



Queensland

# Marine Parks Regulation 2006

## Explanatory Notes for SL 2006 No. 223<sup>1</sup>

made under the

*Environmental Protection Act 1994*

*Fisheries Act 1994*

*Marine Parks Act 2004*

*Nature Conservation Act 1992*

*Place Names Act 1994*

*State Penalties Enforcement Act 1999*

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## Policy objectives of the legislation

The primary objective of making the proposed regulation is to provide for the management of marine parks in Queensland.

## Reasons for the subordinate legislation

The *Marine Parks Regulation 1990* was scheduled to expire on 1 September 2001 under section 54 of the *Statutory Instruments Act 1992* (SIA). However the Marine Parks Regulation was exempted from automatic expiry under the SIA, section 56A(2) because the *Marine Parks Act 1982*, under which it was made, was under review.

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1 For the accompanying regulatory impact statement, see 2006 SL No. 222

On 25 August 2005, the date of expiry of the *Marine Parks Regulation 1990* was extended from 31 August 2005 to 31 August 2006. The *Marine Parks Regulation* cannot be extended further.

The *Marine Parks Regulation 2006* (***the Regulation***) will—

- commence on 31 August 2006 immediately after the uncommenced parts of the *Marine Parks Act 2004* commence and will provide for the ongoing management of Queensland's marine parks; and
- satisfy the obligations under the *Statutory Instruments Act 1992* to review the *Marine Parks Regulation 1990* to ensure it is relevant to the economic, social and general wellbeing of the people of Queensland and that it is drafted to the highest standard.

## Alternatives to regulation

Potential alternatives to the creation of a new Regulation have been considered, including a 'no-legislative intervention' option (i.e. allow the Regulation to expire without replacement). The 'no legislative intervention' option and other potential alternatives to the proposed regulations are unsatisfactory because they have a range of serious, highly undesirable environmental, economic and social consequences, including—

- removing the State's capability to regulate activities and behaviours that contravene the management principles in the marine park environment that are established under the *Marine Parks Act 2004* and zoning plans;
- immediate removal of all restrictions that apply to activities in marine parks declared under the *Marine Parks Act 1982*;
- break down of the collaborative management schemes in place between the Queensland and Australian Governments for the joint management of the Great Barrier Reef Marine Parks;
- inability to implement the *Marine Parks Act 2004*, which commences on 13 October 2006 if its commencement is not proclaimed by a separate regulation before that date (see *Acts Interpretation Act 1954*, section 15DA (Automatic commencement of postponed law)); and

- cessation of current marine parks permissions and conditions when the *Marine Parks Act 2004* commences.

## **Administrative costs**

The Regulation will not impose further costs on either the Environmental Protection Agency (EPA) or other Government Departments. Implementation costs will be met from existing EPA allocations. The Regulation promotes a coordinated and integrated approach with other legislation, thus encouraging the formulation of arrangements to improve efficient management.

## **Fundamental legislative principles**

### **Penalties**

The inclusion of penalties of up to 165 penalty units is not in keeping with the preferred position of the Scrutiny of Legislation Committee that penalties imposed in subordinate legislation should not exceed 20 penalty units.

Much of the detail of regulation relies upon the subordinate legislation, and for many serious marine park offences 20 penalty units is too low. A range of other offences on taking natural resources, unauthorised fires and unauthorised works carry maximum penalties of 165 penalty units.

As the State and Commonwealth share a common interest in the management of the Great Barrier Reef Marine Park, and the administration of the legislation is done jointly with the Commonwealth Government, there is a need to maintain consistency with the Commonwealth legislation in terms of drafting and penalties, to the extent possible.

### **Powers to immediately suspend or cancel a permission in certain circumstances**

The Regulation gives the chief executive the power to suspend or cancel a permission without the person having right of reply or right

of appeal of the decision, in particular circumstances, including where—

- the person has failed to pay a fee required to be paid to the State under the Regulation;
- the suspension or cancellation is necessary to protect the natural or cultural resources of the marine park, or is for the protection of human health and safety;
- the area to which the permission relates has been declared a restricted access area after the permission is granted.

### **Failure to pay fee**

The Regulation gives the chief executive power to suspend or cancel a permission for failure to pay a fee required under the *Marine Parks Act 2004* either immediately or following a “show cause” period.

The EPA processes applications for permissions as expeditiously as possible and in some situations may decide the application before the applicant’s financial institution clears a cheque or credit application. If the permission is granted and payment is dishonoured, the holder of the permission has effectively obtained the permission without paying the prescribed fee.

It would be onerous on Government to be bound to statutory “show cause” processes and appeal provisions to suspend or cancel a permission for failure to pay a fee.

Nevertheless, the ordinary process of notifying that a person has not paid the required fee would usually involve opportunity to pay it. Therefore, although no formal “show cause” process is mandated by the Regulation, in effect, a similar non-statutory process exists.

The alternative, of withholding decisions until proceeds of payment has cleared, would not satisfy the community’s expectation of the Government in terms of providing fast and efficient customer service.

### **Amendment, suspension or cancellation to protect natural or cultural resources**

To protect the marine environment, the Act provides a suit of tools to “switch off” use or entry authority to a marine park if continuing to

enter or use the park may cause damage to the area's natural or cultural resources. That damage may arise from—

- use of an area in a way that is not ecologically sustainable, which may become evident only after a period of time or advances in scientific knowledge;
- a natural disaster, which may instantaneously render an area susceptible to environmental damage or prevent it from recovering following the disaster.

In the interests of the sustainable use of the marine park environment, there is an inherent need to be able to restrict use of areas, whether by amendment, suspension or cancellation of permissions, or by declaring restricted access areas (discussed below) that authorise an activity that is having an unacceptable impact on the marine environment.

The circumstances where the State might consider amendment, suspension or cancellation of a permission for the protection of natural and cultural resources are generally unforeseen and unforeseeable, but may have immediate and significant impact. It would be inappropriate to mandate a show cause procedure and instigate right to appeal the decision, which is a time consuming process, when the needs for the protection of the marine environment are pressing and urgent.

It is the EPA's view that the circumstances in which the chief executive may declare a restricted access area are sufficiently limited, and tied to the objective of the Act, to justify immediate action without affording the right to be heard. Additionally, the fact that the declaration of a restricted access area must be preceded by consultation with stakeholders provides a reasonable opportunity for involvement of the public in the management of the marine park and acts as a reasonable constraint on the exercise of the power.

### **Declaration of restricted access areas**

The chief executive may declare an area as a restricted access area (*RAA*). A RAA may be declared to—

- prohibit or restrict access to an area by a person or certain class of persons for the protection of natural or cultural resources of the Marine Park;

- restrict access to an area for a purpose unless the entry is made under a permission;
- temporarily close a marine park or part of a marine park for operational reasons, such as to facilitate harvesting from an aquaculture facility or to allow a sporting activity to occur without interferences; or
- to prevent risk to human health and safety.

If the chief executive proposes to declare a RAA to prohibit or restrict access to a marine park or part of a marine park the chief executive must invite comment from the public and consider any submissions made by the public before making the decision about whether or not to make the declaration. This ensures stakeholders' view and interests are considered in the day-to-day management of the marine park.

A RAA declaration may be in force for an unspecified amount of time, but is generally more targeted and site-specific than zoning plans. Therefore the types of actions that are likely to be the subject of RAA declarations are localised and may, in terms of natural resources, be seasonal or itinerant in nature (e.g. protection of a bird nesting area).

It would be impractical and frustrate the administration of the Act to require the chief executive to invoke a right of reply, or institute appeal rights to amend, revoke or suspend a permission where the integrity of the area's natural or cultural values or the safety of a person or persons is compromised. Doing so would also impact on the Government's ability to manage the day-to-day operations of the Marine Park.

Also, if the reason for declaring an area a RAA no longer exists, the declaration must be revoked as soon as reasonably practicable.

In the event that the chief executive was of the view that it was necessary to declare a restricted access area over a large area of a marine park on a permanent basis, the effect of which was to prohibit access to the Marine Park or part of a park, or make it subject to restrictions on entry that have the effect of making general entry and use to the park untenable, an amendment to the zoning plan may be a more suitable option, with its attendant requirement for public consultation and consideration of submissions. Additionally, any zoning plan amendment would be subject to the scrutiny of Parliament through the tabling process.

## **Chief executive can declare restricted access areas that prohibit access to areas, affecting all users including people who hold a permission to enter the area**

The chief executive may declare an area to be a temporary restricted area or a restricted access area (each a *declared area*) in response to circumstances prescribed in the Act or a Regulation. It is an offence to enter a declared area unless the entry is excused by the Regulation or a zoning plan, or entry to the area is specifically authorised under a permission. The declaration may apply to an area to which entry is authorised under a permission granted under the Regulation, or a commercial activity agreement, the effect of which is to administratively withdraw the holder's authority to enter or use the area.

A RAA declaration may be a long-term declaration, the effect of which is to restrict or prohibit access to a marine park, or part of the park, for a period of time and which overrides other instruments (such as zoning plans made under the Act) made by the Governor in Council and which have been subject to other Parliamentary disallowance procedures. This could be viewed as a breach of fundamental legislative principles, namely failure to have regard to the rights and liberties of individuals as they confer powers to the chief executive that have the effect of closing access to an area.

Also, a RAA effectively restricts or prohibits access to an area even by a person who holds a permission that was issued prior to the declaration, and but for the declaration, could enter or use the area.

The chief executive may only declare an area a RAA following notification of the proposal and consideration of comments made by the public.

It is the EPA's view that it would be too onerous and inappropriate to require the chief executive to institute formal amendment, suspension or cancellation of permissions following declaration of an RAA as it would—

- be partly duplicated by the process of public notification;
- focus decision-making and operational day-to-day management of the marine park environment on issues affecting permission holders, to the exclusion of many users that lawfully enter and use the park without a permission; and

- increase the costs of declaring RAA's, which typically affect only a small area of a park, and are essential for the protection of the park's use and non-used values and the management of the marine park environment generally.

The declaration of an RAA does not entitle a person aggrieved by the decision to compensation by the State. It is the EPA's view that the Regulation includes reasonable constraints on the exercise of the power to declare a RAA, that the public notification procedures provide adequate opportunity for consideration of public comments about the proposal and that the use of these restrictive powers is a reasonable and necessary power for the day-to-day management of Queensland's marine parks.

## **Consultation**

A Regulatory Impact Statement (RIS) which detailed the proposed review and remake of the *Marine Parks Regulation 1990* was released on 20 January 2006. Public submissions on the RIS were accepted up until 3 March 2006.

Submissions from all stakeholders expressed general support for the remaking of the Marine Parks Regulation and the majority of the proposed amendments.

Additional consultation with Queensland Government Departments has occurred in preparing the Regulation.

## **Notes on provisions**

### **Part 1 Preliminary**

Part 1 states the short title of the Regulation and that it will commence on 31 August 2006.





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

Division 2 establishes the procedures that the chief executive must follow in deciding an application for a permission under the *Marine Parks Act 2004*. These provisions are generally consistent with the *Great Barrier Reef Marine Park Act 1975* and Regulations, to facilitate the joint assessment of applications for a permission to enter or use a State and Commonwealth Marine Park, and the grant of joint permissions that authorise entry into both the State and Commonwealth marine park areas.

The division—

- requires the chief executive to consider each properly made application;
- describes the things that the chief executive may and must consider in deciding whether a permission should be granted;
- enables the chief executive to require an applicant for a permission to supply additional information (including an environmental impact statement) to enable the chief executive to properly consider the application;
- allows the applicant for a permission to amend the application before the chief executive decides it, but only if the chief executive agrees to the amendment;
- describes the procedures for preparing and notification of an environmental impact statement where the chief executive requires the person to provide an environmental impact statement in order to properly assess the application for the permission;
- restricts the grant of a permission if the grant of the permission for the purpose is inconsistent with a zoning plan or management plan made for the marine park, or part of the marine park, to which the application relates;
- restricts the grant of a permission to a person who is not a suitable person and the criteria for deciding whether a person is a suitable person for the grant of a permission;
- restricts the grant of specific permissions involving whale watching, the feeding of dolphins in marine parks, or the availability of adequate insurance cover for the activity;

- enabling the chief executive to grant a permission, with or without conditions, or refuse an application for a permission and requiring the chief executive to give the person an information notice stating the reasons for any conditions stated on the permission or, if the application is refused, the reasons for refusal;
- The steps to be taken after the application for a permission is decided.

### **Division 3                      Form of permission**

This division states the form that a permission must take, namely—

- the permission must be in writing; and
- the things that must be stated on the permission.

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

This division states the procedures and grounds for amendment, suspension or cancellation of a permission granted under the *Marine Parks Act 2004*.

This division details the—

- chief executive's authority to make minor amendments to a permission;
- grounds and procedures for amending a permission on application by the holder of the permission;
- circumstances when the chief executive may amend a permission other than immediately, including if the permission was granted on the basis of false or misleading information or the holder has contravened a condition of the permission;
- procedure for amending a permission other than immediately, including providing an opportunity for the holder to show cause why the chief executive should not amend the permission in the way stated in the show cause notice;
- chief executive's powers to immediately amend or suspend of a permission for safety or conservation reasons, or for failure to

pay a fee that the person is required to pay under the Act, and the procedure for doing so;

- the grounds for suspending a permission other than immediately or cancelling a permission and the procedure for doing so;
- when a holder of an amended permission must return the permission for amendment; and
- when the holder of a suspended or cancelled permission must return the authority to the chief executive.

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

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

This subdivision states the effect of a permission, namely to enter or use<sup>4</sup> a marine park, or part of a marine park, stated on the permission and the term of the permission.

This subdivision also authorises a person who is the holder of a permission to give authorisation to another person to conduct the activity authorised under the permission if a condition on the permission allows the holder to give authorisation to another person, and the procedure for doing so.

The subdivision also declares that—

- the holder of an authorisation must comply with the conditions of the permission from which the person's authorisation is derived; and
- the person named in the permission may continue to enter and use the park in the way afforded by the permission.

### **Subdivision 2                Conditions and other requirements    applying to permissions**

This subdivision imposes a number of obligations on permission and authorisation holders, and creates offences for failing to comply with the obligations, namely—

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4 Note, a temporary restricted area declared under the *Marine Parks Act 2004*, or restricted access area declaration made under the *Marine Parks Regulation 2006*, prevails over a permission and may prohibit or restrict access to the area.

- specifying that it is an offence to fail to comply with the conditions of a permission;
- specifying the holder of a permission or an authorisation must have it available or a copy of it available for inspection while carrying out an activity under the permission or authorisation. It is an offence to fail to produce the authority for inspection.

## **Division 6                      Transfer of permissions**

This division deals with the transfer of permissions, including that permissions, including joint permissions, are transferable and the procedures for transferring the permission, including application requirements and the eligibility of the transferee and the steps to be taken after the application to transfer the permission has been decided.

## **Division 7                      Other provisions about permissions**

This division contains a number of miscellaneous provisions about permissions including—

- the requirement for the holder of a permission to notify the chief executive and apply for an amendment to the permission if any of the following changes—
  - the holder's name;
  - the holder's business address stated on the permission; or
  - if the permission is issued to a corporation—the person in charge of the activity conducted under the permission;
- the authority for the holder of a permission to apply for a replacement of a damaged, destroyed, lost or stolen permission and the procedures for applying for it and for the chief executive to consider the application and either grant or refuse to grant the permission;
- the surrender of permissions; and
- that a permission is taken to continue in force after expiry for a period of time if the holder of the permission has applied before the permission expires for a new permission in substantially the same terms and conditions as stated in the original permission until the chief executive decides the application for the permission and notifies the applicant of the decision.

## **Part 4 Commercial activity agreements**

Part 4 introduces provisions regarding the Tourism in Protected Areas (TIPA) commercial activities management framework, where “protected areas” includes a range of managed estates. The TIPA framework implements more flexible arrangements for the management of commercial activities, such as, the ability to enter into individually negotiated agreements with individual operators.

### **Division 1 Preliminary**

Division 1 specifies—

- the ways the chief executive may enter into a commercial activity agreement, including through an expression of interest process, an application process, or by agreement with a holder of an existing commercial activity permit;
- restrictions on entering into an agreement for the conservation of a marine park, this includes the chief executive being satisfied that the activities authorised under the agreement are consistent with the zoning plan and management plan for the marine park, and that a commercial activity agreement cannot create an interest in land or authorise reclamation of a park or part of a park;
- restrictions on entering into an agreement based on the suitability of the party, having regard to the person’s knowledge, character and ability to operate under an agreement;
- restrictions on entering into an agreement unless the proponent has adequate insurance cover to undertake the activities authorised by the agreement;
- the content of an agreement must include the name of the marine park, or part of a marine park, the date the agreement is entered into, its term, the name of the person and the person’s business details, the activities authorised under the agreement, any conditions of the agreement and the amount payable to the State under the agreement. The parties to the agreement (i.e. the chief executive and the other party to the agreement) may amend the agreement at any time; and

- that the chief executive may only enter into the agreement if any conditions the chief executive consider are essential for the conduct of the activity under the agreement, and that contravention of the condition is an offence, are stated on the agreement.

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

Division 2 provides the framework to be applied if the chief executive decides to use an expression of interest process for entering into commercial activity agreements. Provisions on the invitation for submissions, requirements for submissions, requirements for processes and for providing notice to unsuccessful submitters are contained in this division.

### **Invitation for expression of interest**

This process allows the chief executive to limit the expression of interest process to only the holders of a commercial activity permit for the activity for the park, or to invite members of the public who the chief executive reasonably believes would be interested to submit an expression of interest. It is intended that the expression of interest process will only be limited to the holders of commercial activity permits for the activity for the park when there is a need to reduce the capacity levels of commercial activity at an area for conservation reasons. In situations where it may be necessary to reduce capacity, limiting the expression of interest process to the holders of commercial activity permits for a park means that operators with established business in the area will not be required to compete with prospective new operators for the reduced capacity available.

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

This division requires that a submission must be in writing, accompanied by the required fee, and submitted in accordance with the invitation for expression of interest.

### **Requirements for process**

The chief executive may, subject to the requirements for expression of interest, determine the process used to decide which expressions of interest should be further negotiated. In considering an expression of

interest the chief executive must have regard to the matters relevant to consideration of an application for a commercial activity permit and any other matter the chief executive reasonably considers relevant.

**Chief executive may request further information**

This division allows the chief executive to ask the submitter, by written notice, to provide further information by a stated date (at least 20 business days after the notice is received). The expression of interest is taken to be withdrawn if the submitter does not (without reasonable excuse), provide the information by the stated date. However, the chief executive may extend the time for the information to be provided.

**Amending expression of interest**

This division allows the applicant of an expression of interest (if the chief executive agrees) to amend the submission before the chief executive has finished considering it.

**Notice to unsuccessful submitters**

This division requires the chief executive, within 14 business days after making a decision, to give each unsuccessful applicant a written notice for the decision.

**Division 3                      Application process**

Division 3 provides the framework to be used if the chief executive decides to use an application process for entering into commercial activity agreements. The division provides—

- The maximum term of a commercial activity agreement of 10 years and that the agreement may provide for review of the agreement at stated intervals and the matters that will be considered in the review of the agreement.
- The required form for applying for an agreement, and that it must be accompanied by the prescribed fee.
- Matters the chief executive must consider in regards to an application, including all matters that the chief executive must have regard to in considering an application for a permission for a commercial activity in a marine park.



- That the chief executive may request further information from the applicant, to be provided by a stated date (no less than 20 business days after receiving the notice).

If the applicant does not, without reasonable excuse, provide the further information on time, then the application is taken to have been withdrawn, in which case the chief executive must give the applicant written notice to this effect and advise that a new application may be made. The chief executive may extend the time for the information to be provided.

- That if the chief executive agrees, the applicant may amend the application before the chief executive has finished considering it.
- That the chief executive may request public notice of an application if the chief executive considers entering into a commercial activity agreement may restrict the reasonable use of a marine park by other people. The chief executive may give the applicant a written notice detailing the advertising required.
- The process for negotiating an application for agreement, including that the chief executive must consider each application for a commercial activity agreement and decide to either negotiate the signing of a commercial activity agreement or refuse the application. The chief executive must give the applicant written notice of the decision within 10 business days of making the decision. If the decision is to refuse the application, the notice must be an information notice (which then allows the applicant to apply for review of the decision).
- The steps to be taken after an application is decided, including that if the chief executive decides, after negotiations, to enter into a commercial activity agreement then this must be done as soon as practicable. If the chief executive decides to refuse to enter into a commercial activity agreement, then the chief executive must give the applicant an information notice for the decision within 10 business days (which then allows the applicant to apply for review of the decision).

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

Division 4 specifies the maximum term of a commercial activity agreement to be 10 years and provides that an agreement may also provide for rolling extensions and review processes.

The division also outlines the nature of a commercial activity agreement, stating that subject to the conditions of the agreement, a commercial activity agreement authorises the holder to conduct the stated activity in the stated marine park (or part). A commercial activity agreement may also be transferred.

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

Division 5 provides procedures for management of commercial activity agreements, including amendment, suspension or cancellation of the agreements.

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

This division provides for immediate amendment or suspension of a commercial activity agreement in order to secure the safety of a person or a person's property, because of a cyclone or other natural disaster, or to conserve or protect the cultural or natural resources of the marine park. Advice of amendment or suspension may be given verbally (where practical) or by signs, and takes effect immediately after the other party to the agreement is advised, and continues until the chief executive advises otherwise.

This provision allows immediate action in urgent and serious circumstances, which do not allow time for advance notice to be given or for representations to be made by the other party to the agreement.

The effect of the amendment does not depend on the amendment being noted on the agreement. The chief executive must as soon as practicable advise the other party or put a notice on the Department's web site advising when the amendment or suspension no longer applies.

**Amending agreement other than immediately**

This division describes the grounds for amending a commercial activity agreement other than immediately include but are not limited to, when an agreement was obtained because of incorrect or misleading information, the other party has contravened a condition of the agreement or the other party to the agreement is no longer a suitable person to be a party to the agreement.

**Process for amending agreement other than immediately**

The division describes process that the chief executive may follow for amending an agreement other than immediately This process specifies that the chief executive may give the other party to the agreement written notice of any proposed amendment, stating the ground for the proposed amendment, an outline of the facts and circumstances forming the basis for the ground, and inviting the other party to the agreement to make representations, within a stated period of not less than 20 business days.

The chief executive may, after considering representations, amend the agreement in the way stated in the notice, or in another way having regard to the representations. If the chief executive makes the amendment, the other party to the agreement must be advised of the amendment by information notice (which then allows the holder to apply for review of the decision). The other party to the agreement must also be advised in writing if the chief executive decides not to make the proposed amendment.

**Cancelling agreement or suspending authorisation under agreement other than immediately**

This division states the the grounds under which the chief executive may cancel an agreement or suspend authorisation under the agreement other than immediately, which include but are not limited to, if the chief executive reasonably believes that the activities being conducted under the agreement are having an unacceptable impact on the use or amenity of the marine park or are threatening public health and safety.

**Process for cancelling agreement or suspending authorisation under agreement (other than immediately)**

This division describes the process for cancelling an agreement or suspending authorisation under the agreement other than immediately,

which provides that the chief executive must give the other party to the agreement a written notice stating the proposed action, including any proposed suspension period, grounds for the proposed action and circumstances surrounding the decision, and an invitation to make written representations within a stated period (not less than 20 business days after the notice is given).

After considering any representations made, the chief executive may decide, to either suspend the authorisation (for no longer than the proposed suspension period) or cancel the agreement in line with the proposed action. The chief executive must give the other party to the agreement an information notice about the decision if the agreement is cancelled or authorisation suspended.

If the chief executive decides not to take action, the chief executive must give the other party to the agreement written notice of the decision, as soon as practicable.

If the authorisation under a commercial activity agreement is cancelled or suspended because of the conviction of a person and the conviction is quashed, the cancellation or suspension period ends on the day the conviction is quashed.

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

Division 6 makes provision for the transfer of an agreement, for the chief executive to approve or refuse the transfer and requirements for giving effect to the transfer.

### **Application to transfer authorisation**

The authorisation under a commercial activity agreement may be transferred. Both the seller (the original party to the agreement) and the buyer (the party to whom the authority is being transferred) must apply to the chief executive to approve the transfer.

### **Approval or non-approval to transfer**

The chief executive may approve the transfer of a commercial activity agreement only if the chief executive is satisfied that the transferee is a suitable person for the commercial activity agreement. The chief executive must give the seller and the buyer an information notice for the decision if the decision is to refuse the transfer.

**Giving effect to a transfer**

This division provides that the transfer can only be affected if the chief executive has approved the transfer, and all relevant fees have been paid.

If the seller transfers all of the authorisations under the agreement, the chief executive must cancel the seller's agreement and, if the buyer has a commercial activity agreement, amend the buyer's agreement to reflect the transfer. If the buyer does not have a commercial activity agreement, the chief executive must enter into an agreement with the buyer for conducting the commercial activity.

If the seller transfers only part of the authorisation under the agreement, the chief executive must amend the seller's commercial activity agreement to reflect the transfer, and if the buyer has a commercial activity agreement amend the buyer's agreement to reflect the transfer. If the buyer does not have a commercial activity agreement, the chief executive must enter into an agreement with the buyer for conducting the commercial activity.

**Division 7                      Requirement to have agreement or copy available for inspection**

Division 7 requires that a commercial activity agreement, copy or relevant details of the agreement must be available for inspection by an inspector appointed under the *Marine Parks Act 2004*.

**Part 5                              Provisions about accreditations**

This part empowers the chief executive to accredit another document, which includes a corresponding authority or a departmental instrument, an educational or research institution or a harvest fishery by publishing notice of the accreditation in the gazette. The part also states the restrictions on each type of accreditation.

However the chief executive may accredit a document only if satisfied that the activity that, if a person engaged in the activity in the way described in the document, the activity would not be a prohibited purpose in the zoning plan for a zoned marine park.

The part also describes the processes for amending an instrument of accreditation, or for cancelling it.



The division also declares certain evidentiary provisions, namely that the fact that a regulatory notice or a regulatory information was erected is evidence that it was erected by the chief executive.

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

This division empowers the chief executive's power to declare an area a restricted access area, the circumstances in which the chief executive may make the declaration, and the process the chief executive must follow before making the declaration.

The chief executive may declare an area a restricted access area only after giving public notice of the chief executive's intention to make the declaration and considering any submissions made in response to the notice.

The notice must state how access to the area is restricted or prohibited. Entering a restricted access area or failing to leave a restricted access area without a reasonable excuse is an offence.

The reasons for declaring an area to be a restricted access area include—

- to control an activity that is likely to have an impact on the management of a marine park;
- to protect the natural or cultural resources of the park;
- to facilitate the conservation or restoration of a park or part of a park;
- to protect a breeding area for native wildlife;
- to protect an area of significant importance to the area's use and non-use values;
- to declare a park or part of a park as a place that a person may only enter or use with a permission, or a commercial activity agreement; and
- to temporarily close an area of the park for a particular activity, such as, for example, harvesting from an aquaculture facility or to allow a sporting event to proceed without interruption from the public.

A declaration of a restricted access area remains in force until it is revoked, but if the reason for making the declaration ends and another reason does not continue, the declaration must be revoked.

The restricted access area must be identified on a restricted access area notice (which may also be a regulatory information notice).

A restricted access area declaration prevails over a zoning plan, a permission or a commercial activity agreement made under the Act.

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

This division enables the chief executive to prescribe an activity as a prescribed commercial activity and establishes the process for making the declaration, and the effect of the declaration.

A person may only conduct a prescribed commercial activity under a commercial activity agreement.

This division gives effect to the Tourism in Protected Areas (TIPA) initiative.

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

This division enables the chief executive to prescribe an activity as a special activity and establishes the process for making the declaration, and the effect of the declaration. A special activity may be declared to limit access to a part of the park for a period of time where the restriction is needed generally to ensure proper management of the marine park and protect the users of the area and its natural resources.

A special activity notice may also restrict or prohibit access to the area identified in the notice.

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

This division defines prohibited purposes and identifies purposes as purposes for which a permission is needed to enter or use a zoned marine park. It also creates offences for entry or use of a marine park—

- for a prohibited purpose; or
- without an authority where, under the Act, a person may enter or use the area only under an authority.



**Division 1                      Prohibited purposes for zoned marine park and when authority required for zoned marine park**

This division links the Act, the Regulation and the zoning plans (for a zoned marine park) by—

- prescribing which purposes are prohibited purposes for the Act and Regulation and creating an offence for entering or using a zoned marine park for a prohibited purpose;<sup>5</sup>
- prescribing the circumstances, for the Act and Regulation, in which a person may only enter or use a zoned marine park or part of a marine park with an authority and creating an offence for entering or using a marine park without an authority if required by the Act;<sup>6</sup>
- creating an offence for entering or using a marine park or part of a marine park without notifying the chief executive if the Act requires notification prior to entry,<sup>7</sup> and requiring the person to comply with any conditions to which the entry is subject.

**Division 2                      When authority required for unzoned marine park**

**Subdivision 1                  Application**

This subdivision states the purposes for which a person may enter or use an unzoned marine park—

- without an authority or notification;
- without an authority but with notification; or
- with an authority.

**Subdivision 2                  Purpose for which authority required**

This subdivision—

<sup>5</sup> See also the *Marine Parks Act 2004*, section 43, for the offence of wilfully entering or using a marine park for a prohibited purpose.

<sup>6</sup> See also the *Marine Parks Act 2004*, section 44, for the offence of wilfully entering or using a park without an authority required under the Act.

<sup>7</sup> See also the *Marine Parks Act 2004*, section 45, for the offence of wilfully entering or using a park without notification where required under the Act.

- declares that a major impact activity is an activity for which a person may only enter or use an unzoned marine park with an authority;
- creates an offence for entering or using an unzoned marine park, or part of the park, for a purpose for which an authority is required unless the person holds the authority; and
- creates an offence for entering or using an unzoned marine park, or part of the park, for a purpose for which the person must notify the chief executive before conducting the activity without giving the notification.

### **Subdivision 3            Entry or use without authority or notification**

This subdivision states the purposes for which a person may enter or use an unzoned marine park, or part of the park, without an authority and without notifying the chief executive of the person's intention to enter or use the park for the purpose. The purposes are—

- in particular emergencies, such as responding to an emergency alert, save a human life, locate a vessel or aircraft or structure that may be endangered by the weather or a navigational hazard, to carry out repairs to an aid to navigation, to deal with certain pollution threats, or to remove or salvage an aircraft or vessel that is wrecked, sunk or abandoned in an emergency and is authorised under a law of the State or the Commonwealth;
- to undertake a function under the *Great Barrier Reef Marine Park Act 1975* (Cwlth);
- to undertake a law enforcement activity.

### **Subdivision 4            Entry or use without authority but with notification**

This subdivision states the purposes for which a person may enter or use an unzoned marine park, or part of the park, without an authority but only after notifying the chief executive of the person's intention to enter or use the park for the purpose. The purposes are—

- entry or use to remove or salvage an aircraft or vessel, where the removal or salvage is not an emergency, and the removal or

salvage is authorised under an Act or the law of the Commonwealth;

- to remove certain property from the marine park in compliance with certain instruments including an written direction, order or notice given or issued to the person under an Act or a law of the Commonwealth, or an agreement granted under an Act or a law of the Commonwealth that requires the person to remove the person's property from the park;
- entry or use for a defence force activity;
- entry or use for an essential public service;
- entry or use to respond to particular emergencies under which entry or use is not permitted under subdivision 3.

### **Division 3                      Access to parts of marine park and conducting particular activities in marine park generally**

This division creates various offences relating to the declaration of restricted access areas, namely—

- enter or use a restricted access area contrary to a restricted access area declaration; and
- failure to remove certain property from an area after the area in which the property is situated is declared a restricted access area, unless the person has a reasonable excuse;
- conducting a prescribed commercial activity without a commercial activity agreement and complying with any conservation conditions attached to the agreement;
- conducting a special activity without a permission or contrary to a special activity notices;
- complying with a regulatory notice about a health and safety act.

### **Division 4                      Fires in marine parks**

This division gives the chief executive authority to regulate the use of fires in a marine park, including where they may be lit, leaving unattended fires, disposal of fire remnants and inspector's powers in relation to fires.

**Unlawful lighting of fires**

This division makes it an offence to light a fire in a marine park if lighting of fires is prohibited under a regulatory notice, a condition of an authority or commercial activity agreement held by the person.

Also, a person must not light a fire on tidal land within the Great Barrier Reef Coast Marine Park and adjacent to a national park prescribed in the Regulation. These provisions are intended to address spoiling of beaches by fires and ashes and develop a consistent approach for management of fires between the *Marine Parks Act 2004* and management plans made for specific national parks under the *Nature Conservation Act 1992*.

**Unattended fires**

This division creates an offence to leave a fire unattended and must completely extinguish the fire before leaving it, unless another person assumes control of the fire.

**Unauthorised things in relation to fires**

This division creates a range of offences relating to the deposition of flammable and ignited substances in a marine park to minimise the likelihood of fire ignition in a marine park, particularly where it may cause damage to an adjacent national park or recreation area.

**Inspector's powers in relation to fires**

This division gives inspectors appointed under the Act various powers to deal with fires in a marine park where the officer believes it may become a hazard to the marine park or a person's property in the park, including giving a person a written or oral direction in relation to a fire requiring the person to extinguish the fire or lower its intensity.

**Division 5                      Using vehicles or vessels in marine parks**

This division creates offences for—

- bringing a vehicle or vessel into a marine park, or part of a marine park, if bring the vehicle or vessels generally or the bringing of vehicles or vessels of that class into the marine park is an offence under a regulatory notice; and

- the use of vehicles or vessels in a way that contravenes a regulatory notice.

## **Division 6                      Animals in marine parks**

This division creates an offence for bringing a domestic animal (other than a guide dog or trainee guide dog) into a marine park, or part of a marine park, if bringing the animal into the park is prohibited under a regulatory notice.

Also, a person must not bring a domestic animal on tidal land within the Great Barrier Reef Coast Marine Park and adjacent to a national park prescribed in the Regulation. These provisions are intended to address spoiling of high-visitation beaches by domestic animals, especially dogs. The restriction also ensures that dogs are not taken into national parks adjoining marine parks.

However the keeping of animal is permitted on board boats or vehicles or aircraft that are permitted in the marine park or if the use of the animal is associated with an activity authorised under a tourist program permitted by the Commonwealth.

The division also creates an offence to feed a native animal if a regulatory notice prohibits the feeding of the animal.

## **Division 7                      Other conduct in marine park**

This division creates various offences designed to promote orderly conduct in the park, to protect the natural and cultural resources of the area and to prevent interruption of another person's enjoyment of the park. The offences include—

- depositing litter in a marine park;
- use of generators, compressors or motors if the use of these items is prohibited by regulatory notice;
- use of radio, tape recorder or sound systems in a way that may cause unreasonable disturbance;
- using SCUBA and power-heads for spear fishing;
- general misconduct, such as being disorderly or creating a disturbance, doing anything in a way that is likely to threaten the safety of another person in the park, or cordoning off a part of the



fees payable for a permission are decided. It also describes that only a single fee is payable to conduct more than 1 activity and that the fee is the highest of the fees for all the activities conducted under the permission and that reduced fees are payable in certain situations.

Permission application and assessment fees are generally payable under the Act to conduct a commercial activity in the Great Barrier Reef Coast Marine Park where the applicant is liable to pay a fee under the Commonwealth Act. No permission application or assessment fees are payable to conduct a commercial activity in State-only marine parks. However the daily use fees for particular activities, such as whale watching, continue to apply and the fees are stated in the Regulation.

The division also provides for the waiver of fees, either in whole or in part, at the discretion of the chief executive and based upon the complexity of an application and the amount of time it is likely to assess the application, or if the application has, or will be, conducted in coordination with an assessment carried out under another Act or a law of the Commonwealth (e.g. the *Environment Protection and Biodiversity Conservation Act 1999*).

## **Part 10                      Transitional provisions**

This part declares some transitional provisions to ensure proper implementation of the Regulation.

## **Part 11                      Amendment of State Penalties Enforcement Regulation 2000**

This part amends the *State Penalties Enforcement Regulation 2000* to provide for infringement notice penalties for particular offences in the Regulation, and to delete outdated references in that regulation to the *Marine Parks Regulation 1990*.

## **Part 12**                      **Consequential amendments of other regulations**

This part amends the following regulations by updating cross-references in those Regulations to the Marine Parks Act and Regulations—

- *Environmental Protection Regulation 1998;*
- *Fisheries Regulation 1995;*
- *Nature Conservation (Administration) Regulation 2006;*
- *Nature Conservation (Wildlife Management) Regulation 2006;*  
and
- *Place Names Regulation 2005.*

## **Schedule 1**                      **Objects of zones of marine parks**

This schedule establishes a set of standardised zone names and objectives for a zoning plan made or amended after this Regulation.

The zone names are—

- general use zone;
- habitat protection zone;
- estuarine conservation zone;
- conservation park zone;
- buffer zone;
- scientific research zone;
- marine national park zone; and
- preservation zone.



**Schedule 2                    Information that must be included in application for a permission**

The Regulation declares that an application must include all the information that the chief executive reasonably requires to decide the application. This schedule declares the minimum information that all applications must include.

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

This schedule defines the fees payable for a joint permission, for an activity in the Great Barrier Reef Coast Marine Park. A fee is not payable for a permission if the activity occurs exclusively in the waters of the State (i.e. it does not impinge on the Commonwealth Marine Park).

**Schedule 4                    Fee payable under Act for other marine parks**

This schedule prescribes the daily fees payable under the Act to conduct commercial whale watching activities.

**Schedule 5                    Matters for deciding whether person is a suitable person to hold permission**

The chief executive may only grant a permission, or enter into a commercial activity agreement, with a person if the chief executive is satisfied that the applicant is a suitable person to hold the permission or agreement.

This schedule declares the things that the chief executive may consider in deciding whether or not the applicant is a suitable person for the grant of a permission or an agreement.

## **Schedule 6                      Dictionary**

This schedule defines term in use in the Regulation.

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### ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Environmental Protection Agency.

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