

Department of Environment and Science

GST treatment of fees and charges payable by commercial tour operators arising under Commercial Activity Permits and Commercial Activity Agreements

Application of Division 81 of the GST Act

March 2018

This report contains 41 pages

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Contents

1	Executive summary	2
1.1	Overview	2
1.2	Issues considered	2
1.3	Conclusions	3
1.4	Recommendations	3
2	Scope and methodology	5
2.1	Scope	5
2.2	Methodology	5
3	Background facts	7
3.1	Types of authorities and associated fees	7
3.1.1	CAPs	7
3.1.2	CAAs	7
3.1.3	Types of payments and allowable activities	8
3.1.4	Historic GST treatment applied by the Department	8
4	Overview of Division 81	9
4.1	General concepts	9
5	Application of Division 81 to CAPs and CAAs	10
5.1	Focus of our advice	10
5.2	Are the fees payable in relation to CAPs an "Australian fee or charge"?	10
5.3	Are the fees payable in relation to CAAs an "Australian fee or charge"?	11
5.4	Are the fees payable in relation to CAAs and CAPs for a Permission?	11
5.5	Are the fees payable a CAP or CAA on the Taxable List?	12
5.5.1	Are the fees of a non-regulatory nature?	12
5.5.2	Are the fees for the hire, use of, or entry to a facility?	14
6	Recommendations and suggested next steps	19
7	Disclaimer and limitations of this report	20
A	Commercial tour operator fees charged by the Department, as at 1 July 2017	1
A.1	CAA fees – tenure managed under the <i>Nature Conservation Act 1992</i>	1
A.2	CAA fees – tenure managed under the <i>Recreation Areas Management Act 2006</i>	3
A.3	CAP fees – tenure managed under the <i>Nature Conservation Act 2006</i>	6
A.4	CAP fees – tenure managed under the <i>Recreation Areas Management Act 2006</i>	9
A.5	CAP fees – tenure managed under the <i>Forestry Act 1959</i>	12
B	Division 81 assessment flowchart relevant	1
C	Summary of CAP and CAA fees based on our advice	1

1 Executive summary

1.1 Overview

We have been requested to provide advice as to whether GST applies to various fees and charges imposed by the Department of Environment and Science (“**the Department**”)¹ on commercial tour operators (“**CTO**”) under Commercial Activity Permits (“**CAPs**”) and Commercial Activity Agreements (“**CAAs**”). These fees arise under various legislative provisions and, once the authority has been granted, allows the CTO to conduct commercial activities on State owned lands.

As the long-standing history to this matter demonstrates, the GST treatment of fees and charges imposed by government agencies (i.e., Division 81 of the GST Act) is a complex area of GST law, requiring detailed consideration of technical terms in the absence of any meaningful legislative, judicial or administration guidance. Further, the limited guidance that exists is often contradictory or unhelpful.

Appendix A of our report summarises the fees and charges which are subject to this advice and **Appendix B** of our report provides a summary of how Division 81 is to be applied to any fee or charge.

1.2 Issues considered

Practically, there is a two-step process to determining whether a fee is exempt under Division 81:

- **Step 1** – determining that the fee comes within the scope of Division 81 of the GST Act; and
- **Step 2** – confirming that the fee is not specifically excluded by virtue of the GST Regulations (i.e., the fee will be taxable if specifically excluded).

In reviewing the particular fees and charges arising under CAPs and CAAs, we identified the following major issues requiring detailed technical analysis in respect of Step 1:

- considering whether the fees are an “Australian fee or charge” which is payable under an “Australian law”; and
- considering whether the fees relate to, or are in relation to the application for, a permission, exemption, authority or licence.

Subject to our detailed comments in this report, we consider that all CAP and CAA fees come within the scope of Division 81 for Step 1 purposes. In determining whether any of the fees are specifically excluded under the GST Regulations, we identified the following major issues requiring detailed technical analysis:

- considering whether the fees are of a “non-regulatory nature”; and
- considering whether the fees are for the hire, use or entry to a “facility”.

¹ Through the Assessment and Approvals Unit of the Queensland Parks and Wildlife Service
31904341_4 - 29 March 2018

While, historically, the Department has primarily focused on the mechanism by which a fee is charged (i.e., under a CAP or a CAA), our view is that Division 81 requires the Department to consider what each fee is for and to focus less on how the fee is calculated. As such, the Department's fees and charges should be split into three broad categories:

1. application fees and renewal fees for CAPs and CAAs;
2. permit / annual fees; and
3. use / daily site fees.

In terms of whether the fees are of a non-regulatory nature and / or for the use of a facility, we note that there is significant uncertainty with how these terms are intended to be interpreted and how the Commissioner of Taxation would apply them in the event of a GST review or audit.

Our report provides further details of where the uncertainty lies but, essentially, there is a reasonable risk that the CAP and CAA fees could be interpreted as being for the use of a national park, with a national park being a "facility" for GST purposes. If this is the case, then any fee which is for the use of a national park will be taxable for GST purposes, regardless of whether it arises under a CAP or a CAA.

1.3 Conclusions

For the reasons set out in our report, we consider that, on the facts as we understand them:

- application fees and renewal fees for CAPs and CAAs are regulatory in nature and not for the use of a national park (i.e., they are exempt from GST);
- permit and annual fees for CAPs and CAAs are regulatory in nature and not for the use of a national park (i.e., they are exempt from GST); and
- use and daily site fees are non-regulatory in nature and are for the use of a national park (i.e., they are subject to GST).

Set out in **Appendix C** are the CAP and CAA fees considered as part of this advice, together with our view on their GST treatment, subject to the recommendations set out further below.

1.4 Recommendations

Given the fact that there is limited guidance which specifically addresses whether a fee is regulatory in nature and whether a fee is for the use of a facility, and noting that what material is available appears to be contradictory, we **strongly recommend** that the Department confirms the position in relation to its CAP and CAA fees through a private binding ruling application with the Commissioner of Taxation.

Our recommendation is reinforced by the fact that our view is different to the current treatment by the Department and will potentially mean that the Department:

- has historically underpaid GST relating to usage fees for CAPs;



- has historically overpaid GST relating to non-use fees payable under CAAs; and
- will require its business portal and systems to be updated to reflect the GST position.

We also **strongly recommend** that the Department seeks specific GST advice relating to the treatment of any in-kind consideration paid by CTOs under or, in relation to, a CAA. On initial glance, the Department is likely to have a GST liability if the in-kind amounts provided by the CTO are deemed to be consideration for a supply (in non-monetary form), which seems possible. However, advising on this matter is currently outside of our scope.

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2 Scope and methodology

2.1 Scope

Pursuant to the request for quote NPSR17098, and our related response dated 27 November 2017, the Department has requested us to determine whether certain fees and charges it levies² on CTOs, which provide the CTOs with the authority and permission to conduct commercial activities on State owned land, are subject to GST. The authorities and permissions are granted pursuant to the *Nature Conservation Act 1992*, the *Recreation Areas Management Act 2006* and the *Forestry Act 1959* and the Department currently provides these authorities either via a CAP or a CAA.

Our specific scope for this engagement incorporates a review of the authorities for CAPs and CAAs administered by the QPWS, as listed in **Appendix A** of this report. In our review, we have considered the administrative processes by which the Department imposes these fees and charges for CAPs and CAAs and also considered the Department's *Operational Policy: Commercial tourism and recreation activities in QPWS managed area* ("**Operational Policy**"), which includes advice regarding how the Department levies GST in certain circumstances.

2.2 Methodology

At the outset, we note that Division 81 of the GST Act³ is a difficult provision to apply in practice as its application is heavily dependent on the surrounding factual circumstances (e.g., the legislation pursuant to which the fee is levied, understanding whether commercial operators can levy similar fees and the basis by which the fee is calculated).

Noting that there is very limited useful guidance in relation to Division 81 issued by the Commissioner of Taxation ("**the Commissioner**") and there is no judicial guidance provided by the courts or tribunals, our methodology in preparing this report included the following steps:

- Detailed review of the material provided to us by the Department, which includes a summary of the types of authorities, the types of payments and the payment processes;
- Review of existing guidance or relevant material regarding Division 81, including:
 - o The "**Treasurer's Determination**", being the *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2011 (No. 1)*
 - o Practice Statement PSLA 2013/2 (GA): *GST and treatment of Australian fees or charges under Division 81 of the A New Tax System (Goods and Services Tax) Act 1999*
 - o Australian Taxation Office ("**ATO**") fact sheet entitled "*Payments to government agencies under Division 81*"

² Via the Queensland Parks and Wildlife Service ("**QPWS**")

³ *A New Tax System (Goods and Services Tax) Act 1999* ("**the GST Act**")

- Detailed searches and review of various class rulings issued to New South Wales local councils⁴;
- Detailed searches and review of edited private binding rulings (“**PBRs**”) issued to other taxpayers by the Commissioner relating to similar fees and charges;
- Review of websites of equivalent State and Territory departments to understand the existing GST treatments for similar charges; and
- Discussions and correspondence with senior ATO personnel to understand the ATO’s informal position regarding some of the contentious elements of Division 81. As agreed with you, we provided the ATO with background information of the Department’s fees under both CAPs and CAAs and referenced the relevant legislation prior to facilitate the discussion. We did not provide the ATO with any documentation (e.g., copies of CAAs).

This report represents our view on the matters within our scope based on the methodology above.

⁴ These include the following class rulings: CR 2015/67, CR 2013/19, CR 2013/1, CR 2013/25, CR 2014/6 and CR 2013/41

3 Background facts

3.1 Types of authorities and associated fees

The Department currently provides authorities to CTOs to enable them to access State owned lands, such as national parks, for commercial purposes. The authority is granted via either a CAP or a CAA and arises pursuant to one of the following Acts (inclusive of any related Regulations or subordinate legislation):

- *Nature Conservation Act 1992*;
- *Recreation Areas Management Act 2006*; and
- *Forestry Act 1959*.

At present, the Department receives amounts payable from CTOs for CAPs and CAAs for the following:

- new and renewal application fees;
- permit fees for CAPs;
- returns of operations for CAPs (essentially, ongoing usage charges); and
- negotiated charges for CAAs, generally based on the number of participants on a tour and payable in a quarterly return.

3.1.1 CAPs

A CAP allows a CTO to conduct activities for commercial gain in a national park. The duration of a CAP is determined by the CTO on application and can range from three months to a maximum of three years.

Generally, the fees for CAPs are regulated under the *Nature Conservation (Administration) Regulation 2017* ("**NCA Regulation**"), *Recreation Areas Management Regulation 2017* and the *Forestry Regulation 2015* (as appropriate).

3.1.2 CAAs

A CAA is an alternative method by which the Department authorises a commercial activity in a national park. A CAA is entered into by way of negotiation between the CTO and the Department (as opposed to by way of an application) and allows the CTO to negotiate access to the national park in return for a financial contribution (i.e., a fee) and / or an in-kind contribution to the Department⁵. Generally, the main advantage of entering into a CAA rather than a CAP is the longer period of access (i.e., up to 15 years).

⁵ For example, we were provided with a copy of the CAA dated 30 March 2015 for the Eungella National Park which states that the CTO will carry out the commercial activity of operating a kiosk and information centre in return for in-kind services such as cleaning the facility and public toilets, providing local and QPWS information to visitors and maintaining the car park

The fees payable under a CAA are negotiated between the Department and the CTO, as per section 87 of the NCA Regulation. While some CAA charges can be guided by the regulated fees for CAPs⁶, they can also be determined on a case-by-case basis for each individual application.

3.1.3 Types of payments and allowable activities

The Operational Policy provides the following examples of the types of activities that may qualify as commercial activities:

- vehicle based guided tours;
- events;
- filming and photography activities;
- canoeing, rafting, kayaking;
- vending;
- scenic flights; and
- motorised activities.

3.1.4 Historic GST treatment applied by the Department

As a general rule:

- the Department treats fees required for CAPs (such as application and annual fees, as well as return of operation fees) as not subject to GST, on the basis that Division 81 applies to these charges; and
- the Department treats negotiated charges under a CAA as taxable, as these amounts are not prescribed in legislation and are considered to be “non-regulatory”.

A more detailed overview of the historic treatment for each fee is set out in **Appendix A**.

As a result of the above, there has been at least one instance where a CTO’s authority has transitioned from a CAP to a CAA and, notwithstanding that the authority has remained practically identical, the GST treatment of the fees has changed from being exempt to taxable. This seemingly anomalous outcome is, partly, the reasoning behind the Department seeking our advice.

⁶ For example, we reviewed the CAA dated 31 January 2015 concerning QuEST Guided Tours performed in the Fraser Island Recreation Area, under which the fees payable were listed as “equivalent to fees as set out in section 13(c)(iii) of Schedule 3 of the *Recreation Areas Management Regulation 2007* in the Fraser Island Recreation Area”

4 Overview of Division 81

4.1 General concepts

Since 1 July 2011, under Division 81:

- (a) the payment of an “Australian tax” is not subject to GST; and
- (b) the payment of an “Australian fee or charge” is not subject to GST if:
 - i. it relates to, or is in respect of an application for, the provision, retention or amendment, under an “Australian law”, of a permission, exemption, authority or licence (hereafter, referred to simply as a **“Permission”**), or
 - ii. it is specifically listed in regulation 81-15.01 of the GST Regulations⁷ (hereafter, referred to as **“the Exempt List”**), or
 - iii. it relates to a government agency (amongst other things) recording, copying or allowing access to information⁸ (i.e., relating to information or record-keeping).

However, as an exception, even if a fee or charge meets one or more of the above, it may still be subject to GST if it is specifically listed in regulation 81-10.01 of the GST Regulations (hereafter, referred to as **“the Taxable List”**).

Before 1 July 2011, Division 81 treated all fees or charges as subject to GST unless they were listed on the Treasurer’s Determination as specifically exempt from GST. Pursuant to Practice Statement *PSLA 2013/2 (GA)*, a fee or charge which is listed on the Treasurer’s Determination continues to remain exempt from GST unless that fee or charge appears on the Taxable List (i.e., it is subject to grandfathering arrangements).

Finally, we note that it is theoretically possible that a single fee or charge may appear on both the Exempt List and the Taxable List. In such a case, there are tiebreaker rules that will apply to clarify that the fee or charge will be taxable, except in the case of a fee or charge that is for the entry to a national park, which will be exempt.

In **Appendix B**, we have provided a flowchart which summarises how Division 81 practically operates.

⁷ A New Tax System (Goods and Services Tax) Regulations 1999 (**“the GST Regulations”**)

⁸ As this category is not relevant to the issue at hand, our report focus on does not comment or consider this any further
31904341_4 - 29 March 2018

5 Application of Division 81 to CAPs and CAAs

5.1 Focus of our advice

At the outset, we have proceeded on the basis that none of the relevant fees payable in respect of CAPs and CAAs are:

- an “Australian tax”;
- listed on the Treasurer’s Determination; or
- for the entry to a national park.

Arguably, some or all of the fees may fall within the Treasurer’s Determination⁹. However, there is no practical benefit in concluding on this as it will still require us to consider whether the fees and charges fall within the Exempt List, which is the aspect most open to debate.

Therefore, in order for us to advise on their GST treatment, it is necessary to consider whether the fees payable in respect of CAPs and CAAs are:

- an “Australian fee or charge” which is payable under an “Australian law”;
- for a Permission; and
- on the Taxable List, particularly whether the fees are either for a supply of a non-regulatory nature or are for the hire, use or entry to a “facility”.

5.2 Are the fees payable in relation to CAPs an “Australian fee or charge”?

An “Australian fee or charge” means a fee or charge (however described):

- other than an Australian tax;
- imposed under an “Australian law”; and
- payable to an “Australian government agency”¹⁰.

To summarise the relevant definitions:

- “Australian law” means “a Commonwealth law, a State law or a Territory law”¹¹;
- “State law” means a law of a State¹²; and
- “Australian government agency” includes a State or an authority of a State¹³.

⁹ See items 5.5 – 5.8, which, amongst other things, include protected area permits, recreation area permits and Forestry Act fees

¹⁰ Section 195-1 of the GST Act

¹¹ Section 195-1 of the GST Act with reference to section 995-1 of the *Income Tax Assessment Act 1997* (“ITAA97”)

¹² Section 995-1 of the ITAA 1997

¹³ Section 995-1 of the ITAA 1997

The Department is clearly part of the State of Queensland and, therefore, an “Australian government agency”.

In regards to whether the CAP fees arise under an Australian law, the Commissioner considers that there needs to be a clear authority to impose a particular fee or charge before it can be considered to be imposed under an Australian law. On the basis that the fees in respect of CAPs are payable under one of the following Acts (and associated subordinate legislation), we are comfortable that the CAP fees are payable under an Australian law:

- *Nature Conservation Act 1992*;
- *Recreation Areas Management Act 2006*; and
- *Forestry Act 1959*.

5.3 Are the fees payable in relation to CAAs an “Australian fee or charge”?

We appreciate that the quantum of the fees payable by a CTO under a CAA are determined by negotiation, albeit that these amounts are often set with reference to the amount that would have been charged had the CTO elected to apply for a corresponding CAP.

Nevertheless, we consider that the fees payable under a CAA are ultimately imposed under an Australian law on the basis that it is the relevant Act (and associated subordinate legislation) that authorises the State to enter into a CAA with the CTO and to impose the associated fees. For instance, sections 67 and 71 of the NCA Regulation, authorises the State to enter into a CAA and requires that CAA to contain details of its term, the controlled activities and the amounts payable to the Department under the CAA (or at least a way of determining that amount).

Our view above is consistent with the view taken by the Commissioner in a number of edited PBRs and class rulings wherein an Act only needs to empower the State to impose a fee and does not, in itself, need to specify the particular amount of the fee or how it is calculated¹⁴.

5.4 Are the fees payable in relation to CAAs and CAPs for a Permission?

In our view, the fees payable in relation to CAAs and CAPs are for a Permission and, therefore, they fall within section 81-10(4) of the GST Act. In short:

- the application fees relate to the application for the Permission (under subsection (b));
- the permit fees under a CAP and other negotiated fees under a CAA are for the provision of the Permission; and

¹⁴ See, for example, edited private binding ruling 1012470048194 under heading “Other fees associated with agreements relating to reserves”

- The return of operation fees (essentially, usage fees) are for the retention of the Permission.

Our view is premised on the basis that the terms “permission”, “exemption”, “authority” and “licence” are not defined in the GST Act and, therefore, take their ordinary meanings. As stated by the Commissioner in Class Ruling *CR 2013/13 Goods and services tax: GST treatment of developer contributions and other dedications of land made to NSW councils* (“**CR 2013/13**”), the word “permission” connotes, with reference to *The Macquarie Dictionary, 2009, 5th edition*:

allowing, permitting or consenting to something being done.

CR 2013/13 concludes that a development consent granted to an applicant has the character of a formal permission from the consent authority to do something and, therefore, falls within the ordinary meaning of “permission”.

We consider that the payments made by CTOs relate to the specific permit or authority granted. This is evidenced by the requirement for CTOs to complete permit application forms which specify the relevant commercial activity type to which the application relates and, once approved, are required to specify the fees payable in the return of operations.

We are also comfortable that payments made under a CAA are also specifically related to the grant of a permission. The CAA template document provided states:

The State is empowered under the Relevant Act to enter into a Commercial Activity Agreement authorising a person to conduct a Commercial Activity in the Relevant Area.

In our view, this is clearly granting a permission to the CTO to conduct commercial activities, as defined in the CAA. Therefore, any payments or in-kind contributions made under the CAA are in return for the authorisation.

5.5 Are the fees payable a CAP or CAA on the Taxable List?

The Taxable List is contained in regulation 81-10.01 of the GST Regulations. To be clear, if a CAP or CAA fee falls within at least one item on this list, the fee will be taxable¹⁵. The two relevant items are:

- a fee or charge for a supply of a non-regulatory nature; or
- a fee for hire, use of, or entry to a facility, except for an entry fee to a national park.

5.5.1 Are the fees of a non-regulatory nature?

Regulation 81-10.01(1)(g) states that fees or charges which constitute consideration include a fee or charge for a supply of a non-regulatory nature. We note that there is no definition of either “regulatory” or “non-regulatory” provided in the GST Act and, as such, we look to the ordinary meaning and any guidance provided by the Commissioner.

The Explanatory Statement to the legislative instrument, *A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 2)*, states that this regulation seeks to

¹⁵ Leaving aside the tiebreaker rule which applies to make a fee for the entry to a national park exempt

ensure that any non-regulatory activities of government (such as commercial activities) are subject to GST. The Explanatory Statement states that a thing lacks regulatory character where the fee or charge does not arise under an Australian law which is intended, for example, to:

- regulate behaviour;
- ensure consumer protection; and
- ensure compliance with certain standards.

On this basis, it appears that the regulatory nature of the fee is derived from the character of the relevant law under which it arises and, therefore it is relevant to consider whether the particular law is intended to regulate behaviour, ensure consumer protection or ensure compliance with certain standards.

To provide some context, the Explanatory Statement provides the following examples of supplies that are not of a regulatory nature:

- a fare charged for travel on a transportation service;
- a fee paid by the media to a council for immediate access to traffic information; and
- a fee charged for exclusive rights to a mausoleum or burial plot.

Whether a fee or charge falls within this provision is to be determined on a case-by-case basis.

5.5.1.1 *Our view*

We have considered the objects of each of the relevant Australian laws applicable to the Department's fees and provided our view, as below:

- the object of the *Nature Conservation Act 1992* is the conservation of nature while allowing for the involvement of indigenous people in the management of protected areas, such as a national park¹⁶. In our view, ensuring conservation of nature through various methods, including the restriction of commercial activities performed on national park land, is a clear example of regulatory activities. On this basis, a fee which arises under this law should also carry a regulatory character;
- the main purpose of the *Recreation Area Management Act 2006* is the establishment, maintenance and use of recreation areas (as defined in the regulations)¹⁷. The act of managing activities performed in recreation areas, and limiting the number of entrants, is intended to regulate behaviour. The permits and authorities issued under this Act carry specific terms and conditions and, as such, ensure compliance with standards. On this basis, we consider that fees under this Act are regulatory in nature; and
- the *Forestry Act 1959* generally seeks to provide for the management of State forests, timber reserves and forest entitlement areas. Section 73B(1) the Act states that a person must not conduct an activity for gain (a commercial activity) in a State forest

¹⁶ Section 4 of the *Nature Conservation Act 1992*

¹⁷ Section 4(1)(a) of the *Recreation Areas Management Act 2006*

or timber reserve, unless it is an activity that is authorised under a permit, licence, lease or other authority under the Act, or an activity that is authorised under an agreement or contract granted or entered into under the Act. The protection of State forests by limiting and monitoring the number of people that can enter the forests and the activities that may be performed is an example of regulation of behaviour and ensuring certain standards are met. In our view, the fees payable under this Act should also be considered regulatory.

As a specific exception to the above, to the extent that any fee is for the hire, use of or entry to a facility, it would generally be considered to be commercial in nature and not regulatory. As such, our comments in this section should be read in conjunction with our comments in section 5.5.2.

5.5.1.2 Summary

Based on the above, we consider that each of the relevant Acts under which the Department imposes fees and charges should be considered regulatory in nature, subject to whether it is for the use of a facility. In this regard, it is relevant to note each of the CAP and CAA fees can only be imposed by the Department (i.e., no commercial entity could grant these authorities or charge these fees).

We appreciate that our view above differs from that of the Department in that the Department considers all fees under a CAA to be non-regulatory. This is on the basis that the quantum of CAA fees are determined by negotiation rather than specified in an Act or Regulation. As above, we consider that it is the purpose for which a fee is charged that is of greater relevance than how it is calculated. However, as this is an untested area of the law, and we see some merit in the Department's view, we recommend that this position is tested in a PBR application to the Commissioner.

5.5.2 Are the fees for the hire, use of, or entry to a facility?

Under subregulation 81-10.01(1)(c), where the fee is for the hire, use of, or entry to a facility¹⁸, the fee will be taxable.

5.5.2.1 Uncertainty and conflicting guidance

Unfortunately, there is limited guidance on what this regulation means and how broad it is intended to operate. Further, what limited guidance exists is, in many respects, conflicting and difficult to reconcile. This evidences the fact that this provision is neither well understood or nor well applied.

Firstly, we note that the term "facility" is not a defined term and, as such, it is not clear whether a facility refers to a specific, physical or man-made object (e.g., a hall) or whether it can cover something as vast and naturally existing as a national park. Secondly, there is uncertainty as to whether a fee which **allows** for, or **has the effect of** allowing, the use of a facility is equivalent to a fee which is **for** the use of a facility. That is, it is unclear whether the focus of the enquiry is on the intention of why the fee is paid

¹⁸ Except for an entry fee to a national park

(i.e., what it is for) or whether the focus should be on the outcome (i.e., what does it allow) once the fee is paid.

As direct evidence of this apparent confusion:

- in edited PBR 1012470048194, the licence fees charged to an Australian government agency allowing a person to carry out a tour on government land was held not to be for a facility and, therefore, exempt; however
- in edited PBR 1011982628401, the licence fee paid by a CTO or fitness trainer to conduct activities in national parks for certain periods was held to be for the use of a facility and, therefore, taxable. This is similar to the position taken in Class Ruling CR 2014/6 where the fee charged by a local council to a commercial fitness trainer allowing the trainer to undertake training sessions with its clients in a council park was held to be for the use of a facility and, therefore, taxable.

In this regard, based on our high-level research and appreciating that we do not have access to any underlying agreements, we note that there appears to be inconsistent treatment of similar authority and usage fees across other Australian jurisdictions:

- in New South Wales, a 12 month licence includes GST¹⁹;
- in Western Australia, the application, renewal and licence fees are exempt from GST, but fees charged for entry by a person into a national park via a commercial operator include GST²⁰;
- in Northern Territory, there is no GST charged on the application fee for the tour operator permit²¹, but fees charged for camping facilities are inclusive of GST²²;
- in South Australia, all licence fees are exempt from GST, however, visitor fees applicable to CTOs for park entry, camping and tour fees are treated as GST inclusive²³; and
- in Tasmania, no GST is charged on any application fee for the lease / licence to the CTO, however, GST is charged on a "licence administration fee"²⁴.

5.5.2.2 Discussions with the ATO

In order to clarify the position and to discuss the apparent inconsistencies, we held informal discussions with senior ATO representatives. The ATO representatives confirmed that the Commissioner does not yet have a settled position on how broadly the term "facility" is to be applied in practice and when a fee is for a facility. As highlighted above, and as accepted by the ATO representatives, what is taken to constitute "a fee for hire, use of, or entry to a facility" is not clear cut and is apparently contradictory.

Based on the background information we provided, the ATO representatives provided an informal view that the GST treatment of fees payable should not be impacted by

¹⁹ <http://www.environment.nsw.gov.au/parksecopass/licenceappnewstep1.htm>

²⁰ https://parks.dpaw.wa.gov.au/sites/default/files/downloads/known/Commercial_operator_handbook_-_terrestrial_2011.pdf

²¹ <https://nt.gov.au/leisure/parks-reserves/permits-for-parks/permits-for-tour-operators-in-parks>

²² https://nt.gov.au/_data/assets/pdf_file/0008/367091/camping-fee-information-sheet.pdf

²³ https://www.environment.sa.gov.au/parks/get-involved/Commercial_Tour_Operators/Licence_costs

²⁴ <http://www.parks.tas.gov.au/file.aspx?id=6468>

whether the fee is administered under a CAP or a CAA. However, the ATO representatives stressed that the GST treatment under a CAA would be dependent on the specific agreement and, as such, each specific agreement should be reviewed to determine the GST position. The ATO representatives also appeared to accept that it is reasonable to conclude that the use / daily site fees are subject to GST, but did not comment on the GST treatment of the application or permit fees.

The ATO representatives indicated that the ATO can only make a determination on a case-by-case basis and this should be undertaken through an application for a PBR which necessarily involves a thorough examination of the individual facts. This may involve early engagement with the ATO, which could include meeting with, and presenting to, ATO representatives prior to the lodgement of a formal PBR submission.

5.5.2.3 Our view

Based on the facts we provided, the ATO representatives did indicate that a national park would likely be a facility, relying on the ordinary definition of the term. While there may be some room for debate, this is a position that, at face value, would seem difficult to argue against given the apparent broad interpretation applied by the Commissioner.

In our view, the focus of the regulation is on **what a fee is for**, not what a licence or permission is for or allows. Therefore, it is not necessarily relevant whether the permit allows for use or entry to a facility, but whether the fee is **paid for the hire or use of a facility**. This interpretation means that, if the fee is paid to reimburse the Department's administration costs or is paid as an application or processing fee, the fee should not be **for the hire or use of a facility** even if payment of that fee **allows for the hire or use of a facility**. The ATO has advised that relevant factors (although not conclusive) that a fee is **not** for hire, use or entry are:

- the fee is a set fee not based on usage or number of entries;
- the fee is paid regardless of whether the licence or permit is issued;
- the fee is based on recoupment of administration costs; and
- the fee is to cover cost of inspection or supervision services.

Indicators that a fee is for hire, use or entry of a facility are where the fee is based on time, area, numbers of people or number of entries to a facility. The ATO representatives made it clear that these factors were purely indicative and not conclusive and any determination would be made on the particular facts of each case.

Given this informal guidance, the Department's fees and charges should be split into three categories:

4. application fees and renewal fees for CAPs and CAAs;
5. permit / annual fees; and
6. use / daily site fees.

Application fees and renewal fees

We understand that a non-refundable, prescribed application fee is payable by CTOs who submit an application for either a CAP or CAA and that a renewal fee is required to be paid at the end of the relevant authority period.

We understand that the application fee and the renewal fee is payable to the Department for administrative services and, ultimately, to recoup the associated administration costs incurred in processing the application / renewal. Given the ATO's guidance (which we agree with), we consider that application and renewal fees are not for the hire, use or entry to a facility. Instead, they are essentially paid for the Department's administration services.

For the same reasons, we consider that a fee which is payable when a CAP or CAA is transferred between parties is also a fee not in relation to the hire, use or entry to a facility.

Permit / annual fee

We understand that a permit fee is payable for CAPs, based on the term of the permit. A similar annual charge is payable for CAAs, with the quantum payable agreed under the CAA.

The permit fee for a CAP is a flat fee set in the regulations and the quantum is not based or related to the number of entrants into the national park. The annual charge for a CAA is not prescribed under the regulations but, we understand in practice, the fee is generally referable to the amount payable for a CAP under the regulations. The annual charge is agreed under the CAA, such that the CTO has certainty regarding the amount payable each year. We have referred to CAA 2014/139 dated 31 January 2015 for the Fraser Island Recreation Area which states that:

"the annual fee payable will be equivalent to the fee as currently and thereafter prescribed in Section 13(b)(ii) of Schedule 3 of the Recreation Areas Management Regulation 2007.

The initial Annual fee payable (2014-15) is \$240.40"

In these circumstances, we consider that the annual fee payable under a CAA is similar to the permit fee payable under the CAP.

In determining what the fee is for, it is relevant to consider what the CTO is receiving in return for the payment of the fee. In our view, the fee is paid in return for the provision of a permit or authority. The permit or authority allows the CTO to conduct certain commercial activities on national park land, but the fee itself is not referable to these particular activities. This view is supported by the fact that a single annual fee is payable where activities are performed across multiple tenures (i.e., recreation parks, national parks, State forest) and that the annual charges are not based on time, area or numbers of people or entries.

On this basis, we consider that the permit fees payable under a CAP and the annual charges payable under a CAA are not for the hire, use or entry to a facility.

For completeness, we understand that annual fees in monetary form are not always payable under CAAs and in certain circumstances the Department may agree that the CTO will provide in-kind contributions instead of paying a monetary fee. As our scope does not extend to considering the treatment of any non-monetary or in-kind consideration, this report does not comment on CAAs which are wholly, or in part, granted in return for in-kind contributions from a CTO. We recommend that the Department seeks separate advice as to the GST treatment of any in-kind consideration.

Use / daily site fees

Daily site fees payable under a CAP are prescribed in regulations and are specifically referable to the location of the recreational area, the number of tour participants and duration of the tour.

With regard to the use fees payable under a CAA, we understand that these fees are not specifically prescribed in regulations, however, similar to the annual fee, are generally referable to regulations. We refer to CAA 2014/139 dated 31 January 2015 for the Fraser Island Recreation Area which states the following with regard to Daily Fees:

"Equivalent to fees as set out in section 13(c)(iii) of Schedule 3 of the Recreation Areas Management Regulation 2007 in the Fraser Island Recreation Area"

In regard to daily site fees payable under a CAP, the fee is for the CTO's client taking part in the activity conducted under the permit and is calculated on the location and duration of the activity. As the use fees payable under a CAA are calculated on the same basis (i.e., number of persons, time, location), we consider that the GST treatment of the fees under the CAA should follow the treatment applied to fees under a CAP.

It appears difficult to argue that the daily site fee is not paid for the use of a facility given that the fee is calculated with specific reference to the number of people on the tour, the location of the tour and the duration of time spent in the national park. It is also difficult to argue that the fee is paid "for entry" into the national park, as the fee appears to be more relevantly connected to the commercial activity taking place in the national park. On this basis, we consider that the daily site fees payable under a CAP and the usage fees payable under a CAA are for the use of a facility.

6 Recommendations and suggested next steps

- Given the fact that there is limited guidance which specifically addresses whether a fee is regulatory in nature and whether a fee is for the use of a facility, and noting that what material is available appears to be contradictory, we **strongly recommend** that the Department confirm the position in relation to its CAP and CAA fees through a PBR application.
- We would recommend that this application is facilitated through an early engagement process, which allows for confidential discussions with senior ATO representatives with a view to clarifying the GST position before a formal PBR application is made. This method has the benefit of opening a dialogue with the ATO for constructive discussion on the GST treatment, as opposed to the more formal approach of a written submission through the standard PBR process.
- Our recommendation is reinforced by the fact that our view is different to the current treatment by the Department and will potentially mean that the Department:
 - o has historically underpaid GST relating to usage fees for CAPs;
 - o has historically overpaid GST relating to non-use fees payable under CAAs; and
 - o will require its business portal and systems to be updated to reflect the GST position.
- We also **strongly recommend** that the Department seeks specific GST advice relating to the treatment of any in-kind consideration paid by CTOs under or, in relation to, a CAA. On initial glance, the Department is likely to have a GST liability if the in-kind amounts provided by the CTO are deemed to be consideration for a supply (in non-monetary form), which seems possible.

7 Disclaimer and limitations of this report

Our tax advice is based on current taxation law as at the date our advice is provided. You will appreciate that the tax law is frequently being changed, both prospectively and retrospectively. A number of key tax reform measures have been implemented, a number of other key reforms have been deferred and the status of some key reforms remains unclear at this stage.

Unless special arrangements are made, this advice will not be updated to take account of subsequent changes to the tax legislation, case law, rulings and determinations issued by the Australian Commissioner of Taxation or other practices of taxation authorities. It is your responsibility to take further advice, if you are to rely on our advice at a later date.

We are, of course, unable to give any guarantee that our interpretation will ultimately be sustained in the event of challenge by the Australian Commissioner of Taxation.

These comments are made specifically in response to your request for advice on behalf of the Department of National Parks, Sport and Racing. Accordingly, neither the firm nor any member or employee of the firm undertakes responsibility in any way whatsoever to any person or company other than Department of National Parks, Sport and Racing for any errors or omissions in the advice given, however caused.

A Commercial tour operator fees charged by the Department, as at 1 July 2017

A.1 CAA fees – tenure managed under the *Nature Conservation Act 1992*

Number	Act, Regulation or operational policy under which fee arises	Fee name	Permission under which fee is charged	Amount charged as at 1 July 2017	Department's comments	Current GST treatment applied by the Department
1	<i>Nature Conservation (Administration) Regulation 2006 – item 12 of Schedule 3</i>	Application fee	CAA – general	\$333.60	As this is a regulated fee, this fee is applied to all agreement applications, including filming and photography and vending activities.	Not subject to GST under Division 81 of the GST Act
2	Operational policy— <i>Commercial tourism and recreation activities in QPWS managed areas</i>	Amount payable	CAA – general	Non-regulated amount, which is negotiated between the parties	<p>"Use fees" will generally be consistent with the regulated fees for CAPs, at least for activities where fees are prescribed. Unlike CAPs, all charges levied under CAAs include GST.</p> <p>Under CAAs, alternative charges may be applicable depending on the type and location of the activities being conducted. These charges can be negotiated.</p>	Taxable
3	Operational policy— <i>Commercial tourism and recreation activities in QPWS managed areas</i>	Annual charge	CAA – tourism and recreation, excluding filming and photography	\$266.50 plus GST	The annual charge is based on the regulated annual CAP fee.	Taxable

Number	Act, Regulation or operational policy under which fee arises	Fee name	Permission under which fee is charged	Amount charged as at 1 July 2017	Department's comments	Current GST treatment applied by the Department
4	Operational policy— <i>Commercial tourism and recreation activities in QPWS managed areas</i>	Use charge / daily (per person) fee	CAA – tourism and recreation, excluding filming and photography	<ul style="list-style-type: none"> \$1.98 or \$3.55 daily charge per person taking part in an activity, depending on duration \$3.50 camping charge for each person, each night camped under the CAP (educational) \$6.35 camping charge for each person, each night camped under the CAP (other) 	<ul style="list-style-type: none"> For CAAs, the basis for “use charges” will generally be consistent with the regulated fees for CAPs. Under some CAAs, alternative charge structures and payments may be applicable depending on the type and location of the activities being conducted. A CAA may also incorporate camping fees, which, across the board, are inclusive of GST. 	Taxable
5	Operational policy— <i>Commercial tourism and recreation activities in QPWS managed areas</i>	Annual fee	CAA – filming and photography	\$266.50 plus GST	The annual charge is based on the regulated annual CAP fee.	Taxable
6	Operational policy— <i>Commercial filming and photography in QPWS-managed areas</i>	Other charges	CAA – filming and photography	Non-regulated amount, which is negotiated between the parties	<ul style="list-style-type: none"> The total amount payable under a CAA for a major film production will be set on a case-by-case basis and can be based on the principle of full cost recovery. When negotiating the monies payable under a CAA for a major production, the Department will use the fees that would otherwise have been payable under a CAP (e.g., application fees plus daily site fees) as a basis figure for negotiation. 	Taxable

Number	Act, Regulation or operational policy under which fee arises	Fee name	Permission under which fee is charged	Amount charged as at 1 July 2017	Department's comments	Current GST treatment applied by the Department
7	Operational policy— <i>Commercial vending activities on QPWS-managed areas</i>	Annual “estate access” fee	CAA – commercial vending activities	\$722.70 plus GST	<ul style="list-style-type: none"> Given the nature of commercial vending operations, there is no additional fee structure provided for in the legislation as in the case of tour-based commercial operations, which attract a per person fee based on the duration of the tour. Accordingly, the principle of an annual “estate access fee” will be applied and included in the relevant schedule of the CAA under “Fees” payable. 	Taxable

A.2 CAA fees – tenure managed under the *Recreation Areas Management Act 2006*

Number	Act, Regulation or operational policy under which fee arises	Fee name	Permission under which fee is charged	Amount charged as at 1 July 2017	Department's comments	Current GST treatment applied by the Department
8	<i>Recreation Areas Management Regulation 2017</i> – item 16 of Schedule 2	Application fee	CAA – general	\$333.60	As this is a regulated fee, this fee is applied to all agreement applications, including filming and photography and vending activities.	Not subject to GST under Division 81 of the GST Act

Number	Act, Regulation or operational policy under which fee arises	Fee name	Permission under which fee is charged	Amount charged as at 1 July 2017	Department's comments	Current GST treatment applied by the Department
9	Section 71 of the Recreation Areas Management Act 2006 Operational policy— <i>Commercial tourism and recreation activities in QPWS managed areas</i>	Amount payable	CAA – general	Non-regulated amount, which is negotiated between the parties	“Use fees” will generally be consistent with the regulated fees for CAPs, at least for activities where fees are prescribed. Unlike CAPs, all charges levied under CAAs include GST. Under CAAs, alternative charges may be applicable depending on the type and location of the activities being conducted. These charges can be negotiated.	Taxable
10	Operational policy— <i>Commercial tourism and recreation activities in QPWS managed areas</i>	Annual charge	CAA – tourism and recreation, excluding filming and photography	\$266.50 plus GST	The annual charge is based on the regulated annual CAP fee.	Taxable
11	Operational policy— <i>Commercial tourism and recreation activities in QPWS managed areas</i>	Use charge / daily (per person) fee	CAA – tourism and recreation, excluding filming and photography	<ul style="list-style-type: none"> • \$1.98 or \$3.55 daily charge per person taking part in an activity, depending on duration • \$3.50 camping charge for each person, each night camped under the CAP (educational) • \$6.35 camping charge for each person, each night camped under the CAP (other) 	<ul style="list-style-type: none"> • For CAAs, the basis for “use charges” will generally be consistent with the regulated fees for CAPs. • Under some CAAs, alternative charge structures and payments may be applicable depending on the type and location of the activities being conducted. • A CAA may also incorporate camping fees, which, across the board, are inclusive of GST. 	Taxable
12	Standard business practice	Annual charge	CAA – filming and photography	\$266.50 plus GST	The annual charge is based on the regulated annual CAP fee.	Taxable

31904341_4 - 29 March 2018

4

Number	Act, Regulation or operational policy under which fee arises	Fee name	Permission under which fee is charged	Amount charged as at 1 July 2017	Department's comments	Current GST treatment applied by the Department
13	Operational policy— <i>Commercial filming and photography in QPWS-managed areas</i>	Other charges	CAA – filming and photography	Non-regulated amount, which is negotiated between the parties	<ul style="list-style-type: none"> The total amount payable under a CAA for a major film production will be set on a case-by-case basis and can be based on the principle of full cost recovery. When negotiating the monies payable under a CAA for a major production, the Department will use the fees that would otherwise have been payable under a CAP (e.g., application fees plus daily site fees) as a basis figure for negotiation. 	Taxable
14	Operational policy— <i>Commercial filming and photography in QPWS-managed areas</i>	Annual charge	CAA – commercial vending activities	\$722.70 plus GST	<ul style="list-style-type: none"> Given the nature of commercial vending operations, there is no additional fee structure provided for in the legislation as in the case of tour-based commercial operations, which attract a per person fee based on the duration of the tour. Accordingly, the principle of an annual “estate access fee” will be applied and included in the relevant schedule of the CAA under “Fees” payable. 	Taxable

A.3 CAP fees – tenure managed under the *Nature Conservation Act 2006*

Number	Act, Regulation or operational policy under which fee arises	Fee name	Permission under which fee is charged	Amount charged as at 1 July 2017	Department's comments	Current GST treatment applied by the Department
15	<i>Nature Conservation (Administration) Regulation 2017</i> – various items in Schedule 3	Application fee	CAP – filming and photography	<ul style="list-style-type: none"> • \$350.30 for 11 or more persons (no structures) • \$350.30 for 11 or more persons renewal fee (no structures) • \$175.70 for 1 to 5 persons (structures) • \$175.70 for 1 to 5 persons renewal (structures) • \$870.00 for 6 to 25 persons (structures) • \$870.00 for 6 to 25 persons renewal (structures) • \$1,750.00 for 26 to 50 persons (structures) • \$1,750.00 for 26 to 50 persons renewal (structures) • \$3,512.00 for 51 or more persons (structures) • \$3,512.00 for 51 or more persons renewal (structures) 	Regulated fee per legislation	Not subject to GST under Division 81 of the GST Act

Number	Act, Regulation or operational policy under which fee arises	Fee name	Permission under which fee is charged	Amount charged as at 1 July 2017	Department's comments	Current GST treatment applied by the Department
16	<i>Nature Conservation (Administration) Regulation 2017 – various items in Schedule 3</i>	Permit fee / daily fee	CAP – filming and photography	<ul style="list-style-type: none"> • \$175.70 for 1 to 5 persons (no structures) • \$175.70 for 1 to 5 persons renewal (structures) • \$870.00 for 6 to 25 persons (structures) • \$1,750.00 for 26 to 50 persons (structures) • \$1,750.00 for 26 to 50 persons (structures) • \$3,512.00 for 51 or more persons (structures) 	Regulated fee per legislation	Not subject to GST under Division 81 of the GST Act
17	<i>Nature Conservation (Administration) Regulation 2017 – various items in Schedule 3</i>	Application fee	CAP – other than filming and photography	<ul style="list-style-type: none"> • \$166.60 permit is same as previous • \$333.60 new application • 166.60 renewal 	Regulated fee per legislation	Not subject to GST under Division 81 of the GST Act



Department of National Parks, Sport and Racing
*GST treatment of fees and charges payable by commercial tour operators arising
under Commercial Activity Permits and Commercial Activity Agreements
Deals, Tax & Legal
February 2018*

Number	Act, Regulation or operational policy under which fee arises	Fee name	Permission under which fee is charged	Amount charged as at 1 July 2017	Department's comments	Current GST treatment applied by the Department
18	<i>Nature Conservation (Administration) Regulation 2017</i> – various items in Schedule 3	Permit fee	CAP – other than filming and photography	<ul style="list-style-type: none"> • \$66.80 - 3 months or less • \$266.50 – 3 months to 1 year • \$535.00 – 1 year to 2 years • \$755.00 – 2 year to 3 years • \$252.30 – for each year after the third year 	Regulated fee per legislation	Not subject to GST under Division 81 of the GST Act
19	<i>Nature Conservation (Administration) Regulation 2017</i> – various items in Schedule 3	Transfer fee	CAP – other than filming and photography	<ul style="list-style-type: none"> • \$166.20 	Regulated fee per legislation	Not subject to GST under Division 81 of the GST Act
20	<i>Nature Conservation (Administration) Regulation 2017</i> – various items in Schedule 3	Daily fee, five years and older	CAP – other than filming and photography	<ul style="list-style-type: none"> • \$1.98 – less than three hours • \$3.55 – three hours or more 	Regulated fee per legislation	Not subject to GST under Division 81 of the GST Act

A.4 CAP fees – tenure managed under the *Recreation Areas Management Act 2006*

Number	Act, Regulation or operational policy under which fee arises	Fee name	Permission under which fee is charged	Amount charged as at 1 July 2017	Department's comments	Current GST treatment applied by the Department
21	<i>Recreation Areas Management Regulations 2017</i> – various items in Schedule 2	Application fee	CAP – filming and photography	<ul style="list-style-type: none"> • \$350.30 for 11 or more persons (no structures) • \$350.30 for 11 or more persons renewal fee (no structures) • \$175.70 for 1 to 5 persons (structures) • \$175.70 for 1 to 5 persons renewal (structures) • \$870.00 for 6 to 25 persons (structures) • \$870.00 for 6 to 25 persons renewal (structures) • \$1,750.00 for 26 to 50 persons (structures) • \$1,750.00 for 26 to 50 persons renewal (structures) • \$3,512.00 for 51 or more persons (structures) • \$3,512.00 for 51 or more persons renewal (structures) 	Regulated fee per legislation	Not subject to GST under Division 81 of the GST Act

Number	Act, Regulation or operational policy under which fee arises	Fee name	Permission under which fee is charged	Amount charged as at 1 July 2017	Department's comments	Current GST treatment applied by the Department
22	<i>Recreation Areas Management Regulations 2017</i> – various items in Schedule 2	Permit fee / daily fee	CAP – filming and photography	<ul style="list-style-type: none"> • \$175.70 for 1 to 5 persons (no structures) • \$175.70 for 1 to 5 persons renewal (structures) • \$870.00 for 6 to 25 persons (structures) • \$1,750.00 for 26 to 50 persons (structures) • \$1,750.00 for 26 to 50 persons (structures) • \$3,512.00 for 51 or more persons (structures) 	Regulated fee per legislation	Not subject to GST under Division 81 of the GST Act
23	<i>Recreation Areas Management Regulations 2017</i> – various items in Schedule 2	Application fee	CAP – other than filming and photography	<ul style="list-style-type: none"> • \$166.60 permit is same as previous • \$333.60 new application • 166.60 renewal 	Regulated fee per legislation	Not subject to GST under Division 81 of the GST Act

Number	Act, Regulation or operational policy under which fee arises	Fee name	Permission under which fee is charged	Amount charged as at 1 July 2017	Department's comments	Current GST treatment applied by the Department
24	<i>Recreation Areas Management Regulations 2017 – various items in Schedule 2</i>	Permit fee	CAP – other than filming and photography	<ul style="list-style-type: none"> • \$66.80 - 3 months or less • \$266.50 – 3 months to 1 year • \$535.00 – 1 year to 2 years • \$755.00 – 2 year to 3 years • \$252.30 – for each year after the third year 	Regulated fee per legislation	Not subject to GST under Division 81 of the GST Act
25	<i>Recreation Areas Management Regulations 2017 – various items in Schedule 2</i>	Transfer fee	CAP – other than filming and photography	<ul style="list-style-type: none"> • \$166.20 	Regulated fee per legislation	Not subject to GST under Division 81 of the GST Act
26	<i>Recreation Areas Management Regulations 2017 – various items in Schedule 2</i>	Daily fee	CAP – other than filming and photography	<ul style="list-style-type: none"> • \$2.75 – Green Island • \$1.98 – less than 3 hours, Bribie, Cooloola, Minjerribah, Moreton • \$3.55 - more than 3 hours, Bribie, Cooloola, Minjerribah, Moreton • \$3.80 – less than 3 hours, other recreation areas • \$7.95 – greater than 3 hours, other recreation areas 	Regulated fee per legislation	Not subject to GST under Division 81 of the GST Act

A.5 CAP fees – tenure managed under the *Forestry Act 1959*

Number	Act, Regulation or operational policy under which fee arises	Fee name	Permission under which fee is charged	Amount charged as at 1 July 2017	Department's comments	Current GST treatment applied by the Department
27	<i>Forestry Regulation 2015</i> – various items in Schedule 6	Application fee	CAP – filming and photography	<ul style="list-style-type: none"> • \$350.30 for 11 or more persons (no structures) • \$350.30 for 11 or more persons renewal fee (no structures) • \$175.70 for 1 to 5 persons (structures) • \$175.70 for 1 to 5 persons renewal (structures) • \$870.00 for 6 to 25 persons (structures) • \$870.00 for 6 to 25 persons renewal (structures) • \$1,750.00 for 26 to 50 persons (structures) • \$1,750.00 for 26 to 50 persons renewal (structures) • \$3,512.00 for 51 or more persons (structures) • \$3,512.00 for 51 or more persons renewal (structures) 	Regulated fee per legislation	Not subject to GST under Division 81 of the GST Act

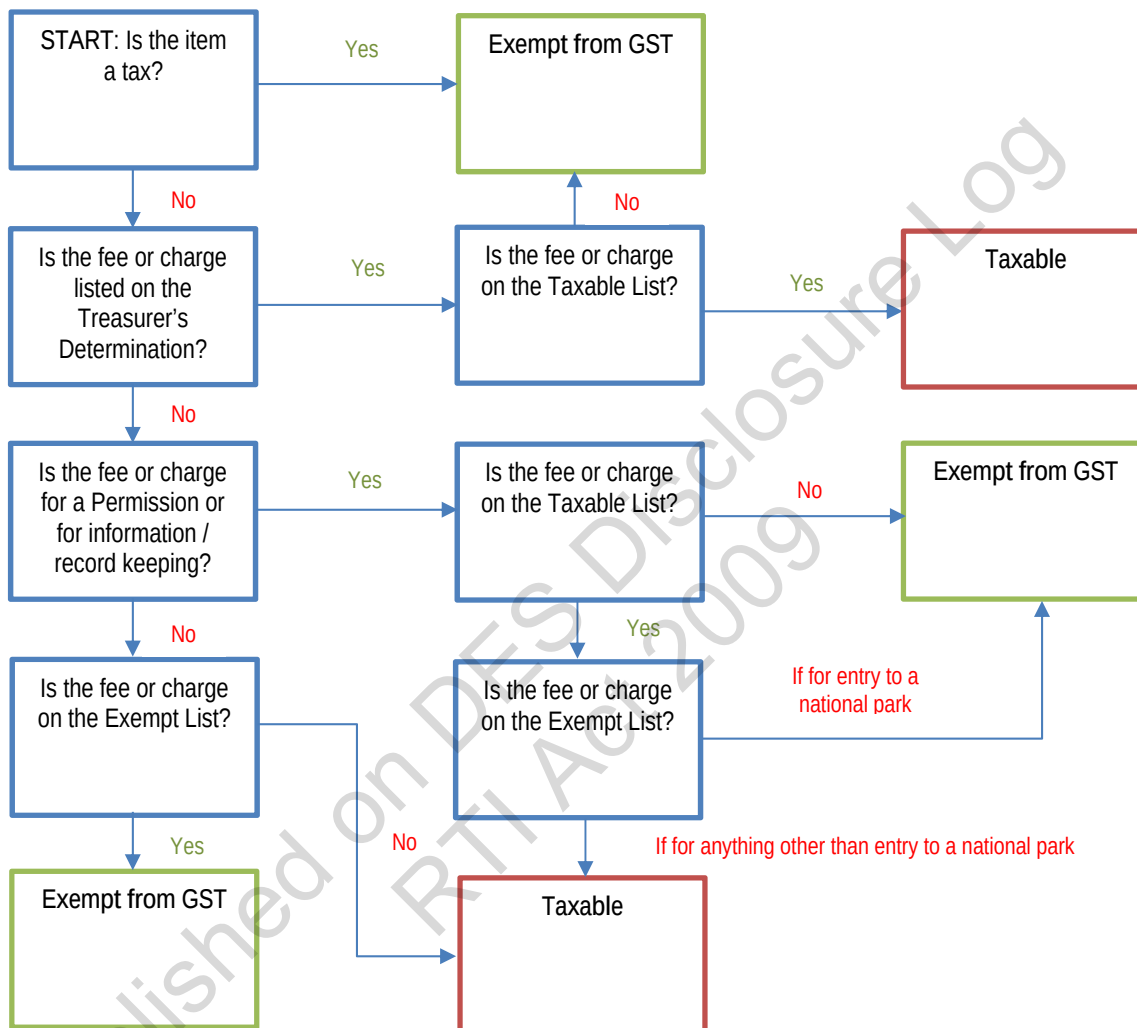
Number	Act, Regulation or operational policy under which fee arises	Fee name	Permission under which fee is charged	Amount charged as at 1 July 2017	Department's comments	Current GST treatment applied by the Department
28	<i>Forestry Regulation 2015</i> – various items in Schedule 6	Permit fee	CAP – filming and photography	<ul style="list-style-type: none"> • \$175.70 for 1 to 5 persons (no structures) • \$175.70 for 1 to 5 persons renewal (structures) • \$870.00 for 6 to 25 persons (structures) • \$1,750.00 for 26 to 50 persons (structures) • \$1,750.00 for 26 to 50 persons (structures) • \$3,512.00 for 51 or more persons (structures) 	Regulated fee per legislation	Not subject to GST under Division 81 of the GST Act
29	<i>Forestry Regulation 2015</i> – various items in Schedule 6	Application fee	CAP – other than filming and photography	<ul style="list-style-type: none"> • \$166.60 permit is same as previous • \$333.60 new application • 166.60 renewal 	Regulated fee per legislation	Not subject to GST under Division 81 of the GST Act
30	<i>Forestry Regulation 2015</i> – various items in Schedule 6	Permit fee	CAP – other than filming and photography	<ul style="list-style-type: none"> • \$66.80 - 3 months or less • \$266.50 – 3 months to 1 year • \$535.00 – 1 year to 2 years • \$755.00 – 2 year to 3 years 	Regulated fee per legislation	Not subject to GST under Division 81 of the GST Act



Department of National Parks, Sport and Racing
*GST treatment of fees and charges payable by commercial tour operators arising
under Commercial Activity Permits and Commercial Activity Agreements
Deals, Tax & Legal
February 2018*

Number	Act, Regulation or operational policy under which fee arises	Fee name	Permission under which fee is charged	Amount charged as at 1 July 2017	Department's comments	Current GST treatment applied by the Department
31	<i>Forestry Regulation 2015</i> – various items in Schedule 6	Daily fee	CAP – other than filming and photography	<ul style="list-style-type: none"> • \$1.98 – less than three hours • \$3.55 – three hours or more 	Regulated fee per legislation	Not subject to GST under Division 81 of the GST Act

B Division 81 assessment flowchart relevant





C Summary of CAP and CAA fees based on our advice

Number	Act or Regulation	Fee name and permit granted	Department's GST treatment	KPMG view	Additional comments
1	<i>Nature Conservation Act 1992 and Nature Conservation (Administration) Regulation 2006</i>	Application fee for CAA (general)	Exempt from GST	Exempt from GST	Subject to confirmation in a PBR, application fees are paid to cover the Department's administration costs and not for the use of a facility
2	<i>Nature Conservation Act 1992</i>	Amount payable for use charges for CAA (general)	Taxable	Taxable	Usage charges are likely to be seen as being for the use of a national park
3	<i>Nature Conservation Act 1992</i>	Annual charge for CAA (tourism and recreation, excluding filming and photography)	Taxable	Exempt from GST	Subject to confirmation in a PBR, annual charges are paid for the grant or retention of a permission and not for the use of a facility
4	<i>Nature Conservation Act 1992</i>	Amount payable for use charges for CAA (tourism and recreation, excluding filming and photography)	Taxable	Taxable	Usage charges are likely to be seen as being for the use of a national park
5	<i>Nature Conservation Act 1992</i>	Annual charge for CAA (filming and photography)	Taxable	Exempt from GST	Subject to confirmation in a PBR, annual charges are paid for the grant or retention of a permission and not for the use of a facility
6	<i>Nature Conservation Act 1992</i>	Other charge for CAA (filming and photography)	Taxable	Taxable	Usage charges are likely to be seen as being for the use of a national park

31904341_4 - 29 March 2018

1



Department of National Parks, Sport and Racing
GST treatment of fees and charges payable by commercial tour operators arising
under Commercial Activity Permits and Commercial Activity Agreements
Deals, Tax & Legal
February 2018

Number	Act or Regulation	Fee name and permit granted	Department's GST treatment	KPMG view	Additional comments
7	<i>Nature Conservation Act 1992</i>	Annual charge for CAA (commercial vending activities)	Taxable	Exempt from GST	Subject to confirmation in a PBR, annual charges are paid for the grant or retention of a permission and not for the use of a facility
8	<i>Recreation Areas Management Act 2006 and Recreation Areas Management Regulation 2017</i>	Application fee for CAA (general)	Exempt from GST	Exempt from GST	Subject to confirmation in a PBR, application fees are paid to cover the Department's administration costs and not for the use of a facility
9	<i>Recreation Areas Management Act 2006</i>	Amount payable for use charges for CAA (general)	Taxable	Taxable	Usage charges are likely to be seen as being for the use of a national park
10	<i>Recreation Areas Management Act 2006</i>	Annual charge for CAA (tourism and recreation, excluding filming and photography)	Taxable	Exempt from GST	Subject to confirmation in a PBR, annual charges are paid for the grant or retention of a permission and not for the use of a facility
11	<i>Recreation Areas Management Act 2006</i>	Amount payable for use charges for CAA (tourism and recreation, excluding filming and photography)	Taxable	Taxable	Usage charges are likely to be seen as being for the use of a national park
12	<i>Recreation Areas Management Act 2006</i>	Annual charge for CAA (filming and photography)	Taxable	Exempt from GST	Subject to confirmation in a PBR, annual charges are paid for the grant or retention of a permission and not for the use of a facility
13	<i>Recreation Areas Management Act 2006</i>	Other charge for CAA (filming and photography)	Taxable	Taxable	Usage charges are likely to be seen as being for the use of a national park

31904341_4 - 29 March 2018

2

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Department of National Parks, Sport and Racing
GST treatment of fees and charges payable by commercial tour operators arising
under Commercial Activity Permits and Commercial Activity Agreements
Deals, Tax & Legal
February 2018

Number	Act or Regulation	Fee name and permit granted	Department's GST treatment	KPMG view	Additional comments
14	<i>Recreation Areas Management Act 2006</i>	Annual charge for CAA (commercial vending activities)	Taxable	Exempt from GST	Subject to confirmation in a PBR, annual charges are paid for the grant or retention of a permission and not for the use of a facility
15	<i>Nature Conservation Act 2006 and Nature Conservation (Administration) Regulation 2017</i>	Application fee for CAP (filming and photography)	Exempt from GST	Exempt from GST	Subject to confirmation in a PBR, application fees are paid to cover the Department's administration costs and not for the use of a facility
16	<i>Nature Conservation Act 2006 and Nature Conservation (Administration) Regulation 2017</i>	Permit / daily fee for CAP (filming and photography)	Exempt from GST	Taxable	Usage charges are likely to be seen as being for the use of a national park
17	<i>Nature Conservation Act 2006 and Nature Conservation (Administration) Regulation 2017</i>	Application fee for CAP (other than filming and photography)	Exempt from GST	Exempt from GST	Subject to confirmation in a PBR, application fees are paid to cover the Department's administration costs and not for the use of a facility
18	<i>Nature Conservation Act 2006 and Nature Conservation (Administration) Regulation 2017</i>	Permit fee for CAP (other than filming and photography)	Exempt from GST	Exempt from GST	Subject to confirmation in a PBR, periodic charges are paid for the grant or retention of a permission and not for the use of a facility
19	<i>Nature Conservation Act 2006 and Nature Conservation (Administration) Regulation 2017</i>	Transfer fee for CAP (other than filming and photography)	Exempt from GST	Exempt from GST	Subject to confirmation in a PBR, transfer fees are paid for in relation to a permission and not for the use of a facility
20	<i>Nature Conservation Act 2006 and Nature Conservation (Administration) Regulation 2017</i>	Daily fee for CAP (other than filming and photography)	Exempt from GST	Taxable	Usage charges are likely to be seen as being for the use of a national park

31904341_4 - 29 March 2018

3

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Department of National Parks, Sport and Racing
GST treatment of fees and charges payable by commercial tour operators arising
under Commercial Activity Permits and Commercial Activity Agreements
Deals, Tax & Legal
February 2018

Number	Act or Regulation	Fee name and permit granted	Department's GST treatment	KPMG view	Additional comments
21	<i>Recreation Areas Management Act 2006 and Recreation Areas Management Regulations 2017</i>	Application fee for CAP (filming and photography)	Exempt from GST	Exempt from GST	Subject to confirmation in a PBR, application fees are paid to cover the Department's administration costs and not for the use of a facility
22	<i>Recreation Areas Management Act 2006 and Recreation Areas Management Regulations 2017</i>	Permit / daily fee for CAP (filming and photography)	Exempt from GST	Taxable	Usage charges are likely to be seen as being for the use of a national park
23	<i>Recreation Areas Management Act 2006 and Recreation Areas Management Regulations 2017</i>	Application fee for CAP (other than filming and photography)	Exempt from GST	Exempt from GST	Subject to confirmation in a PBR, application fees are paid to cover the Department's administration costs and not for the use of a facility
24	<i>Recreation Areas Management Act 2006 and Recreation Areas Management Regulations 2017</i>	Permit fee for CAP (other than filming and photography)	Exempt from GST	Exempt from GST	Subject to confirmation in a PBR, periodic charges are paid for the grant or retention of a permission and not for the use of a facility
25	<i>Recreation Areas Management Act 2006 and Recreation Areas Management Regulations 2017</i>	Transfer fee for CAP (other than filming and photography)	Exempt from GST	Exempt from GST	Subject to confirmation in a PBR, transfer fees are paid for in relation to a permission and not for the use of a facility
26	<i>Recreation Areas Management Act 2006 and Recreation Areas Management Regulations 2017</i>	Daily fee for CAP (other than filming and photography)	Exempt from GST	Taxable	Usage charges are likely to be seen as being for the use of a national park
27	<i>Forestry Act 1959 and Forestry Regulation 2015</i>	Application fee for CAP (filming and photography)	Exempt from GST	Exempt from GST	Subject to confirmation in a PBR, application fees are paid to cover the Department's administration costs and not for the use of a facility

31904341_4 - 29 March 2018

4

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Number	Act or Regulation	Fee name and permit granted	Department's GST treatment	KPMG view	Additional comments
28	<i>Forestry Act 1959 and Forestry Regulation 2015</i>	Permit fee for CAP (filming and photography)	Exempt from GST	Exempt from GST	Subject to confirmation in a PBR, application fees are paid to cover the Department's administration costs and not for the use of a facility
29	<i>Forestry Act 1959 and Forestry Regulation 2015</i>	Application fee for CAP (other than filming and photography)	Exempt from GST	Exempt from GST	Subject to confirmation in a PBR, application fees are paid to cover the Department's administration costs and not for the use of a facility
30	<i>Forestry Act 1959 and Forestry Regulation 2015</i>	Permit fee for CAP (other than filming and photography)	Exempt from GST	Exempt from GST	Subject to confirmation in a PBR, periodic charges are paid for the grant or retention of a permission and not for the use of a facility
31	<i>Forestry Act 1959 and Forestry Regulation 2015</i>	Permit / daily fee for CAP (filming and photography)	Exempt from GST	Taxable	Usage charges are likely to be seen as being for the use of a national park



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