

# Marine Parks and Other Legislation Amendment Regulation 2019

Explanatory notes for SL 2019 No. 64

made under the

*Marine Parks Act 2004*

*State Penalties Enforcement Act 1999*

## General Outline

### Short title

*Marine Parks and Other Legislation Amendment Regulation 2019*

### Authorising law

Sections 25 and 150 of the *Marine Parks Act 2004*

Section 165 of the *State Penalties Enforcement Act 1999*

### Policy objectives and the reasons for them

The policy objectives of the *Marine Parks and Other Legislation Amendment Regulation 2019* (Amendment Regulation) are to amend the:

1. *Marine Parks (Great Sandy) Zoning Plan 2017* to create a new designated area for the wreck of the ex-HMAS *Tobruk* in the Great Sandy Marine Park to allow for ongoing management of the dive site; and to correct mapping errors in the statutory maps of zones and designated areas for the marine park;
2. *State Penalties Enforcement Regulation 2014* to prescribe Penalty Infringement Notice offences for the ex-HMAS *Tobruk* designated area;
3. *Marine Parks (Declaration) Regulation 2006*, the *Marine Parks (Great Barrier Reef Coast) Zoning Plan 2004* and the *Marine Parks (Moreton Bay) Zoning Plan 2008* to clarify the intent of the 'mangrove line' marine park boundary definitions;
4. *Marine Parks (Moreton Bay) Zoning Plan 2008* and the *Marine Parks (Great Sandy) Zoning Plan 2017* grey nurse shark designated area provisions to remove reference to the withdrawn *Australian Standard AS 4005.1-2000 Training and certification of recreational divers* and to ensure consistency between these provisions in both zoning plans;
5. *Marine Parks (Moreton Bay) Zoning Plan 2008* to make a minor correction in the entry and use provisions for marine national park zones.

## Achievement of policy objectives

The change to the Great Sandy Marine Park to create a designated area for the ex-HMAS *Tobruk* is implemented by amendment to the *Marine Parks (Great Sandy) Zoning Plan 2017*, Part 3 Designated areas. The designated area will match the size and location and have the same level of access restrictions as the interim Restricted Access Area currently in place under the *Marine Parks Regulation 2017*, which prescribes no access to the area without a commercial activity agreement or permission. The designated area will provide management benefits, with site access and use requirements more visible to park users, assisting in education; and improved compliance options that will allow for better protection of the site. The Restricted Access Area will be revoked after the designated area is in place.

The location of the ex-HMAS *Tobruk* and a buffer around the wreck, the same as the Restricted Access Area, will be added as a designated area – the ‘Ex-HMAS *Tobruk* area’ – in section 20 of the *Marine Parks (Great Sandy) Zoning Plan 2017*, and as a ‘relevant designated area’ in section 21. Under section 22, the chief executive must not grant a permission within a relevant designated area if entering or using the area under the proposed permission is inconsistent with the objects of the relevant designated area.

The Ex-HMAS *Tobruk* area will be shown on a revised designated areas plan MP3, dated 3 May 2019 and given effect by the updated section 20(2) of the *Marine Parks (Great Sandy) Zoning Plan 2017*. In addition, mapping errors such as typological errors will also be corrected in the revised MP3 plan, and in the revised MP2 plan (dated 3 May 2019), for zones, which is given effect by the updated section 7(2) of the *Marine Parks (Great Sandy) Zoning Plan 2017*.

The new subsection 22(3) of the *Marine Parks (Great Sandy) Zoning Plan 2017* will specify other considerations when issuing a permission to enter or use the ex-HMAS *Tobruk* area. This section also applies to consideration of an application for a commercial activity agreement, as required by section 68 of the *Marine Parks Regulation 2017*. A permission to enter or use the area may only be granted for the purposes of diving (free diving or scuba diving) or snorkelling, and activities relating to diving or snorkelling; research that the chief executive decides is relevant to, and a priority for, the management of the marine park and cannot be reasonably conducted elsewhere; or another purpose that the chief executive considers would benefit the natural and cultural resources of the marine park.

The objective of this subsection is to ensure use of the ex-HMAS *Tobruk* area is limited to only certain activities in keeping with the objects of the area, in particular management of the area as a dive site. Research that may be permitted can include fishing and collecting activities and activities that involve interference with the wreck of the ex-HMAS *Tobruk*. However, the research must be related to, and be a priority for marine park management, and have a need to occur in the area. This could include, for example, research into the wreck itself, or research into animal or plant colonisation or use of the area.

The allowance for permissions to be granted for other activities that the chief executive considers ‘would benefit the natural and cultural resources of the marine park’ under new section 22(3)(c) of the *Marine Parks (Great Sandy) Zoning Plan 2017* is intended to provide for purposes that result in minimal impacts to the area (no fishing or collecting and no interference with the wreck), and would provide marine park management benefits.

Examples of purposes that may meet this criteria are a limited education program or a limited media activity. As with all other permissions or commercial activity agreements, any activity under this subsection must be consistent with the objects of the area.

A new Division 3A ‘Ex-HMAS Tobruk area’ will specify the objects of the area and provisions relating to the entry or use of the area. The objects of the area are to manage and maintain the wreck of the ex-HMAS *Tobruk*; to provide safe opportunities for public appreciation, understanding and enjoyment of the area; to minimise the damage, disturbance or other interference to the wreck of the ex-HMAS *Tobruk* caused by entry or use of the area; and to minimise harm or distress to the living organisms in the area, and any disturbance to the other natural resources in the area caused by entry or use of the area. The objects for the ex-HMAS Tobruk area are in addition to the objects of the zone (a General Use Zone) in which the designated area is located.

The new section 23B of the *Marine Parks (Great Sandy) Zoning Plan 2017* describes how a person may enter or use the area, including offences. Under subsection 23B(1) it is an offence to enter or use the ex-HMAS Tobruk area without a permission or authority under a commercial activity agreement, unless the person has a reasonable excuse. Subsection (2) provides the offence for carrying out fishing or collecting in the ex-HMAS Tobruk area without a permission, unless the person has a reasonable excuse. The term ‘fishing or collecting’, is a broad term defined in the *Marine Parks (Great Sandy) Zoning Plan 2017* that means ‘the taking of an animal, plant or marine product’, therefore capturing a range of activities including line fishing, spear fishing, and collection of algae, coral and other invertebrates.

It is an offence under subsection 23B(3) of the *Marine Parks (Great Sandy) Zoning Plan 2017* to interfere with the wreck of the ex-HMAS *Tobruk*, unless the person has a reasonable excuse—‘interfere with’, a wreck, includes damaging, defacing or destroying the wreck; disturbing, exposing, moving or removing the wreck.

The term ‘cultural resources’ will be removed from the Schedule 3 Dictionary of the *Marine Parks (Great Sandy) Zoning Plan 2017* as this term is defined in the *Marine Parks Act 2004*.

Penalty infringement notice offences for the Ex-HMAS Tobruk area will be implemented by amendment to the *State Penalties Enforcement Regulation 2014*, Schedule 1 *Marine Parks (Great Sandy) Zoning Plan 2017*. The creation of penalty infringement notices will allow efficient and effective compliance for minor breaches of the new offence provisions: entry or use of the designated area without a permission or authority under a commercial activity agreement (section 23B(1), 3 penalty units), fishing or collecting in the area without a permission (section 23B(2), 5 penalty units), and interfering with the wreck of the ex-HMAS *Tobruk* without a permission (section 23B(3), 5 penalty units). The higher penalty infringement notice amounts for subsections (2) and (3) reflect the more serious nature of these offences in relation to them affecting the ability to achieve the objects of the designated area, compared to section (1), entry to the area without a permission or authority.

The term ‘mangrove line’ is regularly used to describe marine park outer boundaries, and internal zone and designated area boundaries. The mangrove line definition will be clarified by amendments to the related definition of ‘mangrove forest’ in the dictionaries of relevant subordinate marine parks legislation. The amendment to the term ‘mangrove forest’ will ensure that mangrove line boundaries are interpreted to be along the outer edge of a dense

mangrove forest that has touching or overlapping leaves or branches (crowns). Isolated mangroves that have a crown that does not touch or overlap the other mangroves in the forest are not considered part of the forest, and therefore the mangrove line is drawn to exclude such mangroves.

Section 35 of the *Marine Parks (Moreton Bay) Zoning Plan 2008* restricts the number of persons diving in the grey nurse shark designated areas, and specifies the number of dive instructors and guides in any group. The definition of ‘recreational scuba training organisation’ in this section will be amended to remove reference to the withdrawn *Australian Standard AS 4005.1-2000 Training and certification of recreational divers*. The definition of ‘dive instructor’ will be clarified and the term ‘guide’ will be replaced with ‘certified assistant’, and defined in this section. All terms used will be consistent with the definitions in the *Safety in Recreational Water Activities Regulation 2011*. The definitions in the equivalent section in the *Marine Parks (Great Sandy) Zoning Plan 2017* (section 34) will be amended to be consistent with the definitions in the *Marine Parks (Moreton Bay) Zoning Plan 2008*.

Section 24 of the *Marine Parks (Moreton Bay) Zoning Plan 2008* describes the activities that a person may perform in a marine national park zone, with a permission. Subsection (2) states that for section (1)(i) a person is taken to continue to anchor a vessel in the marine national park zone during a period unless the vessel is moved during the period and anchored at least 1 nautical mile from the area. The reference to subsection (1)(i), the purpose of ‘using a facility’, is incorrect, and will be amended to refer to section (1)(g), ‘anchoring a vessel’.

## **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the main purpose of the *Marine Parks Act 2004*, which is to provide for conservation of the marine environment. The ‘conservation’, of the marine environment, is defined in the *Marine Parks Act 2004* to mean ‘the protection and maintenance of the environment while allowing for its ecologically sustainable use’. This purpose is achieved in a number of ways, including declaration of marine parks; establishing zones and designated areas within marine parks; preparing zoning and management plans; a coordinated and integrated approach with other environment conservation legislation; the provision of opportunities for public appreciation, understanding and enjoyment of the marine environment; recognition of the cultural and social relationships between marine parks and other areas; and the application of the precautionary principle in decision-making processes.

The Amendment Regulation includes changes to marine parks subordinate legislation to create a new designated area for the ex-HMAS *Tobruk* in the Great Sandy Marine Park, which is in keeping with the objects of the *Marine Parks Act 2004*. The new designated area offences are below the maximum allowable penalty for a zoning plan under the *Marine Parks Act 2004* (165 penalty units), and are consistent with other similar penalties in the zoning plan and the *Marine Parks Regulation 2017*.

Other amendments include minor mapping corrections to the zone and designated area maps under the *Marine Parks (Great Sandy) Zoning Plan 2017*, which are required to ensure that the marine park's management arrangements are clear to the public and other stakeholders, thereby facilitating public appreciation, understanding and enjoyment of the marine park.

The amendments to the mangrove line definitions in two state marine park zoning plans, and the *Marine Parks (Declaration) Regulation 2006* will clarify the intent of marine park outer boundaries, as well as zone, designated area and other special management area boundaries that are defined by a mangrove line. This will ensure ongoing conservation and effective management of marine parks.

The amendments to the grey nurse shark designated area provisions for the Moreton Bay Marine Park and Great Sandy Marine Park zoning plans will clarify the definitions and intent of these provisions in relation to the number of divers in a group allowed to be in the water at the same time. This will ensure ongoing and coordinated protection of grey nurse shark, which are also protected under a range of other environment conservation legislation.

The correction to the entry and use provision for marine national park zones in Moreton Bay Marine Park ensure the marine park management arrangements are clear.

The Amendment Regulation is also consistent with the main objectives of the *State Penalties Enforcement Act 1999* which include—

- maintaining the integrity of fines as a viable sentencing or punitive option for offenders; and
- maintaining confidence in the justice system by enhancing the way fines and other monetary penalties may be enforced; and
- reducing the cost to the State of enforcing fines and other monetary penalties.

Penalty infringement notice offences are an alternative to prosecution through the court system. The prescription of new penalty infringement notice offences for the ex-HMAS Tobruk area meet the objects of the *State Penalties Enforcement Act 1999* by allowing a cost-effective method of enforcement and administrative efficiency. The penalty infringement notice offences have been developed in accordance with the 'Guidelines for the prescription of penalty infringement notice offences under the *State Penalties Enforcement Regulation 2014*' to ensure that an administrative penalty is an appropriate and proportionate response to the offending behaviour, and therefore maintaining the integrity of fines as an option for offenders.

## **Inconsistency with policy objectives of other legislation**

The Amendment Regulation is not inconsistent with any other legislation.

## **Alternative ways of achieving policy objectives**

The option of ongoing management of the ex-HMAS *Tobruk* site as a Restricted Access Area was considered; however, the establishment of a designated area through a legislative amendment to the *Marine Parks (Great Sandy) Zoning Plan 2017* was determined to be a better option. A designated area provides management benefits, with site access and use requirements more visible to park users in statutory documents such as the map of designated

areas MP3, and in the *Marine Parks (Great Sandy) Zoning Plan 2017*, assisting in education. A statement of the objects of the ex-HMAS Tobruk area and clear compliance options specified in the designated area provisions will allow for better protection of the site. A designated area will also have the benefit of being shown and described in interpretive products and as a digital data source for use in apps. The proposed designated area has the same level of access restrictions as the Restricted Access Area currently in place, and will cause no adverse effect on dive operators or other stakeholders.

There are no alternative ways of achieving the policy objectives for the other amendments.

## **Benefits and costs of implementation**

The Amendment Regulation will not result in the need for additional government resources. Routine compliance of marine park authorities issued to commercial dive operators accessing the ex-HMAS Tobruk area and other routine compliance of the Great Sandy Marine Park will continue as per current programs. The corrected Great Sandy Marine Park statutory maps showing designated areas, including the ex-HMAS Tobruk area, and zones will be available on the internet, and the corrections will assist management of the marine park. The amendment to the mangrove line definitions, and grey nurse shark designated area provisions relating to diving, and the correction to the entry and use provision for Moreton Bay Marine Park will allow better compliance and marine park management.

## **Consistency with fundamental legislative principles**

The Amendment Regulation is consistent with the fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

## **Consultation**

The creation of the ex-HMAS Tobruk area meets the requirement under section 25(3)(c) of the *Marine Parks Act 2004* for exemption from public notification of the proposed zoning plan amendments, as there has been adequate public consultation about the matters subject of the amendment.

Key stakeholders for the marine park, including the dive industry, commercial and recreational fishers, Traditional Owners, environmental organisations and interested community organisations were engaged directly about the implementation of the ex-HMAS *Tobruk* management arrangements, in particular the restrictions on access to the dive site (no entry to the area without an authority or permission). The consultation also involved two public consultation processes: one to request feedback on the size of the dive site / access exclusion area ('Ex-HMAS *Tobruk* Management Options – Exclusion Zone'), and another on the proposed (interim) Restricted Access Area for the site.

On 5 May 2018, a public notice of the intention to declare a Restricted Access Area for the ex-HMAS *Tobruk* dive site was placed in the *Fraser Coast Chronicle*, *Bundaberg News Mail* and *The Courier-Mail* inviting public comment until 6 June 2018 (28 days).

Key stakeholder groups consulted for the ex-HMAS *Tobruk* project supported the proposed management arrangements. Four responses were received following the public notification of the Restricted Access Area, with the key concerns raised being:

- the distance from shore that the ship will be scuttled is too far for recreational fishers and divers to travel; and
- the site should be open to all activities (particularly) fishing, not just diving.

The Department of Environment and Science did not amend the proposal in relation to these concerns, as:

- many considerations were taken into account in selecting the final resting site for the ex-HMAS *Tobruk*, including access from both ports of Hervey Bay and Bundaberg, required water depth and no other major reef structures in the area. This gap analysis limited options for an appropriate site closer to shore; and
- a condition of the ex-HMAS *Tobruk* being provided to the State by the Commonwealth was that it was to be prepared as a dive wreck. From a safety and utility perspective, diving and fishing operations are best separated.

No changes to the Amendment Regulation were required as a result of the consultation on the management of the ex-HMAS *Tobruk* site.

The designated area provisions for the ex-HMAS *Tobruk* include three offence provisions relating to the area – no entry or use of the area without a permission or commercial activity agreement or a reasonable excuse; no fishing or collecting in the area without a permission or a reasonable excuse; and no interference with the wreck of the ex-HMAS *Tobruk* without a permission or a reasonable excuse. These provisions reflect the proposed management arrangements for the ex-HMAS *Tobruk* communicated as part of the consultation on the project. Companies and individuals that currently have authorisation to access the area for diving and snorkelling have restrictions on their use that prohibits fishing or collecting and interference with the wreck; therefore the designated area offence provisions do not affect their use of the area.

No additional external or public consultation was required for the other components of the Amendment Regulation, as the other mapping and minor amendments correct errors and provide clarification, and are therefore administrative in nature. Section 25 of the *Marine Parks Act 2004* necessitates that zoning plan amendments require prior public notice; however, this does not apply to minor amendments to correct an error or to make a change that is not a change of substance.

The Great Barrier Reef Marine Park Authority was consulted on the amendments to the mangrove line definitions to be made to the *Marine Parks (Great Barrier Reef Coast) Zoning Plan 2004*. No concerns were raised.

The Office of Best Practice Regulation (OBPR) within the Queensland Productivity Commission was consulted regarding the requirement for further analysis or assessment in accordance with *The Queensland Government Guide to Better Regulation* (the Guidelines) in relation to creation of the ex-HMAS *Tobruk* area, amendments related to the mangrove line definitions, correction of the mapping errors, and the proposed penalty infringement notice offences under the *State Penalties Enforcement Regulation 2014*.

OBPR advised that no further assessment is required under the Guidelines as the proposals are unlikely to result in significant adverse impacts.

The Department of Environment and Science applied an agency-assessed exclusion category from undertaking further regulatory impact analysis for the amendments relating to the withdrawn Australian Standard, and correction of the Moreton Bay Marine Park entry and use provision (Category f – Regulatory proposals that correct technical errors or amend legislation to take account of current Queensland drafting practice).

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