine park to which the commercial activity agreement applies and the agreement restricts the current availability of public access to the marine park.

## 81 Procedure for non-immediate cancellation or suspension

- (1) If the chief executive proposes to take action (the *proposed action*) under section 80, the chief executive must give the other party to the agreement a notice stating each of the following—

- (a) the proposed action;
  - (b) the ground for the proposed action;
  - (c) an outline of the facts and circumstances forming the basis for the ground;
  - (d) if the proposed action is suspension of the agreement—the proposed suspension period;
  - (e) an invitation to make written submissions, within a stated period of at least 20 business days after the notice is given, about why the proposed action should not be taken.
- (2) If, after considering any written submissions made within the stated period, the chief executive still considers the ground to take the proposed action exists, the chief executive may decide—
- (a) if the proposed action was to suspend the authorisation under the agreement—to suspend it for not longer than the proposed suspension period; or
  - (b) if the proposed action was to cancel the agreement—either to cancel the agreement or to suspend the authorisation under it for a period.
- (3) If the chief executive decides to cancel the agreement, or suspend the authorisation under the agreement, the chief executive must give the other party to the agreement an information notice about the decision.
- (4) The cancellation or suspension takes effect on the later of the following days—
- (a) the day the information notice is given to the other party to the agreement;
  - (b) the day of effect stated in the information notice.
- (5) If the chief executive decides not to take the proposed action, the chief executive must as soon as practicable after making the decision give the other party to the agreement notice of the decision.



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- (6) If a commercial activity agreement is cancelled because of the conviction of a person for an offence and the conviction is quashed, the cancellation has no further effect.
  - (7) If the authorisation under a commercial activity agreement is suspended because of the conviction of a person for an offence and the conviction is quashed, the suspension period ends on the day the conviction is quashed.

## **Division 6                      Transfer of authorisation under agreement**

### **82            Application to transfer agreement**

- (1) The other party to a commercial activity agreement (the *seller*) may transfer the authorisation under the agreement to another person (the *buyer*).
- (2) The seller and the buyer must apply to the chief executive to—
  - (a) approve the transfer; and
  - (b) if the chief executive approves the transfer, give effect to the transfer under this division.

### **83            Deciding transfer application**

- (1) The chief executive may approve the transfer only if—
  - (a) the chief executive is satisfied the buyer is a suitable person to be a party to the commercial activity agreement the subject of the authorisation; and
  - (b) if the authorisation allows the buyer to conduct a commercial whale watching program in the Point Lookout area within the Moreton Bay Marine Park—the buyer is a person mentioned in section 18(3)(a).
- (2) If the chief executive refuses to approve a transfer, the chief executive must give the seller and the buyer an information notice about the decision.

## **84 Giving effect to transfer**

- (1) This section applies if—
  - (a) the chief executive approves the transfer; and
  - (b) all amounts payable by the seller under the seller's commercial activity agreement have been paid.
- (2) If the seller transfers all of the authorisation under the agreement, the chief executive must give effect to the transfer by cancelling the seller's agreement and—
  - (a) if the buyer is the other party to another commercial activity agreement—amending the other agreement to reflect the transfer; or
  - (b) if the buyer is not the other party to another commercial activity agreement—entering into, with the buyer, a commercial activity agreement for the conducting of the commercial activity the subject of the authorisation.
- (3) If the seller transfers only part of the authorisation under the agreement, the chief executive must give effect to the transfer by amending the seller's commercial activity agreement to reflect the transfer and—
  - (a) if the buyer is the other party to another commercial activity agreement—amending the other agreement to reflect the transfer; or
  - (b) if the buyer is not the other party to another commercial activity agreement—entering into, with the buyer, a commercial activity agreement for the conducting of the commercial activity the subject of the authorisation.

## **Division 7 Inspection of agreement or copy**

### **85 Agreement or copy must be available for inspection**

- (1) A person acting under a commercial activity agreement must—
  - (a) have the following available for inspection—

- (i) for a person who is a party to the agreement—the agreement, a copy of the agreement or a copy of the relevant details for the agreement;
  - (ii) for a person who is not a party to the agreement—a copy of the agreement, or a copy of the relevant details for the agreement, endorsed by a party to the agreement with that person’s name and residential address; and
- (b) if asked by an inspector, produce the agreement or copy for inspection by the inspector, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) In this section—

*relevant details*, for a commercial activity agreement, means the details needed to identify the following matters—

- (a) the names of the parties to the agreement;
- (b) the date on which the agreement was entered into;
- (c) the marine park, or the part of the marine park, to which the agreement applies;
- (d) the activity authorised under the agreement.

## **Part 5                      Accreditations**

### **Division 1                      Accreditation of external authority as corresponding authority**

#### **86                      Accreditation of external authority**

- (1) Subject to section 87, the chief executive may, by gazette notice, accredit an external authority as a corresponding authority for a marine park or a part of a marine park.
- (2) The notice must state—

- (a) the external authority is accredited as a corresponding authority for the marine park or part; and
- (b) the corresponding authority is an authority for the purposes of the Act.

## **87 Limitations on accreditation of external authority**

- (1) The chief executive can not accredit an external authority as a corresponding authority for a marine park, or a part of a marine park, if the authority—
  - (a) authorises a person to enter or use the marine park or part for a prohibited purpose for the marine park or part; or
  - (b) authorises an activity to be conducted in a zone or designated area that is inconsistent with the objects to be achieved for the zone or area.
- (2) The chief executive may accredit an external authority as a corresponding authority for a marine park, or a part of a marine park, only if the chief executive is satisfied the process for issuing the external authority to a person includes consideration of the person's ability to conduct activities under the external authority in a competent and ethical way.
- (3) Despite subsection (2), the chief executive may accredit an external authority held by a particular person as a corresponding authority for a marine park, or a part of a marine park, if the chief executive is satisfied the person would, if the person applied under part 3 for a permission for conducting the activity authorised under the external authority in the marine park or part, be a suitable person to hold the permission.

## **88 Notice of accreditation to be available on website**

The chief executive must make a copy of the gazette notice accrediting an external authority as a corresponding authority available for inspection by the public on the department's website.

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## **89 Amendment of accreditation of external authority**

- (1) The chief executive may, by gazette notice, amend an accreditation of an external authority as a corresponding authority for a marine park, or a part of a marine park, to change—
  - (a) the part of the marine park to which the accreditation applies; or
  - (b) the purpose for entry or use of the marine park or part.
- (2) However, the chief executive may amend the accreditation only if the chief executive reasonably believes the amendment is necessary—
  - (a) in the interests of managing the marine park; or
  - (b) because the arrangements applying to the entry or use of the marine park or part under the external authority are not adequate, or are not being adequately implemented or followed.
- (3) The notice must state 1 or both of the following—
  - (a) if the part of the marine park is amended—the part of the marine park for which the external authority will be accredited as a corresponding authority after the amendment;
  - (b) if the purpose for entry or use is amended—the purpose for entry or use of the marine park or part after the amendment.

## **90 Cancellation of accreditation of external authority**

- (1) The chief executive may, by gazette notice, cancel an accreditation of an external authority as a corresponding authority for a marine park, or a part of a marine park, if—
  - (a) the purpose for which the entry or use of the marine park or part is authorised by the external authority becomes a prohibited purpose for the marine park or part; or
  - (b) the chief executive is satisfied—

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- (i) the accreditation of the external authority is no longer desirable in the interests of managing the marine park or part; or
  - (ii) the arrangements applying to the entry or use of the marine park or part under the external authority are no longer adequate, or are not being adequately implemented or followed.
- (2) The notice must state the external authority is no longer accredited as a corresponding authority for the marine park or part.

## **91 Review of accreditation of external authority**

- (1) This section applies if—
  - (a) the chief executive has accredited, under this division, an external authority as a corresponding authority for a marine park or a part of a marine park; and
  - (b) a new zoning plan applying to the marine park is made.
- (2) The chief executive must, within 1 year after the new zoning plan is made, review the accreditation to assess whether, having regard to the matters mentioned in section 87, the external authority should still be accredited as a corresponding authority for the marine park or part.
- (3) After reviewing the accreditation, the chief executive must do 1 of the following—
  - (a) leave the accreditation unchanged;
  - (b) replace the accreditation with a new accreditation;
  - (c) amend the accreditation;
  - (d) cancel the accreditation.

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## **Division 2                      Accreditation of external instrument as accredited instrument**

### **92                      Accreditation of external instrument**

- (1) This section applies to an external instrument that provides for how a particular activity should be conducted by a person in a marine park.
- (2) Subject to section 93, the chief executive may, by gazette notice, accredit the instrument for a marine park or a part of a marine park.
- (3) The notice must state—
  - (a) the instrument is an accredited instrument for the marine park or part; and
  - (b) that a person may, without an authority, enter or use the marine park or part for the activity to which the instrument applies if—
    - (i) the person complies with the requirements, in whatever form and however called, stated in the instrument; and
    - (ii) if the instrument only applies to persons who hold a licence, permit or other authority issued or given under another law of the State or a law of the Commonwealth or another State, the person—
      - (A) holds the licence, permit or authority; and
      - (B) complies with the requirements of the licence, permit or authority and any other applicable requirements under the law under which the licence, permit or authority was issued or given.

### **93 Limitation on accreditation of external instrument**

The chief executive may accredit an external instrument for a marine park, or a part of a marine park, only if the chief executive—

- (a) has had regard to—
  - (i) the management arrangements for the entry or use of the marine park or part under the instrument; and
  - (ii) any other relevant matters; and

*Example of a relevant matter—*

a matter the chief executive must have regard to in considering an application for a permission for the marine park or part

- (b) for a zoned marine park—is satisfied the accreditation is consistent with the zoning plan for the park.

### **94 Notice of accreditation and accredited instrument to be available on website**

The chief executive must make a copy of the gazette notice accrediting an external instrument and of the accredited instrument available for inspection by the public on the department's website.

### **95 Amendment of accreditation of external instrument**

- (1) The chief executive may, by gazette notice, amend an accreditation of an external instrument for a marine park or a part of a marine park to change the part of the marine park to which the accreditation applies.
- (2) However, the chief executive may amend the accreditation only if the chief executive reasonably believes the amendment is necessary—
  - (a) in the interests of managing the marine park; or
  - (b) because the arrangements applying to the entry or use of the marine park or part under the accredited instrument



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are not adequate, or are not being adequately implemented or followed.

- (3) The notice must state the part of the marine park for which the instrument will be an accredited instrument after the amendment.

## **96 Cancellation of accreditation of external instrument**

- (1) The chief executive may, by gazette notice, cancel an accreditation of an external instrument for a marine park or a part of a marine park if the chief executive is satisfied—
  - (a) the accreditation of the instrument is no longer desirable in the interests of managing the marine park or part; or
  - (b) the arrangements applying to the entry or use of the marine park or part under the accredited instrument are not adequate, or are not being adequately implemented or followed.
- (2) The notice must state the instrument is no longer an accredited instrument for the marine park or part.

## **97 Review of accreditation of external instrument**

- (1) This section applies if—
  - (a) the chief executive has accredited, under this division, an external instrument for a marine park or a part of a marine park; and
  - (b) a new zoning plan applying to the marine park is made.
- (2) The chief executive must, within 1 year after the new zoning plan is made, review the accreditation to assess whether, having regard to the matters mentioned in section 93, the external instrument should still be accredited for the marine park or part.
- (3) After reviewing the accreditation, the chief executive must do 1 of the following—
  - (a) leave the accreditation unchanged;

- (b) replace the accreditation with a new accreditation;
- (c) amend the accreditation;
- (d) cancel the accreditation.

### **Division 3                      Accreditation of educational or research institution**

*Note—*

See the *Marine Parks (Moreton Bay) Zoning Plan 2008* for additional provisions about the amendment, suspension and cancellation of the accreditation of an educational or research institution for the Moreton Bay Marine Park or a part of it.

#### **98                      Accreditation of educational or research institution**

- (1) The chief executive may, by gazette notice, accredit an educational institution or a research institution—
  - (a) to carry out in a marine park or a part of a marine park—
    - (i) limited impact research (extractive); or
    - (ii) limited impact research (non-extractive); or
  - (b) to conduct a limited educational program in a marine park or a part of a marine park.
- (2) The notice must state that the institution is an accredited educational institution or accredited research institution for the marine park or the part of a marine park to which the accreditation applies.
- (3) In this section—

*educational program* means the provision, whether as a single act or a series of acts, of transport, accommodation or services for a group of 6 or more persons, none of whom is a tourist, principally for the purpose of systematically educating those persons.

***fishing or collecting*** means the taking of an animal, plant or other marine resource.

***limited educational program*** means an educational program not involving fishing or collecting.

***limited impact research (extractive)***—

- 1 *Limited impact research (extractive)* is research that is a component of—
  - (a) an educational program; or
  - (b) a project carried out for the purposes of research.
- 2 Research involving either or both of the following is also *limited impact research (extractive)*—
  - (a) fishing or collecting by limited research sampling;
  - (b) the installation or operation of minor research aids that do not pose a threat to safety or navigation.

***limited impact research (non-extractive)***—

- 1 *Limited impact research (non-extractive)* is research not involving fishing or collecting.
- 2 Subject to paragraph 1, *limited impact research (non-extractive)* includes the following—
  - (a) visual surveys, other than visual surveys of cetaceans;
  - (b) research not involving an activity that would, if it were not part of a research activity, require a permission;
  - (c) social research not involving the conduct of archaeological excavations.

***limited research sampling*** means taking samples of marine resources only for purposes of research.

**99 Limitation on accreditation of educational or research institution**

The chief executive may accredit an educational institution or research institution for a marine park, or a part of a marine park, only if the chief executive is satisfied the institution—

- (a) has adopted appropriate environmental practices and standards, including, for example, providing instructions for, and training, its personnel for the activities the institution intends to carry out in the marine park or part; and
- (b) has an ongoing commitment to improve the environmental practices and standards.

**100 Notice of accreditation to be available on website**

The chief executive must make a copy of the gazette notice accrediting an educational institution or research institution available for inspection by the public on the department's website.

**101 Cancellation of accreditation of educational or research institution**

- (1) The chief executive may, by gazette notice, cancel an accreditation of an educational institution or research institution for a marine park, or a part of a marine park, if the chief executive is satisfied—
  - (a) the institution's environmental practices and standards are no longer appropriate for the activities it carries out in the marine park or part; or
  - (b) the institution no longer has an ongoing commitment to improve its environmental practices and standards for activities it carries out in the marine park or part.
- (2) The notice must state the institution is no longer an accredited educational institution or accredited research institution for the marine park or part.

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**102 Review of accreditation of educational or research institution**

- (1) This section applies if—
  - (a) the chief executive has accredited, under this division, an educational institution or a research institution for a marine park or a part of a marine park; and
  - (b) a new zoning plan applying to the marine park is made.
- (2) The chief executive must, within 1 year after the new zoning plan is made, review the accreditation to assess whether, having regard to the matters mentioned in section 99, the educational institution or research institution should still be an accredited educational institution or accredited research institution for the marine park or part.
- (3) After reviewing the accreditation, the chief executive must do 1 of the following—
  - (a) leave the accreditation unchanged;
  - (b) replace the accreditation with a new accreditation;
  - (c) amend the accreditation;
  - (d) cancel the accreditation.

**Division 4 Accreditation of harvest fishery**

**103 Accreditation of harvest fishery**

- (1) The chief executive may, by gazette notice, accredit a harvest fishery for a marine park or a part of a marine park.
- (2) The notice must state the harvest fishery is an accredited harvest fishery for the marine park or the part of a marine park to which the accreditation applies.

**104 Limitation on accreditation of harvest fishery**

The chief executive may accredit a harvest fishery for a marine park, or a part of a marine park, only if the chief

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executive is satisfied the accreditation of the fishery is desirable in the interests of managing the marine park or part, having regard to—

- (a) the management arrangements for the fishery under the *Fisheries Act 1994*; and
- (b) any other relevant matters.

### **105 Notice of accreditation to be available on website**

The chief executive must make a copy of the gazette notice accrediting a harvest fishery for a marine park, or a part of a marine park, available for inspection by the public on the department's website.

### **106 Amendment of accreditation of harvest fishery**

- (1) The chief executive may, by gazette notice, amend an accreditation of a harvest fishery for a marine park, or a part of a marine park, to change the part of the marine park to which the accreditation applies.
- (2) However, the chief executive may amend the accreditation only if the chief executive reasonably believes the amendment is necessary—
  - (a) in the interests of managing the marine park; or
  - (b) because the management arrangements that apply for the fishery under the *Fisheries Act 1994* and that apply to the activities carried out under the accreditation are not adequate, or are not being adequately implemented or followed.
- (3) The notice must state the part of the marine park for which the harvest fishery will be an accredited fishery after the amendment.

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## **107 Cancellation of accreditation of harvest fishery**

- (1) The chief executive may, by gazette notice, cancel the accreditation of a harvest fishery for a marine park, or a part of a marine park, if the chief executive is satisfied—
  - (a) the management arrangements that apply for the fishery under the *Fisheries Act 1994* no longer provide a sound basis for an ecologically sustainable fishery in an area that is part of, or includes a part of, the marine park or part; or
  - (b) the accreditation is no longer in the interests of managing the marine park or part, having regard to any relevant matters.
- (2) The notice must state the harvest fishery is no longer an accredited harvest fishery for the marine park or part.

## **108 Review of accreditation of harvest fishery**

- (1) This section applies if—
  - (a) the chief executive has accredited, under this division, a harvest fishery for a marine park or a part of a marine park; and
  - (b) a new zoning plan applying to the marine park is made.
- (2) The chief executive must, within 1 year after the new zoning plan is made, review the accreditation to assess whether, having regard to the matters mentioned in section 104, the harvest fishery should still be an accredited harvest fishery for the marine park or part.
- (3) After reviewing the accreditation, the chief executive must do 1 of the following—
  - (a) leave the accreditation unchanged;
  - (b) replace the accreditation with a new accreditation;
  - (c) amend the accreditation;
  - (d) cancel the accreditation.

## **Division 5                      Accreditation of authorisation process or management arrangement for an activity**

### **109      Accreditation of authorisation process or management arrangement**

- (1) The chief executive may, by gazette notice, accredit an authorisation process or management arrangement for an activity in a marine park or a part of a marine park on conditions decided by the chief executive under subsection (2).
- (2) The chief executive may impose on an accreditation of an authorisation process or management arrangement for an activity in a marine park or a part of a marine park—

- (a) conditions on which the process or arrangement is accredited; and

*Examples of conditions for paragraph (a)—*

- the conduct of a particular activity may be authorised under the process or arrangement only if it avoids or minimises adverse impacts on particular habitat in a marine park
- the conduct of an activity in a particular part of a zoned marine park must not be authorised under the process or arrangement if the conduct of the activity is inconsistent with the objects for the part under a zoning plan

- (b) conditions on the conduct of the activity in the marine park or part by a person under the process or arrangement.

*Examples of conditions for paragraph (b)—*

- a particular structure must not be erected or installed in a particular part of a marine park
- if a particular activity is authorised to be conducted in a marine park under the process or arrangement, the activity may be conducted in only a particular part of the marine park or only in particular circumstances

- (3) The notice must state—



- (a) the authorisation process or management arrangement has been accredited for the activity in the marine park or the part of a marine park; and
- (b) the conditions imposed by the chief executive under subsection (2); and
- (c) that a person may, without an authority, enter or use the marine park or part for the activity if the person—
  - (i) is authorised to conduct the activity under the process or arrangement; and
  - (ii) complies with the conditions imposed by the chief executive on the conduct of the activity under the process or arrangement; and
- (d) that the accreditation does not authorise the person to carry out prohibited purposes in the marine park or part.

#### **110 Limitations on accreditation of authorisation process or management arrangement**

- (1) The chief executive may accredit an authorisation process or management arrangement for an activity in a marine park, or a part of a marine park, only if the chief executive is satisfied the accreditation of the process or arrangement is desirable in the interests of managing the marine park or part.
- (2) Also, the chief executive can not accredit an authorisation process or management arrangement for an activity in a marine park or a part of a marine park for which a permission can not be granted.

#### **111 Notice of accreditation of authorisation process or management arrangement to be available on website**

The chief executive must make a copy of the following available for inspection by the public on the department's website—

- (a) the gazette notice accrediting an authorisation process or management arrangement for an activity;

- (b) either—
  - (i) the law setting out the authorisation process for the activity; or
  - (ii) the management arrangement for the activity.

## **112 Amendment of accreditation of authorisation process or management arrangement**

- (1) The chief executive may, by gazette notice, amend an accreditation of an authorisation process or management arrangement for an activity in a marine park, or a part of a marine park, to change—
  - (a) the part of the marine park to which the accreditation applies; or
  - (b) the conditions to which the accreditation is subject.
- (2) However, the chief executive may amend the accreditation only if the chief executive reasonably believes the amendment is necessary—
  - (a) in the interests of managing the marine park; or
  - (b) because—
    - (i) the conditions to which the accreditation is subject are not adequate, or are not being adequately implemented or followed; or
    - (ii) the authorisation process or management arrangement applying to an activity in the marine park or part under the accreditation is not adequate, or is not being adequately implemented or followed.
- (3) The notice must state 1 or both of the following—
  - (a) if the part of the marine park is amended—the part of the marine park for which the authorisation process or management arrangement for the activity will be accredited after the amendment;

- (b) if the conditions are amended—the conditions to which the accreditation is subject after the amendment.

**113 Cancellation of accreditation of authorisation process or management arrangement**

- (1) The chief executive may, by gazette notice, cancel an accreditation of an authorisation process or management arrangement for an activity in a marine park or a part of a marine park if the chief executive is satisfied—
  - (a) the accreditation is no longer desirable in the interests of managing the marine park or part; or
  - (b) the authorisation process or management arrangement applying to an activity in the marine park or part under the accreditation is not adequate, or is not being adequately implemented or followed.
- (2) The notice must state the authorisation process or management arrangement for the activity in the marine park or part is no longer accredited.

**114 Review of accreditation of authorisation process or management arrangement**

- (1) This section applies if—
  - (a) the chief executive has accredited, under this division, an authorisation process or management arrangement for an activity in a marine park or a part of a marine park; and
  - (b) a new zoning plan applying to the marine park is made.
- (2) The chief executive must, within 1 year after the new zoning plan is made, review the accreditation to assess whether, having regard to the matters mentioned in section 110, the authorisation process or management arrangement should still be accredited for the activity in the marine park or part.
- (3) After reviewing the accreditation, the chief executive must do 1 of the following—

- (a) leave the accreditation unchanged;
- (b) replace the accreditation with a new accreditation;
- (c) amend the accreditation;
- (d) cancel the accreditation.

## **Part 6**                      **Regulatory notices and declarations**

### **Division 1**                **Regulatory notices**

#### **115**    **Chief executive may erect or display regulatory notice**

- (1) This section applies for an activity that—
  - (a) relates to a public health and safety act; or
  - (b) under this regulation or a zoning plan may be authorised, regulated or prohibited by a regulatory notice.
- (2) The chief executive may erect or display a notice (a *regulatory notice*) at the relevant notice points for the area of the marine park, or part of the marine park, to which the notice applies.
- (3) The regulatory notice must—
  - (a) be easily visible to persons passing the relevant notice points; and
  - (b) identify the limits of the area to which the notice applies; and
  - (c) state the activity to which it applies and how the activity is authorised, regulated or prohibited.
- (4) The chief executive must publish a copy of the regulatory notice, or the information contained in it, on the department's website.

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- (5) The chief executive may publish the regulatory notice in other ways the chief executive considers appropriate.
  - (6) The regulatory notice may be included on a sign that also includes a regulatory notice applying to—
    - (a) a protected area under the *Nature Conservation Act 1992*; or
    - (b) a recreation area under the *Recreation Areas Management Act 2006*.
  - (7) The regulatory notice may expressly state that a contravention of a requirement of the notice is an offence against the Act and the penalty for the offence.

*Notes—*

- 1 Section 118 provides for the offence of failure to comply with a regulatory notice about a public health and safety act.
- 2 Sections 152(1)(a), 156, 157(1), 158(1), 159(1) and 161(1) also prohibit particular activities by regulatory notice.

## 116 Regulatory information notice

- (1) This section applies if a regulatory notice for a marine park or a part of a marine park does not expressly state that a contravention of a requirement of the notice is an offence against the Act and the penalty for the offence.
- (2) The chief executive must erect or display, at the relevant notice points for the area of the marine park or part to which the regulatory notice applies and other places the chief executive considers appropriate, a notice (a ***regulatory information notice***) expressly stating—
  - (a) that a contravention of the requirement of the regulatory notice is an offence against the Act; and
  - (b) the penalty for the offence.
- (3) The regulatory information notice must be easily visible to persons passing the relevant notice points.

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- (4) The chief executive must publish a copy of the regulatory information notice, or the information contained in it, on the department's website.
- (5) The chief executive may publish the regulatory information notice in other ways the chief executive considers appropriate.
- (6) The regulatory information notice may be included on a sign that also includes a regulatory information notice applying to—
  - (a) a protected area under the *Nature Conservation Act 1992*; or
  - (b) a recreation area under the *Recreation Areas Management Act 2006*.
- (7) The regulatory information notice may contain other information about the marine park the chief executive considers appropriate.

**117 Erection or display of regulatory notice or regulatory information notice is evidence of particular matters**

- (1) This section applies to a copy of a regulatory notice or regulatory information notice erected or displayed at a relevant notice point for an area to which the regulatory notice or regulatory information notice applies.
- (2) Evidence that the regulatory notice or regulatory information notice was erected or displayed at a relevant notice point for the area to which the regulatory notice or regulatory information notice applies is evidence the notice was erected or displayed by the chief executive.

**118 Compliance with regulatory notice about public health and safety act**

A person in a marine park must comply with a regulatory notice about a public health and safety act, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

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## **Division 2                      Declaration of restricted access area**

### **119      Declaration of restricted access area**

- (1) The chief executive may, by gazette notice (a *restricted access area notice*), declare all or part of a marine park to be a restricted access area.
- (2) However, the chief executive may act under subsection (1)—
  - (a) only for a reason mentioned in section 121; and
  - (b) only after the process mentioned in section 122 has been complied with.
- (3) The restricted access area notice must—
  - (a) identify the limits of the area to which the notice applies; and
  - (b) state how access to the area is restricted or prohibited; and

*Examples of how access to the area may be restricted—*

- a person may enter or use the area only for a special activity authorised under a permission held by the person
  - a person may enter or use the area only for a commercial activity authorised under a commercial activity agreement to which the person is a party
- (c) state that a contravention of a requirement of the notice is an offence against the Act and the maximum penalty for the offence.
- (4) If the chief executive is satisfied the reason for making the declaration no longer exists, the chief executive must ensure the declaration is revoked as soon as practicable.

### **120      Erection or display of restricted access area notice**

- (1) When a restricted access area notice is published in the gazette, the chief executive must erect or display a copy of the notice at the relevant notice points for the area of the marine

park or the part of the marine park to which the restricted access area notice applies.

- (2) The copy of the restricted access area notice must—
  - (a) be easily visible to persons passing the relevant notice points; and
  - (b) identify the limits of the area to which the notice applies; and
  - (c) state the activity to which the notice applies and how the activity is authorised, regulated or prohibited.
- (3) The chief executive must publish a copy of the restricted access area notice on the department's website.
- (4) The chief executive may publish the restricted access area notice in other ways the chief executive considers appropriate.
- (5) The restricted access area notice may be included on a sign that also includes a regulatory notice—
  - (a) erected or displayed under section 115(2); or
  - (b) applying to a protected area under the *Nature Conservation Act 1992*; or
  - (c) applying to a recreation area under the *Recreation Areas Management Act 2006*.
- (6) The copy of the restricted access area notice may contain other information about the marine park the chief executive considers appropriate.

## **121 Reasons for declaring restricted access area**

- (1) The chief executive may declare a marine park or a part of a marine park to be a restricted access area only if the chief executive reasonably believes the declaration is necessary or desirable—
  - (a) to secure the safety of a person or a person's property; or
  - (b) because of a cyclone or other natural disaster; or



- 
- (c) to conserve or protect the natural or cultural resources in the marine park or part, including, for example—
    - (i) to prevent the harassment, reduced health or injury of animals in the marine park or part; or
    - (ii) to enable the restoration or rehabilitation of the marine park or part; or
    - (iii) to protect a breeding area for native wildlife; or
  - (d) to protect an area having significant use and non-use values of the marine park or part; or
  - (e) for public health or safety; or
  - (f) to allow a person to conduct an authorised activity in the area effectively and efficiently, including, for example, to conduct the activity in a way that complies with—
    - (i) the conditions of the authority or commercial activity agreement under which the activity is authorised; and
    - (ii) the requirements under the Act applying to the activity.

*Examples of activities for which an area may need to be declared to be a restricted access area to allow the activity to be conducted effectively and efficiently—*

aquaculture, major works

- (2) However, the chief executive can not declare a marine park, or a part of a marine park, to be a restricted access area if, in the circumstances, the area could be declared as a temporary restricted area under section 95 of the Act.
- (3) In this section—

***authorised activity*** means an activity authorised under an authority or commercial activity agreement.

## 122 Public notice about declaration

- (1) Before making a declaration under section 119, the chief executive must give public notice of the proposed declaration.

- (2) The public notice must state the following—
  - (a) consideration is being given to the making of a declaration under section 119;
  - (b) that, under section 124, entry to a restricted access area is restricted to particular persons;
  - (c) that, among other things, the restriction under section 124 prevents entry under a permission unless it specifically authorises the entry;
  - (d) the declaration of a marine park or a part of a marine park as a restricted access area is a ground for which the chief executive may amend, suspend or cancel a permission applying to the marine park or part;
  - (e) interested persons may make written submissions to the chief executive, in relation to the proposed declaration—
    - (i) at an address stated in the notice; and
    - (ii) within a stated period of at least 20 business days.
- (3) The chief executive must consider all written submissions received in response to the public notice within the stated period.

### **123 Period for which declaration is in force**

- (1) A declaration made under section 119—
  - (a) has effect from the day the restricted access area notice is published in the gazette; and
  - (b) continues in force until it is revoked.
- (2) When the declaration is revoked, the chief executive must—
  - (a) remove the copy of the restricted access area notice from the department's website; and
  - (b) erect or display a notice about the revocation in the same way the chief executive erected or displayed a copy of the restricted access area notice under 120(1); and

- (c) if the chief executive published a copy of the restricted access area notice under section 120(4), publish a notice about the revocation in the same way; and
- (d) remove the copy of the restricted access area notice that is erected or displayed at the relevant notice points for the area to which the notice applies.

## 124 Unlawfully entering restricted access area

- (1) A person must not enter or remain in a restricted access area unless the person—
  - (a) enters the area under a permission that specifically authorises the entry; or
  - (b) enters the area under a commercial activity agreement that specifically authorises the entry; or
  - (c) has a reasonable excuse.Maximum penalty—80 penalty units.
- (2) Subsection (1) does not apply to a person who enters the area under—
  - (a) a direction given, under part 5 or 6 of the Act, by the chief executive or an inspector; or
  - (b) an enforcement order or interim enforcement order made, under part 7 of the Act, by the Planning and Environment Court; or
  - (c) a relevant provision.
- (3) In this section—

***relevant provision*** means—

  - (a) for a restricted access area in an unzoned marine park—part 7, division 2, subdivision 2 or section 148 or 149; or
  - (b) for a restricted access area in a zoned marine park—a provision of the zoning plan applying to the zone of the marine park in which the area is located authorising the entry or use of that zone for a purpose, however described, that is the same or substantially the same as a

purpose mentioned in part 7, division 2, subdivision 2 or section 149 or 150.

## **125 Removing property from restricted access area**

- (1) This section applies to a person who is in a marine park, or a part of a marine park, that is declared to be a restricted access area and to whom section 124 applies.
- (2) The person must, immediately after the declaration is made, remove all of the person's property from the area unless the person has a reasonable excuse.

Maximum penalty—80 penalty units.

- (3) In this section—

*property* does not include a structure or other thing that is fixed in position on more than a temporary basis.

## **Division 3 Declaration of prescribed commercial activity**

### **126 Declaration of prescribed commercial activity**

- (1) The chief executive may, by public notice, declare a commercial activity to be a prescribed commercial activity for a marine park or a part of a marine park.
- (2) The public notice must state the following—
  - (a) that the stated commercial activity is a prescribed commercial activity for the stated marine park or the stated part of the marine park;
  - (b) that, under section 127, a person may conduct the prescribed commercial activity in the marine park or part only under a commercial activity agreement;
  - (c) how the person may obtain further information about entering into a commercial activity agreement for the

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conducting of the prescribed commercial activity in the marine park or part.

- (3) The chief executive must also publish a copy of the public notice on the department's website.

## **127 Unlawfully conducting prescribed commercial activity**

- (1) A person must not conduct a prescribed commercial activity for a marine park, or a part of a marine park, in the marine park or part unless the activity is conducted under a commercial activity agreement.

Maximum penalty—165 penalty units.

- (2) Subsection (1) does not apply to a person conducting a prescribed commercial activity under a permission that is in force on the day the prescribed commercial activity is declared under section 126.

## **Division 4 Declaration of special activity**

### **128 Declaration of special activity**

- (1) The chief executive may, by gazette notice (a *special activity notice*), declare an activity to be a special activity for all or part of a marine park.
- (2) However, the chief executive may act under subsection (1)—
  - (a) only for an activity mentioned in section 129; and
  - (b) unless section 130 does not apply—only after the consultation process mentioned in section 130 has been completed.
- (3) The special activity notice must—
  - (a) identify the limits of the area to which the notice applies; and
  - (b) state the activity that is a special activity for the area; and

- (c) state that, under section 132, a person may conduct the special activity in the area only under—
    - (i) a permission that specifically authorises the conducting of the activity; or
    - (ii) a commercial activity agreement that specifically authorises the conducting of the activity; and
  - (d) state the requirements that apply to a person—
    - (i) conducting the special activity in the area; or
    - (ii) otherwise using the area while a special activity is being conducted in the area; and

*Example of a requirement applying to persons otherwise using the area—*

a requirement that a person not participating in the stated special activity must keep a stated distance away from where the activity is being conducted
  - (e) if requirements mentioned in paragraph (d) are stated in the notice—state that, under section 133, a person must comply with the requirements.
- (4) When the special activity notice is published in the gazette, the chief executive—
- (a) must publish a copy of the notice on the department's website; and
  - (b) may—
    - (i) publish a copy of the notice in other ways the chief executive considers appropriate; or
    - (ii) erect or display a copy of the notice at the relevant notice points for the area of the marine park, or part of the marine park, to which the special activity notice applies.
- (5) If the chief executive is satisfied the reason for making the declaration no longer exists, the chief executive must ensure the declaration is revoked as soon as practicable.

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## 129 Activities that may be special activities

An activity that may, under section 128, be declared to be a special activity for a marine park or a part of a marine park is any of the following—

- (a) an activity that will have, or is reasonably likely to have, an unusual or significant impact on the natural or cultural resources in the marine park or part;
- (b) an activity that will involve, or is reasonably likely to involve, a risk to the person conducting the activity or the public generally;
- (c) an activity for which a controlled setting is required to ensure the quality and efficiency of providing the product or service the subject of the activity;

*Examples of activities that may require controlled setting to ensure the quality and efficiency of providing a product or service—*

an educational activity, filming, photography, research

- (d) an activity that may interfere with the public use or enjoyment of the marine park or part.

*Examples of activities that may interfere with public use or enjoyment of an area—*

fishing competition, regatta, swimming competition, triathlon

## 130 Public notice about proposed declaration

- (1) Before making a declaration under section 128, the chief executive must give public notice of the proposed declaration.
- (2) The public notice must state the following—
  - (a) consideration is being given to the making of a declaration under section 128;
  - (b) interested persons may make written submissions to the chief executive, in relation to the proposed declaration—
    - (i) at an address stated in the notice; and
    - (ii) within a stated period of at least 20 business days.

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- (3) The chief executive must consider all written submissions received in response to the public notice within the stated period.
- (4) This section does not apply if—
  - (a) the activity is declared to be a special activity for the marine park or part for the protection of the natural or cultural resources in the marine park or part or to protect individuals or wildlife from potential danger; and
  - (b) it is not practicable for the chief executive to delay the declaration for the reason of complying with this section.

### **131 Period for which declaration is in force**

- (1) A declaration made under section 128—
  - (a) has effect from the day the special activity notice is published in the gazette; and
  - (b) continues in force until it is revoked.
- (2) When the declaration is revoked, the chief executive must—
  - (a) remove the copy of the special activity notice from the department's website; and
  - (b) publish a notice about the revocation in the same ways the chief executive published a copy of the special activity notice under section 128(4)(b)(i); and
  - (c) if the chief executive erected or displayed a copy of the special activity notice at a relevant notice point for the area to which the notice applies—remove the copy.

### **132 Unlawfully conducting special activity**

- (1) A person must not conduct a special activity for a marine park, or a part of a marine park, in the marine park or part unless the person conducts the activity—
  - (a) under a permission that specifically authorises the conducting of the activity; or



- (b) under a commercial activity agreement that specifically authorises the conducting of the activity.

Maximum penalty—80 penalty units.

- (2) This section does not apply to a person conducting an activity under a relevant provision.

- (3) In this section—

*relevant provision* means—

- (a) for an unzoned marine park—part 7, division 2, subdivision 2 or 3; or
- (b) for a zoned marine park—a provision of the zoning plan applying to the marine park authorising the entry or use of the marine park for a purpose, however described, that is the same or substantially the same as a purpose mentioned in part 7, division 2, subdivision 2 or 3.

### **133 Compliance with special activity notice**

- (1) This section applies if a special activity notice states requirements applying to a person in the area to which the notice applies.
- (2) The person must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—80 penalty units.

## **Part 7 Entering or using marine parks**

### **Division 1 Zoned marine parks**

#### **134 Prohibited purpose**

- (1) This section states a purpose that is a prohibited purpose for a zoned marine park for the following—
- (a) section 43 of the Act;

- (b) section 135.
- (2) A ***prohibited purpose*** is a purpose not stated in the zoning plan for the marine park as a purpose for which the marine park may be entered or used with a permission or without a permission.

### **135 Entry or use for a prohibited purpose**

- (1) A person must not enter or use a zoned marine park for a prohibited purpose.

Maximum penalty—

- (a) for a purpose involving taking natural or cultural resources in the marine park—165 penalty units; or
- (b) for a purpose involving releasing an animal or plant in the marine park—165 penalty units; or
- (c) for a purpose involving carrying out works or the construction of a structure in the marine park—165 penalty units; or
- (d) for a purpose involving the dumping of a chemical, waste or other pollutant in the marine park—165 penalty units; or
- (e) for another purpose—80 penalty units.

*Note—*

See also section 43 of the Act.

- (2) This section does not apply to an act—
- (a) done by an authorised person in the performance of a function or exercise of a power under the Act; or
- (b) done by someone else authorised under the Act to do the act.

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**136 Purpose for which authority required**

- (1) This section states a purpose for which an authority is required to enter or use a zoned marine park for the following—
  - (a) section 44 of the Act;
  - (b) section 137.
- (2) A purpose stated in the zoning plan for the marine park as a purpose for which the marine park may be entered or used with a permission is a purpose for which an authority is required to enter or use a zoned marine park.
- (3) However, a person does not require an authority to enter or use a zoned marine park for a purpose for which the person is authorised to enter or use the marine park under—
  - (a) a commercial activity agreement; or
  - (b) an accredited instrument.
- (4) Also, a person does not require an authority to enter or use a zoned marine park to conduct an activity if—
  - (a) the person is authorised to conduct the activity under an accredited authorisation process or accredited management arrangement; and
  - (b) the person complies with the conditions imposed by the chief executive on the conduct of the activity under the process or arrangement.

**137 Entry or use without an authority**

- (1) A person must not enter or use a zoned marine park for a purpose for which an authority is required under section 136 unless the person has an authority to enter or use the park for that purpose.

Maximum penalty—

- (a) for a purpose involving taking natural or cultural resources in the marine park—165 penalty units; or

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- (b) for a purpose involving releasing an animal or plant in the marine park—165 penalty units; or
- (c) for a purpose involving carrying out works or the construction of a structure in the marine park—165 penalty units; or
- (d) for a purpose involving the dumping of a chemical, waste or other pollutant in the marine park—165 penalty units; or
- (e) for another purpose—80 penalty units.

*Note—*

See also section 44 of the Act.

- (2) If the chief executive makes the entry or use under the authority subject to conditions, the person must comply with the conditions.

Maximum penalty—80 penalty units.

- (3) Subsection (1) does not apply to an act—
  - (a) done by an authorised person in the performance of a function or exercise of a power under the Act; or
  - (b) done by someone else authorised under the Act to do the act.

### **138 Entry or use requiring notice**

A person required under the Act to give the chief executive a notice before entering or using a zoned marine park for a particular purpose must not enter or use the marine park for the purpose without giving the notice.

Maximum penalty—165 penalty units.

*Notes—*

- 1 See also section 45 of the Act.
- 2 For the requirement to give the chief executive a notice before entering or using a zoned marine park for a particular purpose, see—

- (a) for the GBR Coast Marine Park—the *Marine Parks (Great Barrier Reef Coast) Zoning Plan 2004*, section 90; or
- (b) for the Great Sandy Marine Park—the *Marine Parks (Great Sandy) Zoning Plan 2017*, section 51; or
- (c) for the Moreton Bay Marine Park—the *Marine Parks (Moreton Bay) Zoning Plan 2008*, section 68.

## **Division 2                    Unzoned marine parks**

### **Subdivision 1            Entry or use without authority**

#### **139    Purpose for which authority required**

- (1) This section states a purpose for which an authority is required to enter or use an unzoned marine park for the following—
  - (a) section 44 of the Act;
  - (b) section 140.
- (2) The conducting of a major impact activity is a purpose for which an authority is required to enter or use an unzoned marine park, other than if the major impact activity—
  - (a) is conducted for a purpose for which a person may enter or use an unzoned marine park under subdivision 2 or 3; or
  - (b) is conducted for a purpose for which the person is authorised to enter or use the unzoned marine park under an accredited instrument; or
  - (c) is authorised to be conducted by the person under an accredited authorisation process or accredited management arrangement and the person complies with the conditions imposed by the chief executive on the conduct of the activity under the process or arrangement.

## **140 Entry or use without an authority**

- (1) A person must not enter or use an unzoned marine park for a particular purpose unless the person has an authority to enter or use the park for that purpose.

Maximum penalty—

- (a) for a purpose involving taking natural or cultural resources in the marine park—165 penalty units; or
- (b) for a purpose involving releasing an animal or plant in the marine park—165 penalty units; or
- (c) for a purpose involving carrying out works or the construction of a structure in the marine park—165 penalty units; or
- (d) for a purpose involving the dumping of a chemical, waste or other pollutant in the marine park—165 penalty units; or
- (e) for another purpose—80 penalty units.

*Note—*

See also section 44 of the Act.

- (2) If the chief executive makes the entry or use under the authority subject to conditions, the person must comply with the conditions.

Maximum penalty—80 penalty units.

- (3) Subsection (1) does not apply to an act—
- (a) done by an authorised person in the performance of a function or exercise of a power under the Act; or
  - (b) done by someone else authorised under the Act to do the act.

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## **Subdivision 2      Entry or use without authority or notification for major impact activity**

### **141      Object of subdivision**

The object of this subdivision is to state purposes for which a person may enter or use an unzoned marine park, or a part of an unzoned marine park, for conducting a major impact activity without an authority or a notice to the chief executive (a *notification*).

### **142      Entry or use in emergency**

A person may, without an authority or a notification, enter or use an unzoned marine park for conducting an activity in an emergency for any of the following purposes—

- (a) to investigate and respond to the emergency;
- (b) to save human life or avoid the risk of injury to a person;
- (c) to locate or secure the safety of an aircraft, vessel or structure that is, or may be, endangered by the weather or a navigational or operational hazard;
- (d) to carry out repairs to an aid to navigation;
- (e) to deal with a threat of pollution to the marine environment under—
  - (i) a Commonwealth law; or
  - (ii) a national emergency response arrangement in which the chief executive participates;
- (f) to remove or salvage, under an Act or a law of the Commonwealth, an aircraft or vessel, or a part of an aircraft or vessel, or another thing, that is wrecked, stranded, sunk or abandoned and poses a threat to the marine environment or human safety.

**143 Entry or use for undertaking functions under Commonwealth Act**

A person may, without an authority or a notification, enter or use an unzoned marine park for conducting an activity necessary for the performance of a function or the exercise of a power under the Commonwealth Act if the person is authorised to perform the function or exercise the power under that Act.

**144 Entry or use for law enforcement**

A person may, without an authority or a notification, enter or use an unzoned marine park for conducting an activity necessary for the enforcement of an Act or a law of the Commonwealth if the person is authorised under an Act or a law of the Commonwealth to conduct the activity.

**Subdivision 3 Entry or use without authority but with notice for major impact activity**

**145 Object of subdivision**

- (1) The object of this subdivision is to state additional purposes for which a person may enter or use an unzoned marine park for conducting a major impact activity without an authority.
- (2) However, a person intending to enter or use an unzoned marine park for a purpose mentioned in this subdivision must give the chief executive a notice stating the person intends to enter or use the marine park for the purpose.
- (3) The chief executive may, on receiving the notice, impose conditions on the entry or use.

**146 Entry or use to remove or salvage aircraft or vessel**

- (1) A person may, without an authority, enter or use an unzoned marine park for conducting a non-emergency activity that is for the removal or salvage, under an Act or a law of the



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Commonwealth, of an aircraft or vessel, or a part of an aircraft or vessel, or another thing, that is wrecked, stranded, sunk or abandoned.

- (2) This section does not apply to a vessel, or a part of a vessel, that is an historic shipwreck.
- (3) In this section—  
*historic shipwreck* see the *Historic Shipwrecks Act 1976* (Cwlth), section 3.

#### **147 Entry or use to remove property under particular instruments**

A person may, without an authority, enter or use an unzoned marine park for the removal of property in compliance with—

- (a) a written direction, notice, order or other instrument, given under an Act or a law of the Commonwealth, requiring the person to whom it is given to remove the person's property from a marine park; or

*Examples for paragraph (a)—*

- a compliance notice, enforcement order or interim enforcement order under the Act
- an order under the *Great Barrier Reef Marine Park Regulations 1983* (Cwlth), section 94

- (b) an agreement, entered into under a condition of a permission or other authority granted under an Act or a law of the Commonwealth, under which a person agrees to remove the person's property from a marine park.

*Example of paragraph (b)—*

deed of agreement entered into under a condition of a Commonwealth permission

#### **148 Entry or use for defence activity**

A person may, without an authority, enter or use an unzoned marine park for conducting an activity for defence purposes by or for any of the following—

- (a) the Australian Defence Force;
- (b) an arm of the defence forces of a foreign country if the arm is in Australia with the approval of the Commonwealth;
- (c) the Commonwealth Department of Defence or an entity authorised by that department to conduct an activity.

#### **149 Entry or use for essential public services**

- (1) A person may, without an authority, enter or use an unzoned marine park for carrying out urgent maintenance or works for an essential public service if the maintenance or works is authorised under an Act or a law of the Commonwealth.
- (2) In this section—

*essential public service* means an existing service provided for the public by the State, a local government or the Commonwealth, including, for example, a power, water, sewerage or communications system.

#### **150 Entry or use in particular emergencies**

- (1) A person may, without an authority, enter or use an unzoned marine park for dealing with an emergency involving a threat to the environment, other than a threat mentioned in section 142(e) or (f).
- (2) This section does not apply to a public authority to which section 144 of the Act applies.

#### **151 Entry or use requiring notice**

A person required under the Act to give the chief executive a notice before entering or using an unzoned marine park for a particular purpose must not enter or use the marine park for the purpose without giving the notice.

Maximum penalty—165 penalty units.

*Note—*

See also section 45 of the Act.

## **Part 8                      Offences about fires, vehicles,                                          vessels, animals etc. in marine                                          parks**

### **Division 1                Fires in marine parks**

#### **152      Unlawful lighting of fires**

- (1) A person must not light a fire in a marine park, or a part of a marine park, if lighting a fire, or a fire of that type, is prohibited in the marine park or part by—
- (a) a regulatory notice; or
  - (b) a condition of an authority held by the person; or
  - (c) a condition of a commercial activity agreement to which the person is a party.

Maximum penalty—165 penalty units.

- (2) A person must not light, keep or use a fire on tidal land that is—
- (a) within the GBR Coast Marine Park; and
  - (b) adjacent to the Capricornia Cays National Park or the Whitsunday Islands National Park.

*Note—*

For a description of a national park, see the *Nature Conservation (Protected Areas) Regulation 1994*.

Maximum penalty—165 penalty units.

- (3) This section does not apply to a person lighting or using a specified cooking or heating appliance or lighting or smoking a smoking product if the person takes reasonable steps to

ensure the lighting, using or smoking does not result in damage to—

- (a) a natural or cultural resource in the marine park; or
- (b) property, other than property owned by the person, in the marine park.

(4) In this section—

*smoking product* has the meaning given by the *Tobacco and Other Smoking Products Act 1998*, schedule, definition *smoking product*, paragraph (b).

### **153 Unattended fires**

(1) A person who lights or assumes control of a fire in a marine park must put out the fire before leaving the fire.

Maximum penalty—165 penalty units.

(2) Subsection (1) does not apply if another person assumes control of the fire before the person mentioned in subsection (1) leaves the fire.

### **154 Unauthorised things relating to fires**

(1) A person must not deposit any of the following in a marine park—

- (a) a lit match, pipe, cigar, cigarette or tobacco;
- (b) hot ashes;
- (c) a burning or smouldering substance;
- (d) a substance or device that ignites on impact or by spontaneous combustion.

Maximum penalty—165 penalty units.

(2) Subsection (1) does not apply to a person depositing a thing mentioned in subsection (1) for—

- (a) lighting or using a specified cooking or heating appliance; or

- 
- (b) lighting a barbecue or fireplace provided by the chief executive; or
  - (c) if a barbecue or fireplace is not provided by the chief executive for the marine park—lighting a fire in a place that is more than 2m from flammable material.
- (3) A person must not deposit non-combustible material in a fire in a marine park.

*Example of non-combustible material—*

can, bottle, brick, piece of steel

Maximum penalty for subsection (3)—50 penalty units.

## **155 Inspector powers in relation to fires**

- (1) If an inspector reasonably believes a fire in a marine park is, or may become, a hazard to the marine park or an adjacent area, or to a person or the property of a person, the inspector may—
- (a) give the person apparently in charge of the fire an oral or written direction to put the fire out or lower its intensity to a reasonable level; or
  - (b) put out the fire.

*Example of basis for reasonable belief—*

a prevailing strong wind appears likely to carry windborne embers away from the fire

- (2) A person given a direction under subsection (1)(a) must comply with the direction.

Maximum penalty—165 penalty units.

## **Division 2                      Using vehicles or vessels in marine parks**

### **156      Unlawfully bringing vehicle or vessel into marine park**

A person must not bring a vehicle or vessel into a marine park, or a part of a marine park, if bringing the vehicle or vessel, or a vehicle or vessel of that type, into the marine park or part is prohibited under a regulatory notice.

Maximum penalty—20 penalty units.

### **157      Unlawfully using vehicle or vessel in marine park**

- (1) A person must not use a vehicle or vessel in a marine park in a way that contravenes a regulatory notice.

Maximum penalty—20 penalty units.

- (2) In this section—

*use* includes the following—

- (a) for a vehicle—to move or park the vehicle;  
(b) for a vessel—to move, anchor or moor the vessel.

## **Division 3                      Animals in marine parks**

### **158      Restriction on bringing domestic animals into marine park**

- (1) A person must not bring a domestic animal into a marine park, or a part of a marine park, if bringing the animal, or an animal of that class, into the marine park or part is prohibited under a regulatory notice.

Maximum penalty—20 penalty units.

- (2) A person must not bring a domestic animal onto tidal land that is—

- 
- (a) within the GBR Coast Marine Park and adjacent to a national park, to the extent the national park is not located on the mainland; or
  - (b) within the Moreton Bay Marine Park and adjacent to a national park.

Maximum penalty—20 penalty units.

- (3) This section does not apply if the animal—
  - (a) is kept, at all times, on board a vehicle, vessel or aircraft that is permitted to be in the marine park or part or on the tidal land; or
  - (b) is in the marine park or part, or on the tidal land, under a tourism program; or
  - (c) is a support dog.

- (4) In this section—

***national park*** means a national park, or a national park (scientific), under the *Nature Conservation Act 1992* but does not include a special management area (controlled action) to allow activities of the type, or for the purpose, stated in section 17(1A)(a) of that Act.

***support dog*** means an assistance dog, guide dog, hearing dog or trainee support dog under the *Guide, Hearing and Assistance Dogs Act 2009*, schedule 4.

***tourism program*** means an activity, whether consisting of a single act or a series of acts, that—

- (a) is carried out in the course of carrying on business; and
- (b) is, or includes, the provision of transport, accommodation or services for tourists or for persons who include tourists.

## 159 Unlawfully feeding native animals

- (1) A person must not feed a native animal in a marine park if a regulatory notice prohibits the feeding of the animal.

Maximum penalty—40 penalty units.

- (2) Subsection (1) does not apply to—
- (a) an authorised person performing a function or exercising a power under the Act; or
  - (b) a person who feeds a native animal under an authority that authorises the feeding.

## **Division 4                    Other conduct in marine park**

### **160    Depositing litter in marine park**

A person must not deposit litter in a marine park.

Maximum penalty—20 penalty units.

### **161    Unauthorised use of generators, compressors or motors**

- (1) A person must not use a generator, compressor or other similar engine or motor in a marine park, or a part of a marine park, if the use is prohibited in the marine park or part by a regulatory notice.

Maximum penalty—50 penalty units.

- (2) A person does not commit an offence under subsection (1) if—
- (a) the person uses a generator to operate a device for the treatment of a person's medical condition; and
  - (b) the generator does not emit a noise of more than 65dB(A) when measured 7 metres from the generator.
- (3) In this section—

*medical condition*, of a person, means a medical condition for which the person has a medical certificate or other document issued by a doctor stating that the person has the condition.



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## 162 Disturbance by radio, tape recorder or sound system

A person must not use a radio, tape recorder or other sound or amplifier system in a way that may cause unreasonable disturbance to a person or animal in a marine park.

Maximum penalty—50 penalty units.

## 163 Using particular items for spearfishing

(1) A person must not, in a marine park, use either of the following for spearfishing—

- (a) an underwater breathing apparatus;
- (b) a power-head.

Maximum penalty—100 penalty units.

(2) Subsection (1)(b) does not apply to a person using a power-head attached to a spear or spear gun for protecting the person or other persons from an attack by a shark.

(3) In this section—

*explosive* see the *Explosives Act 1999*, schedule 2.

*power-head* means a device that—

- (a) contains an explosive charge; and
- (b) may be attached to a spear or spear gun.

## 164 General misconduct

(1) A person in a marine park must not, unless the person has a reasonable excuse—

- (a) be disorderly or create a disturbance; or
- (b) do anything that interferes, or is likely to interfere, with the safety or health of the person or someone else in the marine park.

Maximum penalty—50 penalty units.

- (2) A person in a marine park must not, unless the person has a reasonable excuse—
- (a) restrict access to, for example, by cordoning off, a part of the marine park; or
  - (b) claim to have an exclusive right to use a part of the marine park.

Maximum penalty—50 penalty units.

- (3) Subsection (2) does not apply to a person who restricts access to a part of a marine park under an authority or a commercial activity agreement that authorises the person to restrict the access.

## **Part 9 Internal and external reviews**

### **Division 1 Preliminary**

#### **165 Review starts with internal review**

A person must not apply for an external review of a reviewable decision unless there has been an internal review of the decision.

### **Division 2 Internal review**

#### **166 Applying for an internal review**

- (1) An application for internal review must—
- (a) be in the approved form; and
  - (b) be made to the chief executive within 20 business days after—
    - (i) for a reviewable decision for which an information notice is given—the day the person is given the information notice; or

- (ii) for another decision—the day the person the subject of the decision is notified of the decision; and
  - (c) include enough information to enable the chief executive to decide the application.
- (2) The chief executive may extend the time for making an internal review application, including, for example, because—
  - (a) the reviewable decision relates to a permission that forms part of a joint permission; and
  - (b) a decision about the Commonwealth permission forming the other part of the joint permission is being reviewed under the Commonwealth Act; and
  - (c) the outcome of the review of the decision about the Commonwealth permission is reasonably likely to affect the chief executive’s internal review decision.
- (3) The application must be dealt with only by a person who—
  - (a) did not make the reviewable decision; and
  - (b) who holds a more senior office than the person who made the reviewable decision.
- (4) Subsection (3)—
  - (a) applies despite the *Acts Interpretation Act 1954*, section 27A; and
  - (b) does not apply to a reviewable decision made by the chief executive.

## **167 Staying operation of reviewable decision**

- (1) An application for an internal review does not stay the reviewable decision.
- (2) However, the applicant may immediately apply, as provided under the QCAT Act, to QCAT for a stay of the reviewable decision.

- (3) QCAT may stay the reviewable decision to secure the effectiveness of the internal review and any later application to QCAT for external review.
- (4) The stay—
  - (a) may be given on conditions QCAT considers appropriate; and
  - (b) operates for the period fixed by QCAT; and
  - (c) may be revoked or amended by QCAT.
- (5) The period of the stay must not extend past the time when the chief executive makes an internal review decision about the reviewable decision and any later period QCAT allows the applicant to enable the applicant to apply for an external review of the decision.
- (6) The internal review application affects the reviewable decision, or carrying out of the decision, only if the decision is stayed.

## **168 Internal review decision**

- (1) Subject to subsection (2), if the chief executive is satisfied the applicant has complied with section 166(1), the chief executive must, within 20 business days after receiving the application—
  - (a) review the reviewable decision; and
  - (b) make a decision (the *internal review decision*) to—
    - (i) confirm that reviewable decision; or
    - (ii) amend the reviewable decision; or
    - (iii) substitute another decision for the reviewable decision.
- (2) The chief executive may, by notice given to the applicant, extend the period for making the internal review decision if—
  - (a) the reviewable decision relates to a permission that forms part of a joint permission; and

- 
- (b) a decision about the Commonwealth permission forming the other part of the joint permission is being reviewed under the Commonwealth Act; and
  - (c) the outcome of the review of the decision about the Commonwealth permission is reasonably likely to affect the chief executive's internal review.
- (3) Within 10 business days after making the internal review decision, if the decision is not the decision sought by the applicant, the chief executive must give the applicant a notice complying with the QCAT Act, section 157(2) about the decision.
- (4) If the chief executive does not comply with subsection (1) or (3), the chief executive is taken to have made a decision confirming the reviewable decision.
- (5) For the purpose of an application to QCAT for external review—
- (a) if the internal review decision confirms the reviewable decision, the reviewable decision is taken to be the internal review decision; or
  - (b) if the internal review decision amends the reviewable decision, the reviewable decision as amended is taken to be the internal review decision.

## **Division 3 External review by QCAT**

### **169 Who may apply**

A person who is given, or is entitled to be given, a notice under section 168(3) about a decision may apply, as provided under the QCAT Act, to QCAT for an external review of the decision.

### **170 Extending time in which to apply**

QCAT may extend the time for applying for external review if—



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## Part 11 Fees

### Division 1 GBR Coast Marine Park

#### 172 Application of division

This division applies to permissions for the GBR Coast Marine Park.

#### 173 Fees payable generally

- (1) This section applies to an application for a permission authorising the conduct of a commercial activity in the GBR Coast Marine Park if the applicant also conducts the commercial activity in the Commonwealth marine park.
- (2) Subject to this division, the fee payable under the Act for an application for the permission is the amount worked out by—
  - (a) using the formula stated in subsection (3) to work out an approximate fee; and
  - (b) rounding down to the nearest \$10.

*Example for paragraph (b)—*

If after applying the formula under subsection (3), the approximate fee is \$1,216, the fee payable is \$1,210.

- (3) The approximate fee is the amount worked out by using the following formula—

$$A = \frac{F \times CPI}{140.7}$$

where—

*A* is the approximate fee payable.

*F* is the fee stated for the activity in schedule 3.

*CPI* is the all groups consumer price index for Brisbane published by the Australian Statistician for the most recent

financial year to end immediately before the calendar year in which the application is made.

#### **174 Fee payable for permission for more than 1 activity**

- (1) This section states the fee payable for an application for a permission to which section 173 applies if the permission authorises the conducting of more than 1 activity mentioned in schedule 3.
- (2) The fee payable for the application is the higher or highest fee payable for the application under section 173.

#### **175 No fee for joint permission if fee paid to Commonwealth**

- (1) This section applies to an application for a permission that forms a part, or will form a part, of a joint permission if the applicant—
  - (a) has also made an application for the Commonwealth permission that forms, or will form, the other part of the joint permission; and
  - (b) has paid a fee for the application for the Commonwealth permission.
- (2) No fee is payable for the application for the permission under the Act.

## **Division 2 Other marine parks**

### **176 Application of division**

This division applies to permissions for a marine park other than the GBR Coast Marine Park.



## **177 Fees payable**

The fees payable under the Act for a permission to conduct a commercial whale watching program in a marine park other than the GBR Coast Marine Park are stated in schedule 4.

## **Division 3 Waiver of fee**

### **178 Chief executive may waive fee in whole or part**

- (1) The chief executive may waive, in whole or in part, the payment of a fee payable under the Act for an application for a permission.
- (2) Without limiting subsection (1), the chief executive may waive the payment of a fee in whole or in part if—
  - (a) the chief executive believes the application has required, or will require, a low level of assessment having regard to each of the following—
    - (i) the number of hours, and number of persons, that will be involved in assessing the application;
    - (ii) the complexity of assessing the activity the subject of the application against the Act;
    - (iii) the number of site inspections that will be required for assessing the application;
    - (iv) whether an environmental impact statement has been, or is required to be, prepared for the activity the subject of the application; or
  - (b) the assessment of the application has been, or will be, conducted in coordination with an assessment carried out under another Act or a law of the Commonwealth.

## **Part 12**                      **Transitional provisions**

### **Division 1**                      **Preliminary**

#### **179**      **Definitions for part**

In this part—

*2006 permission* means a permission under previous section 16 for a marine park or part of a marine park.

*corresponding provision*, for a previous provision, means a provision of this regulation that is substantially the same as or equivalent to the previous provision.

*previous*, for a stated provision of the 2006 regulation, means the provision of the 2006 regulation with that number.

*previous provision* means a provision of the 2006 regulation.

### **Division 2**                      **Provisions about permissions**

#### **180**      **Existing 2006 permissions**

- (1) This section applies to a 2006 permission in force immediately before the commencement.
- (2) From the commencement, the 2006 permission—
  - (a) continues to have effect as a permission under this regulation for its remaining term unless it is earlier cancelled or surrendered; and
  - (b) is subject to the conditions to which it was subject immediately before the commencement; and
  - (c) if, immediately before the commencement, the permission was suspended under the 2006 regulation—continues to be subject to the suspension; and
  - (d) may be amended, suspended, cancelled or surrendered under this regulation.

- (3) Subsection (4) applies if a process for amending, suspending or cancelling a 2006 permission continued under subsection (2) was started but not finished under the 2006 regulation before the commencement.
- (4) The process may be continued and finished under this regulation.

### **181 Existing authorisation by holder of permission**

- (1) This section applies to an authorisation—
  - (a) given by the holder of a permission to another person under previous section 38; and
  - (b) in force immediately before the commencement.
- (2) From the commencement, the authorisation continues to have effect as an authorisation given under section 43.

### **182 Existing application relating to 2006 permission**

- (1) This section applies if—
  - (a) before the commencement a person applied for any of the following under the 2006 regulation—
    - (i) a 2006 permission;
    - (ii) an amendment of a 2006 permission;
    - (iii) a replacement of a 2006 permission;
    - (iv) a transfer of a 2006 permission; and
  - (b) at the commencement, the application had not been finally decided.
- (2) The application is taken to have been made under this regulation for the corresponding matter.
- (3) Anything done in relation to the application under the 2006 regulation is taken to have been done in relation to the application under this regulation.
- (4) In this section—

*corresponding matter* means—

- (a) for a 2006 permission—a permission under this regulation of the same kind; or
- (b) for an amendment of a 2006 permission—an amendment of the 2006 permission as continued under section 180; or
- (c) for a replacement of a 2006 permission—a replacement of the 2006 permission as continued under section 180; or
- (d) for a transfer of a 2006 permission—a transfer of the 2006 permission as continued under section 180.

### **183 Existing requirements or requests about 2006 permissions**

- (1) This section applies if—
  - (a) before the commencement—
    - (i) a person was required to do something under previous section 12, 15, 33, 34, 47 or 69; or
    - (ii) a person was requested to do something under previous section 9 or 67; and
  - (b) at the commencement, the person had not done the thing, and the time for doing the thing had not ended.
- (2) The requirement or request is taken to have been made under the corresponding provision for the previous provision.

## **Division 3 Provisions about commercial activity agreements**

### **184 Existing commercial activity agreements**

- (1) This section applies to a commercial activity agreement in existence immediately before the commencement.

- (2) From the commencement, the commercial activity agreement—
  - (a) continues to have effect as a commercial activity agreement under this regulation for its remaining term unless it is earlier cancelled; and
  - (b) is subject to the conditions to which it was subject immediately before the commencement; and
  - (c) may be amended, suspended or cancelled under this regulation.
- (3) Subsection (4) applies if a process for amending, suspending or cancelling a commercial activity agreement continued under subsection (2) was started but not finished under the 2006 regulation before the commencement.
- (4) The process may be finished under this regulation.

**185 Existing application or submission of expression of interest relating to commercial activity agreement**

- (1) This section applies if—
  - (a) before the commencement—
    - (i) a person applied for a commercial activity agreement under the 2006 regulation; or
    - (ii) a person submitted an expression of interest for a commercial activity agreement under the 2006 regulation; and
  - (b) at the commencement, the application or submission had not been finally decided.
- (2) The application or submission is taken to have been made under this regulation for a commercial activity agreement.
- (3) Anything done in relation to the application or submission under the 2006 regulation is taken to have been done in relation to the application or submission under this regulation.

## **186 Existing requests about commercial activity agreements**

- (1) This section applies if—
  - (a) before the commencement a person was requested to do something under previous section 61, 67 or 69; and
  - (b) at the commencement, the person had not done the thing, and the time for doing the thing had not ended.
- (2) The request is taken to have been made under the corresponding provision for the previous provision.

## **187 Existing application relating to transfer of commercial activity agreement**

- (1) This section applies if—
  - (a) before the commencement a seller and a buyer applied under the 2006 regulation for the transfer of the authorisation under a commercial activity agreement; and
  - (b) at the commencement the application had not been finally decided.
- (2) The application is taken to have been made under this regulation for the transfer of the authorisation under the commercial activity agreement.
- (3) Anything done in relation to the application under the 2006 regulation is taken to have been done in relation to the application under this regulation.

## **Division 4 Provision about accreditations**

### **188 Existing accreditations**

- (1) This section applies to an accreditation that immediately before the commencement was in force under a provision of previous part 5.

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- (2) The accreditation is taken to have been made, with any amendment, under the corresponding provision for that part.

## **Division 5                      Provisions about regulatory notices and declarations**

### **189      Existing regulatory notice**

- (1) This section applies if, immediately before the commencement, a regulatory notice under previous section 95 was in force.
- (2) The regulatory notice is taken to have been erected or displayed by the chief executive under section 115.

### **190      Existing gazette notices about declarations**

- (1) This section applies if, immediately before the commencement, a gazette notice under previous section 98(1) or 103(1) was in force.
- (2) The gazette notice is taken to have been made under the corresponding provision for the previous provision.

### **191      Consultation started for restricted access area declaration**

- (1) This section applies if—
- (a) before the commencement the chief executive gave public notice under previous section 100 of a proposed declaration of a restricted access area; and
  - (b) immediately before the commencement the declaration had not been made.
- (2) The chief executive may make the declaration as if the public notice had been given under section 122.

## **192 Existing declaration of prescribed commercial activity**

- (1) This section applies if immediately before the commencement a declaration under previous section 102 of a prescribed commercial activity was in force.
- (2) The declaration is taken to have been made under section 126.

## **193 Consultation started for special activity declaration**

- (1) This section applies if—
  - (a) before the commencement the chief executive gave public notice under previous section 105 of a proposed declaration of a special activity; and
  - (b) immediately before the commencement the declaration had not been made.
- (2) The chief executive may make the declaration as if the public notice had been given under section 130.

## **Division 6 Other provisions**

### **194 Existing information notices**

- (1) This section applies if—
  - (a) before the commencement the chief executive gave a person an information notice under previous section 22(1)(b), 22(4), 26(7), 28(3), 30(3)(a), 32(3), 44(3), 48(5), 50(2)(b), 70(3), 71(2), 76(3), 78(3) or 80(2); and
  - (b) at the commencement—
    - (i) the period stated in the notice in which the person could apply for an internal review had not ended; or
    - (ii) an extension of time in which to apply given by the chief executive under previous section 148(2) had not ended.



- (2) The information notice is taken to have been given under the corresponding provision for the previous provision.

## **195 Existing notice of internal review decision**

- (1) This section applies if—
- (a) before the commencement the chief executive gave a person a notice under previous section 149(3); and
  - (b) at the commencement—
    - (i) the period stated in the notice in which the person could start a proceeding under the notice before QCAT had not ended; or
    - (ii) an extension of time in which to apply given by QCAT under previous section 152 had not ended.
- (2) The notice is taken to have been given under the corresponding provision for the previous provision.

## **196 References to 2006 regulation**

In an instrument—

- (a) a reference to the 2006 regulation may, if the context permits, be taken to be a reference to this regulation; and
- (b) a reference to a previous provision may, if the context permits, be taken to be a reference to the corresponding provision for the previous provision.

# **Schedule 1      Objects to be achieved for zones of marine parks**

section 6

## **1      General use zone**

The objects to be achieved for the general use zone are—

- (a) to provide for the conservation of the areas of the marine park within the zone; and
- (b) subject to the object mentioned in paragraph (a), to provide opportunities for reasonable use of the areas.

## **2      Habitat protection zone**

The objects to be achieved for the habitat protection zone are—

- (a) to provide for the conservation of the areas of the marine park within the zone through the protection and management of sensitive habitats that are generally free from potentially damaging activities; and
- (b) subject to the object mentioned in paragraph (a), to provide opportunities for reasonable use of the areas.

## **3      Estuarine conservation zone**

The objects to be achieved for the estuarine conservation zone are—

- (a) to provide for the protection of the natural integrity and values of the areas of the marine park within the zone; and
- (b) subject to the object mentioned in paragraph (a), to provide opportunities for—

- (i) the presentation of the values of the relatively undisturbed areas of the marine park within the zone; and
- (ii) the continuation of existing fishing use in the areas of the marine park within the zone.

#### 4 Conservation park zone

The objects to be achieved for the conservation park zone are—

- (a) to provide for the conservation of the areas of the marine park within the zone; and
- (b) subject to the object mentioned in paragraph (a), to provide opportunities for reasonable use and enjoyment, including, for example, limited extractive use, of the areas.

#### 5 Buffer zone

(1) The objects to be achieved for the buffer zone are—

- (a) to provide for the protection of the natural integrity and values of the areas of the marine park that are generally free from extractive activities and are within the zone; and
- (b) subject to the object mentioned in paragraph (a), to provide opportunities for—
  - (i) particular activities, including, for example, the presentation of the values of the marine park, to be undertaken in relatively undisturbed areas within the zone; and
  - (ii) trolling for pelagic species in the areas of the marine park within the zone.

(2) In this section—

*pelagic species* means—

- (a) a species in any of the following families—

- (i) Carangidae;
  - (ii) Coryphaenidae;
  - (iii) Sphyraenidae;
  - (iv) Istiophoridae;
  - (v) Scombridae; or
- (b) a species in either of the following genera—
- (i) *Aphareus*;
  - (ii) *Aprion*; or
- (c) *Rachycentron canadum*; or
- (d) *Xiphias gladius*.

***trolling***—

- 1 *Trolling* is fishing with a line or lines trailed behind a vessel that is under way—
- (a) using not more than 3 lines for each person on the vessel; and
  - (b) with not more than 6 hooks in total for each person.
- 2 For paragraph 1, a vessel is under way only if it is being propelled through the water in a forward direction, whether by engine, sail or human power, and is not adrift.

## **6 Scientific research zone**

The objects to be achieved for the scientific research zone are—

- (a) to provide for the protection of the natural integrity and values of the areas of the marine park that are generally free from extractive activities and that are within the zone; and
- (b) subject to the object mentioned in paragraph (a), to provide opportunities for scientific research to be

undertaken in relatively undisturbed areas within the zone.

## **7 Marine national park zone**

The objects to be achieved for the marine national park zone are—

- (a) to provide for the protection of the natural integrity and values of the areas of the marine park that are generally free from extractive activities and that are within the zone; and
- (b) subject to the object mentioned in paragraph (a), to provide opportunities for particular activities, including, for example, the presentation of the values of the marine park, to be undertaken in relatively undisturbed areas within the zone.

## **8 Preservation zone**

The object to be achieved for the preservation zone is to provide for the protection of the natural integrity and values of the areas of the marine park that are generally undisturbed by human activities and that are within the zone.

## **Schedule 2      Information that must be included in application for or amendment of permission or commercial activity agreement**

sections 8, 26, 67 and 79

### **1      Application of schedule**

This schedule applies to an application for—

- (a) a permission under section 8; or
- (b) an amendment of a permission (a *permission amendment*) under section 26; or
- (c) a commercial activity agreement under section 67; or
- (d) an amendment of a commercial activity agreement (an *agreement amendment*) under section 79.

### **2      Information required**

An application mentioned in section 1 must include all of the following information—

- (a) the marine park, or the part of a marine park, for which the permission, permission amendment, commercial activity agreement or agreement amendment is sought;
- (b) if a zone or designated area of a marine park is to be entered or used under the permission, permission amendment, commercial activity agreement or agreement amendment—the name of the zone or area;
- (c) the proposed purpose for which the marine park or part is to be entered or used;
- (d) the proposed place of entry, proposed movements within the marine park or part and the places proposed to be used for the proposed purpose;

- 
- (e) the period for which the permission, permission amendment, commercial activity agreement or agreement amendment is sought;
  - (f) the means of transport proposed to be used for the entry to, use of, and departure from the marine park or part;
  - (g) the equipment proposed to be used within the marine park or part;
  - (h) any other information required to be included in the application under a zoning plan applying to the marine park.

### **3 Additional information for taking natural or cultural resources**

An application for a permission, permission amendment, commercial activity agreement or agreement amendment for taking natural or cultural resources in a marine park, or a part of a marine park, must also include all of the following information—

- (a) the purpose of the taking;
- (b) a brief description of the nature of the taking, including, in particular—
  - (i) the number, quantity and description of any specimens of animals, plants or other marine resource to be taken; and
  - (ii) the methods to be used for taking the specimens;
- (c) if the taking is for research—
  - (i) a description of the sequence and location of any fieldwork to be conducted in the marine park or part; and
  - (ii) an explanation of the experimental design and methods of analysis to be used in the research; and
- (d) the proposed frequency and duration of visits to the marine park or part for the taking.

## **Schedule 3      Fees payable under Act for GBR Coast Marine Park**

sections 173(3), definition *F*, and 174(1)

### **Part 1                      Application for a new permission authorising the conducting of a commercial activity**

	\$
1    Application for a new permission authorising the conducting of a commercial activity requiring the use of an aircraft or vessel with a maximum capacity of—	
(a) 1–24 passengers	520.00
(b) 25–50 passengers	750.00
(c) 51–100 passengers	1,360.00
(d) 101–150 passengers	2,260.00
(e) 151 or more passengers	3,780.00
2    Application for a new permission authorising the conducting of a commercial activity requiring the use of a facility or structure within the GBR Coast Marine Park	1,660.00
3    Application for a new permission authorising the conducting of a commercial activity for which public notice is required to be given	6,040.00
4    Application for a new permission authorising the conducting of a commercial activity for which an environmental impact statement must be prepared	81,670.00





Schedule 3

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	\$
(a) if no additional environmental impact statement is required to be prepared for the activity	3,780.00
(b) if an additional environmental impact statement is required to be prepared for the activity	81,670.00
5 Application for a continuation of a permission authorising the conducting of another commercial activity	520.00

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## Schedule 4      Fees payable for other marine parks

section 177

	\$
1    Application for a permission to conduct a commercial whale watching program, for a vessel with a length of—	
(a) 15m or less	853.00
(b) more than 15m but not more than 20m	1,369.00
(c) more than 20m	2,574.00
2    Additional daily fee for a permission authorising the conducting of a commercial whale watching program, for each passenger—	
(a) younger than 5 years	nil
(b) 5 years or older but younger than 15 years	1.96
(c) 15 years or older	3.65

## **Schedule 5      Matters for deciding whether person is a suitable person**

schedule 6, definition *suitable person*

### **1      Definitions for schedule**

In this schedule—

***associated person***, of a person who is being considered as suitable or not suitable to hold a permission or be a party to a commercial activity agreement, means—

- (a) if the person being considered is a corporation—each executive officer of the corporation; or
- (b) if the person being considered is an individual—another person who—
  - (i) is, or will be, regularly or usually in charge of the individual's activity or business, or proposed activity or business, that relates, or will relate, to the permission or agreement; or
  - (ii) regularly directs staff of the activity or business in their duties; or
  - (iii) is, or will be, in a position to control or substantially influence the activity or business, or proposed activity or business.

***relevant day*** means—

- (a) in relation to deciding whether or not an applicant for a permission is a suitable person to hold the permission—the day the person applied for the permission under part 3 of this regulation; or
- (b) in relation to deciding whether or not the proposed transferee for an application for the approval of the transfer of a permission is a suitable person to hold the permission—the day the application for the transfer is made under section 46; or

- (c) in relation to deciding whether or not the holder of a permission is not, or is no longer, a suitable person to hold the permission—the day the decision is made; or
- (d) in relation to deciding whether or not a submitter of an expression of interest, or an applicant, for a commercial activity agreement is a suitable person to be a party to the agreement—the day the person submitted the expression of interest or made the application under part 4 of this regulation; or
- (e) in relation to deciding whether or not the holder of a permission with whom the chief executive proposes to enter into a commercial activity agreement under section 52(2)(c) is a suitable person to be a party to the agreement—the day the decision is made; or
- (f) in relation to deciding whether or not the buyer for the approval of the transfer of an authorisation under a commercial activity agreement is a suitable person to be a party to a commercial activity agreement—the day the application for the approval of the transfer is made under section 82; or
- (g) in relation to deciding whether or not the other party to a commercial activity agreement is not, or is no longer, a suitable person to be a party to the agreement—the day the decision is made.

## **2 Matters to which chief executive may have regard**

In deciding whether a person is a suitable person to hold a permission or be a party to a commercial activity agreement, the chief executive may have regard to any matter relevant to the person's ability to conduct activities under the permission or agreement in a competent and ethical way.

### **3 When person not a suitable person—previous cancellations or suspensions**

- (1) A person is not a suitable person to hold a permission, or be a party to a commercial activity agreement, if either of the following circumstances exist—
  - (a) the person, or an associated person of the person, has previously held a permission, or been a party to a commercial activity agreement, and the permission or agreement was cancelled in the 3 years immediately before the relevant day;
  - (b) the person, or an associated person of the person, has previously held a corresponding authority and the authority was suspended or cancelled in the 3 years immediately before the relevant day.
- (2) However, subsection (1) applies only if the chief executive is satisfied the circumstances are relevant to the person's ability to conduct activities under the permission or agreement in a competent and ethical way.

### **4 When person not a suitable person—convictions**

- (1) A person is not a suitable person to hold a permission, or be a party to a commercial activity agreement, if the person, or an associated person of the person, has, in the 3 years immediately before the relevant day, been convicted of—
  - (a) an offence against the Act; or
  - (b) an offence against the expired *Marine Parks Regulation 2006* as in force at any time before the commencement; or
  - (c) an offence against the *Nature Conservation Act 1992* relating to a protected area or wildlife; or
  - (d) an offence against the *Recreation Areas Management Act 2006* relating to a recreation area; or
  - (e) an offence against the *Forestry Act 1959* relating to a State forest or timber reserve; or

- (f) an offence, however described, equivalent to an offence mentioned in paragraphs (a) to (d) in another State or country.
- (2) However, subsection (1) applies only if the chief executive is satisfied the activity of the person that led to the person's conviction is of the same nature as the activity for which the permission or agreement is sought.

## Schedule 6 Dictionary

### section 3

**2006 regulation** means the *Marine Parks Regulation 2006* as in force immediately before the commencement.

**ABN** means ABN (Australian Business Number) under the *A New Tax System (Australian Business Number) Act 1999* (Cwlth), section 41.

**accredited authorisation process**, for an activity in a marine park or a part of a marine park, means an authorisation process accredited under part 5, division 5 for the activity in the marine park or a part.

**accredited educational institution**, for a marine park or a part of a marine park, means an educational institution accredited under part 5, division 3 for the marine park or part.

**accredited harvest fishery** means a harvest fishery accredited under part 5, division 4.

**accredited instrument**, for a marine park or a part of a marine park, means an external instrument accredited under part 5, division 2 for the marine park or part.

**accredited management arrangement**, for an activity in a marine park or a part of a marine park, means a management arrangement accredited under part 5, division 5 for the activity in the marine park or a part.

**accredited research institution**, for a marine park or a part of a marine park, means a research institution accredited under part 5, division 3 for the marine park or part.

**ACN** means ACN (Australian Company Number) under the Corporations Act, section 9.

**agreement amendment** see schedule 2, section 1(d).

**aircraft** includes a helicopter.



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***application for a continuation of a permission*** means an application by the holder of an existing permission that—

- (a) is for a permission—
  - (i) to conduct the activity authorised under the existing permission in the marine park, or a part of a marine park, to which the existing permission applies; and
  - (ii) that is intended to commence immediately after the expiry of the existing permission; and
- (b) is made before the existing permission expires.

***application for a new permission*** means an application for a permission that is not an application for a continuation of a permission.

***associated person***, for schedule 5, see schedule 5, section 1.

***authorisation***, under a commercial activity agreement, means—

- (a) the commercial activity authorised to be conducted under the agreement; and
- (b) the obligations under the agreement for, and the conditions relating to, the conduct of the activity.

***authorisation process*** means a process set out in a law of the State, or a law of the Commonwealth or another State, under which actions are authorised.

***buyer***, in relation to an application for the approval of the transfer of an authorisation under a commercial activity agreement, see section 82(1).

***commercial activity agreement*** see section 52(1).

***commercial whale watching program*** means a business operation involving carrying people in a boat or aircraft to watch whales.

***Commonwealth marine park*** means the Great Barrier Reef Marine Park established under the Commonwealth Act.

***Commonwealth permission*** means a permission granted under the Commonwealth Act.

***department's website*** means the department's website on the internet.

***deposit*** includes drop, leave, place and throw.

***emergency*** means an event or situation that involves an imminent and definite threat requiring immediate action (whether before, during or after the event or situation), other than routine maintenance due to wear and tear.

*Example of an action not done because of an emergency—*

the carrying out, in winter, of works in anticipation of the next cyclone season

***environmental impact statement*** includes an environmental impact statement, however called, required under another law of the State or a law of the Commonwealth or another State.

***external authority*** means a licence, permit or other authority issued under another law of the State or a law of the Commonwealth or another State.

***external instrument*** means—

- (a) an instrument made under another law of the State or a law of the Commonwealth or another State; or
- (b) another instrument made or prepared by, or for, a State or Commonwealth department or agency, including, for example, a policy, guideline or administrative arrangement; or
- (c) another instrument made or prepared by, or for, a non-government entity that describes how an activity is to be conducted; or
- (d) a part of an instrument mentioned in paragraph (a), (b) or (c).

***GBR Coast Marine Park*** means the marine park mentioned and described in the *Marine Parks (Declaration) Regulation 2006*, schedule 2.

***Great Sandy Marine Park*** means the marine park mentioned and described in the *Marine Parks (Declaration) Regulation 2006*, schedule 3.

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**harvest fishery** means the taking of fish, crustaceans or invertebrates under the *Fisheries Act 1994*, if the taking happens in the fishery area of 1 of the following fisheries prescribed under that Act—

- (a) the aquarium fish fishery;
- (b) the sea cucumber fishery;
- (c) the coral fishery;
- (d) the commercial crayfish and rocklobster fishery;
- (e) the pearl fishery;
- (f) the shell fishery;
- (g) the shell grit fishery;
- (h) the star sand fishery;
- (i) the trochus fishery;
- (j) the beachworm fishery;
- (k) the bloodworm fishery;
- (l) the marine yabby fishery.

**information notice**, about a decision, means a notice stating the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) all rights of internal review under this regulation;
- (d) the period in which any internal review under this regulation must be started;
- (e) how rights of internal review under this regulation are to be exercised;
- (f) that a person may apply, as provided under the QCAT Act, to QCAT for a stay of a decision the subject of an internal review.

**insurance cover**, for activities authorised under a permission or a commercial activity agreement, means a policy of insurance that insures the holder of the permission, or the

other party to the agreement, against a claim for damage, injury or loss to a person, and damage to property, arising from the activities to be conducted under the permission or agreement.

***internal review decision*** see section 168(1)(b).

***joint permission*** means an instrument that includes—

- (a) a permission; and
- (b) a Commonwealth permission.

***major impact activity*** means an activity that will cause, or is likely to cause—

- (a) more than a minimal disturbance to natural resources in a marine park; or
- (b) more than a minor alienation of parts of the marine park.

*Examples of activities that could be major impact activities—*

- building an air terminal or boat terminal
- building a breakwater, marina, runway, submarine pipeline or wharf
- conducting an aquaculture operation
- disposing of dredged material or discharging waste
- excavating or dredging
- filling
- reclamation works

*Examples of activities that are generally not major impact activities—*

- installation or removal of a boat ramp, buoy, jetty, pile or pontoon
- installation or maintenance of a sign that is an aid to navigation

***management arrangement*** includes—

- (a) a management plan; and
- (b) a regime; and
- (c) a policy.

***marine resource*** means any naturally occurring material within the marine park including—

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- (a) material making up the seabed, for example, coral, limestone, shell-grit or star sand; and
  - (b) seawater.

**Moreton Bay Marine Park** means the marine park mentioned and described in the *Marine Parks (Declaration) Regulation 2006*, schedule 1.

**natural integrity**, of an area of the marine park, means the area's natural biodiversity and geodiversity and other natural processes and characteristics.

**non-government entity** means an entity that is not a State or Commonwealth department or agency.

**notice** means written notice.

**notification** see section 141.

**other party**, to a commercial activity agreement, see section 75.

**permission amendment** see schedule 2, section 1(b).

**Point Lookout area**, within the Moreton Bay Marine Park, see section 18(5).

**prescribed commercial activity** means a commercial activity declared to be a prescribed commercial activity for a marine park or a part of a marine park under section 126.

**prescribed fee** means a fee payable under part 11.

**presentation**, of the values of a place, means creating awareness and understanding of the natural significance of the place.

**prohibited purpose**, for a zoned marine park, see section 134.

**proposed transferee**, in relation to an application for the approval of the transfer of a permission, means the person to whom it is proposed to transfer the permission.

**proposed use**, for a marine park or a part of a marine park, for an applicant, means any activity the applicant proposes to conduct in the marine park or part, whether or not the activity is proposed to be conducted under a permission.

**public health and safety act** means an act, the regulation or prohibition of which the chief executive believes is necessary or desirable to diminish the risk of death, injury or illness of users of a marine park or adjacent areas.

**public notice** means a notice published in—

- (a) a newspaper circulating generally in the area in which the marine park the subject of the notice is located; and
- (b) a newspaper circulating throughout the State.

**put out**, a fire, includes reducing the heat of the fire to a point that ensures the fire can not be re-ignited or burn a person.

**regulatory information notice** see section 116(2).

**regulatory notice** see section 115(2).

**relevant day**, for schedule 5, see schedule 5, section 1.

**relevant notice point**, for an area of a marine park or a part of a marine park, means a point in, or near the entrance of, the marine park or part that the chief executive reasonably considers appropriate for erecting or displaying a regulatory notice, a regulatory information notice, restricted access area notice or special activity notice applying to the area, having regard to—

- (a) the usual access points for the area; and
- (b) the need to ensure persons accessing the area are aware of the notice.

**restricted access area** means a marine park, or a part of marine park, declared to be a restricted access area under section 119.

**restricted access area notice** see section 119(1).

**reviewable decision** means each of the following decisions of the chief executive—

- (a) a decision for which an information notice must be given;
- (b) a decision to refuse to give an approval under this regulation or a zoning plan;

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- (c) a decision to impose a condition on an approval given under this regulation or a zoning plan;
  - (d) a decision to refuse to grant an accreditation of a traditional use of marine resources agreement, or an educational or research institution, for the Moreton Bay Marine Park;
  - (e) a decision to amend, suspend or cancel an accreditation of a traditional use of marine resources agreement, or an educational or research institution, for the Moreton Bay Marine Park.

***seller***, in relation to an application for the approval of the transfer of an authorisation under a commercial activity agreement, see section 82(1).

***sign***, in relation to an area, includes a sign erected—

- (a) at or near a usual access point to the area; or
- (b) in a position that would normally be seen by a person accessing the area.

***special activity***, for a marine park or a part of a marine park, means an activity declared as a special activity for the marine park or part under section 128.

***special activity notice*** see section 128(1).

***specified cooking or heating appliance*** means a portable cooking or heating appliance that is self-contained and uses manufactured fuel, including, for example, refined oil or gas.

***suitable person***, to hold a permission or be a party to a commercial activity agreement, means a suitable person to hold the permission, or be a party to the agreement, having regard to the matters mentioned in schedule 5.

***transfer application*** means an application for the approval of the transfer of a permission.

***unzoned marine park*** means a marine park or a part of a marine park to which no zoning plan applies.

***waste*** includes offal and parts of a vehicle or vessel.

***zoned marine park*** means a marine park or a part of a marine park to which a zoning plan applies.