

# Marine Parks Act 1997 No 64

[1997-64]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Statute Law \(Miscellaneous Provisions\) Act 2007 No 27](#) (not commenced — to commence on the commencement of Chapter 2 of the [Offshore Petroleum Act 2006](#) of the Commonwealth)
  - [Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Marine Parks Act 1997 No 64



New South Wales

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# Marine Parks Act 1997 No 64



New South Wales

An Act to provide for the declaration of marine parks; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Marine Parks Act 1997*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are as follows:

- (a) to conserve marine biological diversity and marine habitats by declaring and providing for the management of a comprehensive system of marine parks,
- (b) to maintain ecological processes in marine parks,
- (c) where consistent with the preceding objects:
  - (i) to provide for ecologically sustainable use of fish (including commercial and recreational fishing) and marine vegetation in marine parks, and
  - (ii) to provide opportunities for public appreciation, understanding and enjoyment of marine parks.

### 4 Definitions

(1) In this Act:

**advisory committee** means an advisory committee established under section 35.

**Advisory Council** means the Marine Parks Advisory Council established under section 32.

**aircraft** means any airborne craft, including a fixed wing craft, helicopter, gyrocopter, glider, hang glider, hot air balloon and airship.

**animal** means any animal-life (other than human), whether vertebrate or invertebrate and in any stage of biological development, and includes a dead animal.

**Authority** means the Marine Parks Authority constituted by section 29.

**biological diversity** means the diversity of life and is made up of the following 3 components:

- (a) genetic diversity—the variety of genes (or units of heredity) in any population,
- (b) species diversity—the variety of species,
- (c) ecosystem diversity—the variety of communities of ecosystems.

**Commonwealth Native Title Act** means the [Native Title Act 1993](#) of the Commonwealth.

**Crown land** means Crown land within the meaning of the [Crown Lands Act 1989](#).

**ecologically sustainable use** of a marine park means the taking of plants, animals or materials from the marine park, or some other use of the marine park, in accordance with the principles and programs for ecologically sustainable development set out in section 6 (2) (a)–(d) of the [Protection of the Environment Administration Act 1991](#).

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**marine** includes estuarine.

**marine park** means a marine park declared under section 6.

**marine park closure**—see section 20A.

**marine park ranger**—see section 35A (1).

**mineral** includes coal, shale or petroleum.

**native title holder** has the same meaning as it has in the Commonwealth Native Title Act.

**operational plan** for a marine park means the operational plan for the marine park adopted under Part 4.

**owner** has the same meaning as in the [Local Government Act 1993](#), and includes a native title holder.

**plant** means any plant-life, whether vascular or non-vascular and in any stage of biological development, and includes fungi, lichens and dead plants.

**registered native title body corporate** has the same meaning as it has in the Commonwealth Native Title Act.

**registered native title claimant** has the same meaning as it has in the Commonwealth Native Title Act.

**zoning plan** for a marine park means the zoning plan for the marine park established by a regulation referred to in section 17B.

(2) Notes in the text of this Act do not form part of this Act.

## 5 Reference to relevant Ministers

- (1) In this Act, a reference to **the relevant Ministers** is a reference to the Minister administering the [National Parks and Wildlife Act 1974](#) and the Minister administering the [Fisheries Management Act 1994](#).
- (2) If a provision of this Act requires or authorises the relevant Ministers to take any action or decide any matter, the provision is taken only to require or authorise the relevant Ministers to take the action jointly or decide the matter jointly.

## Part 2 Declaration of marine parks

### 6 Declaration of marine parks

- (1) The Governor may, by proclamation, declare an area described in the proclamation to be a marine park.
- (2) The area that can be so declared includes:
  - (a) any area of waters of the sea or subject to tidal influence, or
  - (b) any area of water, or land, adjacent to such waters, or
  - (c) any area of land within such waters, or
  - (d) any area of land from time to time covered by such waters.
- (3) A proclamation must not be made under this section:
  - (a) in respect of an area of Crown lands above mean high water mark without the consent of the Minister administering the [Crown Lands Act 1989](#), and
  - (b) in respect of any area of land above mean high water mark (whether or not Crown lands) without the consent of the owner of the land.
- (4) A declaration under this section in relation to an area is not affected by:
  - (a) an existing interest in respect of land in the area, or



(b) a change of ownership of land in the area.

- (5) Subject to this Act, a provision of this Act or the regulations has effect in relation to an area of a marine park despite any such existing interest or change of ownership, unless the provision otherwise specifies.

**Editorial note—**

For proclamations relating to marine parks, see the Historical notes.

**7 Name of marine park**

- (1) The Governor may, by proclamation, assign a name to a marine park.
- (2) The Governor may from time to time, by proclamation, alter the name of a marine park.

**Editorial note—**

For proclamations relating to marine parks, see the Historical notes.

**8 Revocation of marine park**

A declaration of a marine park must not be revoked except by an Act of Parliament.

**9 Variation of area of marine park**

- (1) The Governor may from time to time, by proclamation, vary the area of a marine park, but may only vary a marine park to remove an area if the relevant Ministers certify in writing that the area is no longer required to be part of the marine park for the purpose of attaining the objects of this Act.
- (2) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to a proclamation under this section in the same way as those sections apply to a statutory rule.
- (3) The provisions of section 6 (2)–(5) apply to a variation of an area under this section that adds an area to a marine park in the same way as those provisions apply to the declaration of an area as a marine park.

**10 Effect of declaration on aquatic reserves**

- (1) The declaration of an area as a marine park (or part of a marine park) revokes any declaration of the area as an aquatic reserve under the *Fisheries Management Act 1994*.
- (2) An area within a marine park cannot be declared to be an aquatic reserve under the *Fisheries Management Act 1994*.

**11 Effect of declaration on land reserved or dedicated for public purposes (other than**

### **aquatic reserves)**

- (1) Land that is reserved or dedicated for a public purpose may be declared to be a marine park under this Act.
- (2) The land may be used for the purpose for which it is reserved or dedicated to the extent that the use is not inconsistent with this Act or the regulations.
- (3) Nothing in this Act or the regulations permits the land to be used contrary to the provisions of any Act or statutory instrument applying to the land.
- (4) This section extends to land that is reserved or dedicated under the *National Parks and Wildlife Act 1974* or any other Act (other than land declared to be an aquatic reserve under the *Fisheries Management Act 1994*).

### **12 Effect of declaration on aquaculture**

- (1) The declaration of an area as a marine park does not affect any aquaculture permit or aquaculture lease under the *Fisheries Management Act 1994* and in force at the time of the declaration.
- (2) However, such a lease applying to any area within a marine park must not be extended or renewed under that Act, unless the regulations provide that aquaculture is permissible in the relevant area.
- (3) Subsection (2) does not affect a person's entitlement to have an aquaculture lease renewed for the first time under section 167 (3) of the *Fisheries Management Act 1994*.

### **13 Dealings in relation to certain land leases within marine park**

- (1) This section applies to land within a marine park that is leased under the *Crown Lands Act 1989*.
- (2) The Minister administering the *Crown Lands Act 1989* must not, under that Act, approve any change in use of land to which this section applies, or approve the conversion, sale or disposal of such land without consulting the relevant Ministers.

### **14 Compulsory acquisition of land**

A copy of a proposed acquisition notice under section 11 of the *Land Acquisition (Just Terms Compensation) Act 1991* relating to land within a marine park must also be served on the Authority by the authority proposing to acquire the land.

### **14A Consent of owners**

If an owner of land whose consent is required under section 6 or 9 to the making of a proclamation declaring an area to be a marine park or adding an area to a marine park cannot, after diligent inquiry, be found or identified, the proclamation may be made

without the consent of that owner.

### **Part 3 Regulation of activities in marine parks**

#### **Division 1 Regulations for the management, protection and conservation of marine parks**

##### **15 Regulations relating to marine parks generally**

The regulations may make provision for or with respect to the management, protection and conservation of marine parks.

##### **16 (Repealed)**

##### **17 Other regulations for marine parks**

Without affecting the generality of section 15, the regulations may make provision for or with respect to the following matters:

- (a) regulating the use and enjoyment of marine parks,
- (b) regulating or prohibiting the carrying out of activities (including commercial activities) within marine parks either generally or in relation to particular marine parks or by reference to different zones within a marine park,
- (c) regulating or prohibiting the taking of animals, plants or materials from or into marine parks and the possession of animals, plants or materials that have been taken from marine parks,
- (d) regulating or prohibiting the entry into a marine park (or part of a marine park) of all persons or any class of persons,
- (e) removing from marine parks trespassers, persons causing annoyance or inconvenience or persons committing offences,
- (f) regulating navigation and use of vessels within marine parks, or closing a marine park or part of a marine park to vessels,
- (g) regulating where vessels may be moored or anchored within marine parks,
- (h) protecting cultural heritage within marine parks,
- (i) prescribing fees payable in respect of the use of a marine park or the carrying out of any activity within a marine park,
- (j) regulating or prohibiting the use of aircraft over or within marine parks.

### **17A Offences against management regulations**

A person is guilty of an offence if the person contravenes a provision of the regulations referred to in this Division or Division 1A, being a contravention that is designated by the regulations as a serious offence.

Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 500 penalty units.

## **Division 1A Zoning plans**

### **17B Regulations relating to zoning plans for marine parks**

- (1) Without affecting the generality of Division 1, the regulations may make provision for or with respect to the use and management of a marine park by means of a zoning plan set out in the regulations.
- (2) A zoning plan may include provisions for or with respect to the following:
  - (a) the classification of areas within a marine park (for example as sanctuary zones, habitat protection zones and general use zones),
  - (b) the uses that are permitted or prohibited within such areas,
  - (c) the management of such areas.
- (3) The relevant Ministers must not recommend the making of regulations that establish, replace or amend a zoning plan unless the relevant Ministers are satisfied that the provisions of this Division have been complied with in the making of the regulations.
- (4) Failure to comply with any provision of this Division does not affect the validity of a regulation establishing, replacing or amending a zoning plan.

### **17C Making zoning plans for marine parks**

- (1) The Authority, in consultation with the advisory committee for a marine park, is to cause a draft zoning plan to be prepared within 12 months after the declaration of the marine park.
- (2) The Authority is to submit the draft zoning plan to the relevant Ministers together with any comments from the advisory committee for the marine park.
- (3) Within 3 months after receiving the draft zoning plan, the relevant Ministers are to:
  - (a) cause public notice to be given of the draft zoning plan, or
  - (b) refer the draft zoning plan back to the Authority for further consideration.
- (4) The notice is to:

- (a) specify the address of each place at which copies of the draft zoning plan are available, and
  - (b) invite submissions to be made on the draft zoning plan before the date specified in the notice (being a date not less than 3 months after the date of the notice), and
  - (c) specify the address to which submissions are to be forwarded.
- (5) The relevant Ministers are to consider:
- (a) any submissions made before the date referred to in subsection (4) (b), or such later date as the relevant Ministers allow, and
  - (b) any comments from the advisory committee for the marine park.
- (6) Within 3 months after the date referred to in subsection (4) (b) the relevant Ministers are to:
- (a) submit a regulation to the Governor setting out the zoning plan for the marine park with such modifications, if any, as the relevant Ministers think fit, or
  - (b) refer the draft zoning plan back to the Authority for further consideration.

#### **17D Review of zoning plans for marine parks**

- (1) In this section, the **review date** for a zoning plan for a marine park is:
- (a) for the first review of the zoning plan—the date that is 5 years after the commencement of the first zoning plan made for the marine park, or
  - (b) for the second or any subsequent review of the zoning plan—the date that is 10 years after the previous review date for the zoning plan.
- (2) The Authority is to conduct a review of the zoning plan for each marine park as soon as practicable after the review date for the zoning plan to determine whether the plan remains appropriate for securing the objects of this Act.
- (3) In conducting a review, the Authority is to prepare a review report that includes:
- (a) the assessment of existing arrangements for:
    - (i) the conservation of natural and cultural heritage, and
    - (ii) sustainable resource use, and
    - (iii) the management of zones, and
  - (b) any relevant findings and recommendations arising from the review, and
  - (c) such other information arising from the review as the Authority considers

appropriate.

- (4) The review report is to be referred to the advisory committee for the marine park concerned for comment.
- (5) A copy of the review report, including any comments from the advisory committee for the marine park, is to be given to the relevant Ministers no later than 12 months after the relevant review date for the plan.
- (6) Within 3 months after receiving a review report, the relevant Ministers are to direct the Authority to:
  - (a) cause a draft zoning plan to be prepared to replace the zoning plan for the marine park, or
  - (b) cause a draft zoning plan to be prepared to amend the zoning plan for the marine park, or
  - (c) take such other action in relation to the marine park as specified by the relevant Ministers.

#### **17E Amending zoning plans for marine parks**

- (1) The relevant Ministers may, at any time, recommend the making of a regulation to amend the zoning plan for a marine park.
- (2) Without limiting subsection (1), the relevant Ministers may recommend the making of a regulation to amend the zoning plan for a marine park as a consequence of any of the following:
  - (a) the publication of a critical habitat declaration, threat abatement plan or recovery plan under the *Threatened Species Conservation Act 1995*,
  - (b) the publication of a critical habitat declaration, threat abatement plan or recovery plan under the *Fisheries Management Act 1994*,
  - (c) the making of any instrument under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth in relation to species, ecological communities, places or activities that is relevant to the marine park,
  - (d) the making of a proclamation under this Act varying the area of the marine park.
- (3) At the direction of the relevant Ministers, the Authority is, in consultation with the advisory committee for the marine park, to cause a draft zoning plan to be prepared to amend a zoning plan.
- (4) Section 17C (2)–(6) apply to the making of an amendment to the zoning plan for a marine park in the same way as they apply to the making of a zoning plan under that section unless the relevant Ministers are of the opinion that:

- (a) the amendment is to be made as a consequence of any event referred to in subsection (2) (a)–(c), or
- (b) the proposed amendment corrects a technical error or inconsistency.

### **17F Relationship with other plans of management**

If an area within a marine park is subject to a plan of management under the *National Parks and Wildlife Act 1974* or the *Crown Lands Act 1989*, the zoning plan for the marine park prevails over the plan of management to the extent of any inconsistency.

## **Division 2 Development and activities within marine parks**

### **18 Mining in marine parks prohibited**

- (1) It is unlawful to prospect or mine for minerals in a marine park, except as expressly authorised by an Act of Parliament.
- (2) The *Offshore Minerals Act 1999*, the *Mining Act 1992*, the *Petroleum (Onshore) Act 1991* and the *Petroleum (Submerged Lands) Act 1982* do not apply to or in respect of any area within a marine park.
- (3) This section does not apply to or in respect of any licence, permit, authorisation or lease in force under any of those Acts at the commencement of this section. However, no renewal or extension of such a licence, permit, authorisation or lease may be granted after that commencement except as expressly authorised by an Act of Parliament.
- (4) This section does not apply to or in respect of sand extraction within a marine park for conservation purposes or for the purpose of preventing the risk of serious injury to a person or harm to the environment that is carried out in accordance with a consent granted under this section and any other authorisation required under any other Act.
- (5) The relevant Ministers may grant consent (with or without conditions) to the carrying out of sand extraction within a marine park but only if satisfied that the sand extraction is for a purpose referred to in subsection (4).
- (6) In deciding whether to grant consent, the relevant Ministers must have regard to the assessment criteria (if any) prescribed by the regulations.

### **19 Development within marine park—application of EPA Act**

- (1) Before determining a development application under Part 4 of the *Environmental Planning and Assessment Act 1979* for the carrying out of development within a marine park, a consent authority must:
  - (a) take into consideration:
    - (i) the objects of this Act specified in section 3, and

- (ii) if there is a zoning plan for the marine park, the objects of the zone within which the area concerned is situated as specified in that zoning plan, and
    - (iii) the permissible uses of the area concerned under the regulations, and
    - (iv) any relevant marine park closures, and
  - (b) if the consent authority intends to grant consent to the carrying out of the development, obtain the concurrence of the relevant Ministers to the granting of the consent.
- (2) A Minister who is a determining authority must not carry out, or grant approval to carry out, an activity (within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979*) within a marine park unless the Minister has:
- (a) taken into consideration:
    - (i) the objects of this Act specified in section 3, and
    - (ii) if there is a zoning plan for the marine park, the objects of the zone within which the area concerned is situated as specified in that zoning plan, and
    - (iii) the permissible uses of the area concerned under the regulations, and
    - (iv) any relevant marine park closures, and
  - (b) in the case of an activity for which an environmental impact statement is required to be prepared under Division 3 of that Part, consulted with the relevant Ministers on the carrying out of the activity or the granting of approval.
- (3) A determining authority (not being a Minister) must not carry out, or grant approval to carry out, an activity (within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979*) unless the determining authority has:
- (a) taken into consideration:
    - (i) the objects of this Act specified in section 3, and
    - (ii) if there is a zoning plan for the marine park, the objects of the zone within which the area concerned is situated as specified in that zoning plan, and
    - (iii) the permissible uses of the area concerned under the regulations, and
    - (iv) any relevant marine park closures, and
  - (b) in the case of an activity for which an environmental impact statement is required to be prepared under Division 3 of that Part, obtained the concurrence of the relevant Ministers to the carrying out of the activity or the granting of approval.
- (4) In deciding whether or not concurrence should be granted under this section, the



relevant Ministers must take into consideration:

- (a) the objects of this Act specified in section 3, and
  - (b) if there is a zoning plan for the marine park, the objects of the zone within which the area concerned is situated as specified in that zoning plan, and
  - (c) the permissible uses of the area concerned under the regulations, and
  - (d) any relevant marine park closures.
- (5) The provisions of section 79B (8)–(11) of the *Environmental Planning and Assessment Act 1979*, and the regulations under that Act, apply to and in respect of a requirement under this section to obtain the concurrence of the relevant Ministers in the same way as they apply to a requirement to obtain concurrence imposed on a consent authority by an environmental planning instrument under that Act.
- (6) For the purposes of applying those provisions, a reference in those provisions to the matters stated pursuant to section 30 (3) of the *Environmental Planning and Assessment Act 1979* (however expressed) is to be read as a reference to the objects of this Act specified in section 3 and the permissible uses of the area concerned under the regulations.

## **20 Development affecting marine park—application of EPA Act**

- (1) In determining a development application under Part 4 of the *Environmental Planning and Assessment Act 1979* for the carrying out of development on land that is in the locality of a marine park, the consent authority must take into consideration the objects of this Act, the permissible uses of the area concerned under the regulations and any advice given to it by the Authority about the impact on the marine park of development in the locality.
- (2) If the consent authority is of the opinion that development proposed in the development application is likely to have an effect on the plants or animals within the marine park and their habitat, the consent authority must consult with the Authority before finally determining the application.
- (3) A determining authority must not carry out, or grant an approval to carry out, an activity on land that is in the locality of a marine park in purported compliance with Part 5 of the *Environmental Planning and Assessment Act 1979* unless:
- (a) the determining authority has taken into consideration the objects of this Act, the regulations and any advice given to it by the Authority on the impact on the marine park of the carrying out of an activity in the locality, and
  - (b) if the determining authority is of the opinion that the proposed activity is likely to have an effect on the plants or animals within the marine park or their habitat, the determining authority has consulted with the Authority.

## **Division 3 Marine park closures**

### **20A Prohibition of activities in marine parks**

- (1) The relevant Ministers may from time to time, by notification, prohibit the carrying out of any specified activity (including the taking of fish) in a marine park or part of a marine park.
- (2) Any such prohibition is called a **marine park closure**.
- (3) A marine park closure:
  - (a) may apply absolutely or subject to conditions, and
    - (a1) without limiting paragraph (a), may prohibit the carrying out of an activity unless the consent of the Authority or a permit issued by the Authority has been obtained, and
    - (b) must specify the activities that are prohibited and the area to which it applies, and
    - (c) may only apply to the marine park specified in the notification, and
    - (d) has effect despite any provision of the regulations.

### **20B Publication of notification of marine park closure**

- (1) The notification of a marine park closure is to be published:
  - (a) in the Gazette, and
  - (b) in a newspaper circulating, or by radio or television broadcast, in the area adjacent to the marine park to which the closure applies, and
  - (c) by causing a copy of the notification to be exhibited in a prominent place or places adjacent to the marine park to which the closure applies.
- (2) However, if the relevant Ministers consider that the marine park closure is required urgently, they may publish the notification in accordance with subsection (1) (b) or (c) so long as they publish the notification in the Gazette as soon as practicable.

### **20C General provisions relating to marine park closures**

- (1) A marine park closure takes effect on the first publication of the notification or on a later date specified in the notification.
- (2) A marine park closure remains in force, subject to this Act, for the period (not exceeding 5 years) specified in the notification, but may be remade (with or without modification) by a further notification in accordance with this Division.

## 20D Amendment or revocation of closures

The relevant Ministers may from time to time amend or revoke a marine park closure by a further notification published in accordance with this Division.

## 20E General provisions relating to closures

Sections 42, 43 and 45 of the *Interpretation Act 1987* apply to notifications of marine park closures in the same way as they apply to statutory rules within the meaning of that Act.

### Note—

The above provisions of the *Interpretation Act 1987* relate to standard provisions authorising the adoption of other publications by reference, the making of differential closures, the amendment or repeal of closures and judicial notice and presumptions as to validity for closures.

## 20F Regulations relating to closures

The regulations may make provision for or with respect to giving effect to marine park closures or to any other matter relating to marine park closures.

## 20G Offence provisions

- (1) A person who carries out any activity in contravention of a marine park closure is guilty of an offence.

Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 200 penalty units or imprisonment for 6 months, or both.

- (2) A person who is in possession of any animal, plant, rock, sand or other thing that has been taken in contravention of a marine park closure is guilty of an offence.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units or imprisonment for 3 months, or both.

- (3) It is a defence to a prosecution for an offence under subsection (2) if the person charged satisfies the court that the person did not know and could not reasonably have known that the animal, plant, rock, sand or other thing had been taken in contravention of a provision of or made under this Act.

## Division 4 Miscellaneous

### 20H Removal of wrecked vessels and other property from marine parks

- (1) In this section:

**person responsible**, in respect of removable property, means:

- (a) the person who caused the property to be in the marine park, or
- (b) if the person referred to in paragraph (a) is unknown or is unable to remove the property—the person who has control of the property, or

(c) if the persons referred to in paragraphs (a) and (b) are unknown or are unable to remove the property—the owner of the property.

**removable property** includes:

- (a) any sunken or wrecked vessel, or
- (b) any abandoned property, or
- (c) anything unlawfully erected or placed.

(2) The Authority may, by notice in writing, direct the person responsible for any removable property in a marine park to remove the property within such time as is specified in the notice. Any such person who fails, without reasonable excuse, to comply with the direction is guilty of an offence.

Maximum penalty: In the case of a corporation, 1000 penalty units or, in any other case, 200 penalty units or imprisonment for 3 months, or both.

(3) The Authority may remove, or authorise the removal of, any removable property in such manner as the Authority thinks fit (whether or not the Authority has issued a direction for its removal under this section). The removable property may be removed by its destruction if it is reasonable to do so in the circumstances.

(4) The Authority may, subject to and in accordance with the regulations, dispose of anything removed under this section.

(4A) If, in the opinion of the Authority, significant environmental damage has been, or is likely to be, caused by removable property in a marine park, the Authority may take such steps as the Authority considers appropriate to do any or all of the following:

- (a) repair or remedy any damage to the environment caused by the property,
- (b) mitigate any damage to the environment caused by the property,
- (c) prevent any further damage to the environment by the property.

(5) The Authority may recover as a debt in a court of competent jurisdiction the reasonable costs and expenses incurred by the Authority in the exercise of the Authority's powers under this section from the person responsible for the removable property.

(6) Except in the case of an emergency, the Authority must not give a direction for the removal of any removable property, or remove or authorise the removal of any removable property, that the Authority is of the opinion is likely to have significant cultural or ecological value unless the Authority:

- (a) has made an assessment of that cultural or ecological value, and

- (b) has forwarded a copy of that assessment to the relevant advisory committee at least 4 weeks before giving the direction or removing or authorising the removal of the removable property.

## **21 (Repealed)**

## **22 Relationship of Part with other legislation**

- (1) The requirements made by or under this Part are in addition to any requirement in any other Act or statutory instrument.
- (2) In particular, the *Fisheries Management Act 1994* and the *National Parks and Wildlife Act 1974* apply to any relevant area of a marine park.

## **Part 4 Operational plans**

### **23 Preparation of operational plan for marine park**

The Authority is to cause an operational plan to be prepared for each marine park as soon as practicable after the establishment of a zoning plan for the marine park.

### **24 Objective of operational plan for marine park**

The objective of an operational plan for a marine park is to identify and define a scheme of the strategies, actions or activities that are proposed to be undertaken by the Authority (including arrangements with other agencies) to operate a marine park, consistent with the zoning plan for the marine park and the objects of this Act.

### **25 Adoption of operational plan**

- (1) The Authority is to prepare a draft operational plan for a marine park having regard to the zoning plan for the park and the objects of this Act.
- (2) The Authority is to refer the draft operational plan to the advisory committee for the marine park concerned for consideration and advice.
- (3) The Authority is to consider any comments it receives from the advisory committee for the marine park within the period specified by the Authority when referring the plan (being a period of not less than 28 days).
- (4) The Authority is to adopt an operational plan for a marine park as soon as practicable and, before doing so, may make such changes (if any) to the draft plan as it thinks appropriate to take account of the comments received from the advisory committee.

### **26 Alteration or replacement of operational plan for marine park**

- (1) The Authority may, at any time, amend or replace the operational plan for a marine park.

- (2) Without limiting subsection (1), the Authority may amend or replace the operational plan for the marine park as a consequence of a review conducted under section 26A.
- (3) Section 25 applies to the amendment or replacement of an operational plan under this section in the same way as it applies to the initial operational plan for a marine park.

#### **26A Review of operational plan for marine park**

- (1) The Authority is to review the operational plan for a marine park as soon as practicable after the zoning plan for the marine park is amended or replaced.
- (2) Despite subsection (1), the Authority is not required to review the operational plan for a marine park under that subsection after the amendment of the zoning plan for the marine park if the Authority is of the opinion that the amendment is minor in nature.

#### **26B, 26C (Repealed)**

#### **27 Operations under operational plan**

- (1) Any functions of the Authority or any marine park rangers in relation to a marine park are required to be exercised in accordance with the operational plan for the marine park.
- (2) However, the exercise of those functions is not invalid because of a contravention of any such plan.

#### **28 (Repealed)**

### **Part 5 Marine Parks Authority**

#### **29 Establishment of Marine Parks Authority**

- (1) There is constituted by this Act a body corporate with the corporate name of the Marine Parks Authority.
- (2) The Authority consists of:
  - (a) the Director-General of the Department of Premier and Cabinet who is to be the Chairperson of the Authority, and
  - (b) the Director-General of the Department of Primary Industries, and
  - (c) the Director-General of the Department of Environment and Climate Change.
- (2A) The Authority is subject to the control and direction of the relevant Ministers in the exercise of its functions.
- (3) The Authority is, for the purposes of any Act, a statutory body representing the Crown.

(4) Schedule 1 has effect with respect to the procedure of the Authority.

### **30 Functions of the Authority**

(1) The Authority has such functions as are conferred or imposed on it by or under this or any other Act.

(2) In particular, the Authority has the following functions:

- (a) to investigate, assess and consider proposals for marine parks or variations of the areas of marine parks,
- (b) to make recommendations as to the appropriate classification of areas within marine parks,
- (c) to prepare an operational plan in respect of each marine park,
- (d) to manage and control activities that may affect marine biological diversity, marine habitats and marine ecological processes in marine parks,
- (e) to provide for and regulate the ecologically sustainable use (including commercial and recreational fishing) of marine parks,
- (f) to disseminate information about marine parks,
- (g) to encourage public appreciation, understanding and enjoyment of marine parks and, where consistent with the other functions of the Authority, public recreation in marine parks,
- (h) to encourage and permit, when appropriate, scientific research into the ecology of marine systems.

### **31 Staff of the Authority**

The Authority may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of the Department of Environment and Climate Change, Department of Primary Industries or any other government department or public or local authority.

## **Part 6 Marine Parks Advisory Council and advisory committees**

### **32 Establishment of Marine Parks Advisory Council**

(1) There is established by this Act a Marine Parks Advisory Council.

(2) The Advisory Council consists of the Director-General of the Department of Primary Industries, the Director-General of the Department of Environment and Climate Change and the following members appointed by the relevant Ministers:

- (a) one member to represent the Commonwealth Government,

- (b) two members to represent the interests of marine conservation, one being an expert in marine conservation and one being nominated by a peak group or body generally recognised for its interest in conservation, as provided for in the regulations,
  - (c) one member with expertise in marine science,
  - (d) one member to represent the interests of Aboriginal people,
  - (e) one member to represent the interests of the tourism industry,
  - (f) one member to represent the interests of commercial fishers,
  - (g) one member to represent the interests of recreational fishers,
  - (h) one member to represent the interests of scuba divers.
- (3) The relevant Ministers must publicly call for nominations to the positions referred to in subsection (2) (other than the position referred to in subsection (2) (a) and the position for which a person is required to be nominated in accordance with subsection (2) (b)).

### **33 Functions of Marine Parks Advisory Council**

- (1) The Advisory Council has such functions as are conferred or imposed on it by or under this or any other Act.
- (2) In particular, the Advisory Council is, on the request of the relevant Ministers or the Authority, to advise on any of the following matters from a statewide perspective:
- (a) proposals for marine parks,
  - (b) (Repealed)
  - (c) the conservation of marine biological diversity within marine parks,
  - (d) the ecologically sustainable use of marine parks,
  - (e) the public use and enjoyment of marine parks,
  - (f) any other matter relating to the operation of this Act and the regulations.

### **34 Provisions relating to members and procedure of Advisory Council**

Schedule 2 has effect.

### **35 Establishment of marine parks advisory committees**

- (1) The relevant Ministers must establish an advisory committee for each marine park.
- (2) An advisory committee is to include such members as are appointed by the relevant



Ministers who, in the opinion of the relevant Ministers, represent the interests of the following:

- (a) marine conservation,
  - (b) marine science,
  - (c) Aboriginal people,
  - (d) the tourism industry,
  - (e) commercial fishers,
  - (f) recreational fishers,
  - (g) scuba divers,
  - (h) local councils.
- (3) The advisory committee for a marine park may include more than one representative in respect of each interest referred to in subsection (2) and other representatives as determined by the relevant Ministers.
- (4) The relevant Ministers must publicly call for nominations for members of an advisory committee to represent the interests referred to in subsection (2), other than for members to represent the interests of local councils.
- (5) The relevant Ministers are to nominate a member of the advisory committee to be the chairperson of the advisory committee.
- (6) The provisions of Schedule 2 apply to an advisory committee in the same way as they apply to the Advisory Council with any necessary modifications, including modifications (if any) prescribed by the regulations.
- (7) In this section, **modification** includes addition, exception, omission or substitution.

### **35AA Functions of marine parks advisory committees**

- (1) An advisory committee has such functions as are conferred on it by or under this or any other Act.
- (2) In particular, advisory committees are to advise on any of the following matters relating to the marine park in relation to which the advisory committee was established:
- (a) provisions of an operational plan or zoning plan for the marine park,
  - (b) the appropriate classification of areas within the marine park for the purposes of a proposed zoning plan for the marine park,

- (c) the conservation of marine biological diversity,
- (d) the ecologically sustainable use of the marine park and whether any particular use of the marine park is not ecologically sustainable,
- (e) the use and enjoyment of the marine park by members of the public,
- (f) the application of marine park closures.

## **Part 7 Enforcement**

### **35A Marine park rangers**

- (1) For the purposes of this Act, a **marine park ranger** means:
  - (a) a person appointed as a marine park ranger in accordance with this section, or
  - (b) a police officer.
- (2) The relevant Ministers may appoint an officer or employee of a Government Department or a public or local authority as a marine park ranger for the purposes of this Act.
- (3) The relevant Ministers are not to appoint as a marine park ranger a person who is:
  - (a) an officer or employee of a local council without first obtaining the consent of the general manager of the council to the appointment, or
  - (b) an officer or employee of any other public or local authority without first obtaining the consent of the employer of the person to the appointment.

### **36 Application of Fisheries Management Act 1994**

- (1) Divisions 1–4 of Part 9 (Enforcement) of the *Fisheries Management Act 1994*:
  - (a) apply to and in respect of a marine park ranger in the same way as those provisions apply to and in respect of a fisheries officer, and
  - (b) apply to and in respect of an offence against this Act or the regulations in the same way as they apply to and in respect of a fisheries offence.
- (2) In so applying those provisions:
  - (a) a reference to a fisheries officer is to be read as a reference to a marine park ranger, and
  - (b) a reference to the Minister is to be read as a reference to the relevant Ministers, and
  - (c) a reference to a fisheries offence is to be read as a reference to an offence against

this Act or the regulations, and

(d) a reference to the Director-General includes a reference to the Director-General of the Department of Environment and Climate Change.

- (3) The application of Divisions 1–4 of Part 9 of the *Fisheries Management Act 1994* under this section is subject to such other modifications as are prescribed by the regulations.
- (4) An offence against the provisions so applied is an offence against this Act.
- (5) This section does not limit the application of the *Fisheries Management Act 1994* to marine parks.

### **37 Application of National Parks and Wildlife Act 1974**

- (1) Sections 157, 158 and 159 of the *National Parks and Wildlife Act 1974* apply to and in respect of an offence against this Act or the regulations in the same way as they apply to and in respect of an offence against that Act or the regulations under that Act.
- (2) In so applying those provisions:
  - (a) a reference to the Director-General includes a reference to the Director-General of the Department of Primary Industries, and
  - (b) a reference to an officer of the Service or a person duly authorised by the Minister is to be read as a reference to a marine park ranger, and
  - (c) a reference to an offence against that Act is to be read as a reference to an offence under this Act, and
  - (d) a reference to an offence against the regulations under that Act is to be read as a reference to an offence against the regulations under this Act.
- (3) The application of sections 157, 158 and 159 of the *National Parks and Wildlife Act 1974* under this section is subject to such other modifications as are prescribed by the regulations.
- (4) An offence against the provisions so applied is an offence against this Act.
- (5) This section does not limit the application of the *National Parks and Wildlife Act 1974* to marine parks.

### **38 Penalty notices**

- (1) A marine park ranger may serve a penalty notice on a person if it appears to the ranger that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to

have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.

- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty for an offence if dealt with under this section, and
  - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

### **39 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be dealt with:
  - (a) summarily before a Local Court, or
  - (b) summarily before the Land and Environment Court.
- (2) If proceedings are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is, despite any other provision of this Act or the regulations, \$20,000.

### **40 Time within which proceedings may be commenced**

Despite the [Criminal Procedure Act 1986](#) or any other Act, proceedings for an offence against this Act or the regulations may be commenced not later than 2 years after the date alleged to be the date on which the offence was committed.

### **41 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned

in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

## **Part 8 Finance**

### **42 Marine Parks Fund**

- (1) There is to be established in the Special Deposits Account a Marine Parks Fund into which are to be paid:
  - (a) all fees and charges under this Act, and
  - (b) any money received in connection with the administration of this Act, and
  - (c) any gift or bequest of money made for payment into the Fund.
- (2) There may be paid out of the Fund all charges, costs and expenses incurred in the administration of this Act, including:
  - (a) the costs and expenses incurred by the relevant Ministers, the Director-General of the Department of Primary Industries, the Director-General of the Department of Environment and Climate Change and the Authority in the carrying out of functions under this Act, and
  - (b) such costs and expenses of the Advisory Council or advisory committees as are approved by the relevant Ministers.

## **Part 9 Miscellaneous**

### **43 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### **43A Delegations**

- (1) The relevant Ministers may delegate a function conferred by or under this Act on the relevant Ministers (other than the power of delegation conferred by this subsection) to the Authority.
- (2) The Authority may delegate the exercise of any of its functions (other than this power of delegation) to any person, except as provided by subsection (3).

- (3) The Authority may delegate any of the functions delegated to it under this section by the relevant Ministers, but only to the extent authorised by the relevant Ministers.

#### **44 Nominees**

- (1) The Director-General of the Department of Premier and Cabinet may nominate an officer of that Department to act in the place of the Director-General as a member of the Authority.
- (2) The Director-General of the Department of Environment and Climate Change may nominate an officer of that Department to act in the place of the Director-General as a member of the Authority or the Advisory Council.
- (3) The Director-General of the Department of Primary Industries may nominate an officer of that Department to act in the place of the Director-General as a member of the Authority or the Advisory Council.
- (4) A nominee appointed under this section by the Director-General of the Department of Premier and Cabinet has, while acting in the place of the Director-General as a member of the Authority, all of the functions of a member of the Authority (including the functions of the Chairperson) and is taken to be such a member.
- (5) A nominee appointed under this section by the Director-General of the Department of Environment and Climate Change has, while acting in the place of the Director-General as a member of the Authority or the Advisory Council, all of the functions of a member of the Authority or the Advisory Council (as the case may be) and is taken to be such a member. In the case of a nominee to act as a member of the Advisory Council, those functions include any functions of the Director-General in relation to chairing meetings of the Advisory Council.
- (6) A nominee appointed under this section by the Director-General of the Department of Primary Industries has, while acting in the place of the Director-General as a member of the Authority or the Advisory Council, all of the functions of a member of the Authority or the Advisory Council (as the case may be) and is taken to be such a member. In the case of a nominee to act as a member of the Advisory Council, those functions include any functions of the Director-General in relation to chairing meetings of the Advisory Council.

#### **44A Service of documents generally**

A document that is authorised or required by this Act or the regulations to be served on any person may be served by:

- (a) in the case of a natural person:
  - (i) delivering it to the person personally, or
  - (ii) sending it by post to the address specified by the person for the giving or service

of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or

(iii) sending it by facsimile transmission to the facsimile number of the person, or

(b) in the case of a body corporate:

(i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or

(ii) sending it by facsimile transmission to the facsimile number of the body corporate.

#### **44B Service of documents on native title holders**

(1) If a document is authorised or required by this Act or the regulations to be served on a person who is a native title holder in relation to an area, service of the document is taken to be effected in accordance with section 44A if the document is served on a registered native title body corporate in relation to the area.

(2) If no approved determination of native title (within the meaning of the Commonwealth Native Title Act) exists in relation to the area concerned, a document authorised or required by this Act or the regulations to be served on a person who is a native title holder who cannot be identified may be served on any such person by serving it, in a manner authorised by section 44A on:

(a) any representative Aboriginal/Torres Strait Islander bodies for an area that includes the area concerned, and

(b) any registered native title claimants in relation to the area concerned.

#### **44C Meaning of “diligent inquiry”**

(1) For the purposes of section 14A, a **diligent inquiry** to identify a person is the taking of the following actions:

(a) the searching of the following registers:

(i) the Register kept under the *Real Property Act 1900*, and

(ii) the General Register of Deeds kept under the *Conveyancing Act 1919*, and

(iii) the National Native Title Register kept under the Commonwealth Native Title Act,

(b) placing, on a board or other structure in a conspicuous place on the land concerned, a notice:

- (i) stating that it is intended to declare the land as part of a marine park, and
  - (ii) inviting the owner of the land to contact the Authority at a specified address,
  - (c) publishing a notice referred to in paragraph (b) in a newspaper circulating in the vicinity of the land concerned and in a newspaper circulating generally in New South Wales.
- (2) For the purposes of section 14A, a person who is a native title holder is taken to have been unable, after diligent inquiry, to be found or identified if:
- (a) notice of the proposed proclamation is served by the relevant Ministers in accordance with section 44B, and
  - (b) at the expiration of the period of 4 months commencing on service of the notice, the person is neither a registered native title claimant nor a registered native title body corporate in relation to the land concerned.

#### **45 (Repealed)**

#### **46 Resolution of disputes**

- (1) Any dispute arising under this Act between the relevant Ministers may be resolved by the Premier.
- (2) Any dispute arising under this Act between two or more public authorities may be resolved by agreement between the Ministers responsible for those public authorities or, if agreement cannot be reached, by the Premier.
- (3) A Minister or public authority must comply with any direction arising out of the resolution of a dispute under this section and for that purpose is empowered to do so, despite the provisions of this or any other Act.

#### **47 Arrangements with Commonwealth**

- (1) The relevant Ministers may enter into arrangements with the Commonwealth or Commonwealth authorities for the exercise of functions under this Act with respect to waters under the control of the Commonwealth.
- (2) The exercise of those functions in accordance with those arrangements are authorised by this Act.

#### **48 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 200



penalty units.

#### **49 Review of Act**

- (1) The relevant Ministers are to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

#### **50 Savings, transitional and other provisions**

Schedule 3 has effect.

#### **51 (Repealed)**

### **Schedule 1 Provisions relating to procedure of Authority**

(Section 29)

#### **1 Definition**

In this Schedule:

**member** means a member of the Authority.

#### **2 General procedure for calling and holding meetings of Authority**

The procedure for the calling and holding of meetings of the Authority is to be determined by the Authority, subject to any directions of the relevant Ministers.

#### **3 Quorum**

The quorum for a meeting of the Authority is 2 members.

#### **4 Presiding member**

- (1) The Chairperson of the Authority (or, in the absence of the Chairperson, the member chosen by the members present) is to preside at a meeting of the Authority.
- (2) The presiding member has a deliberative vote. In the event of an equality of votes, the presiding member (if the Chairperson of the Authority) has a second or casting vote.

#### **5 Voting**

A decision supported by a majority of the votes cast at a meeting of the Authority at

which a quorum is present is the decision of the Authority.

## **6 Transaction of business outside meetings or by telephone**

- (1) The Authority may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Authority for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Authority.
- (2) The Authority may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Authority.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Authority.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **Schedule 2 Provisions relating to members and procedure of Advisory Council**

(Sections 34, 35)

### **1 Definitions**

In this Schedule:

***appointed member*** means a member appointed by the relevant Ministers.

***member*** means a member of the Advisory Council.

### **2 Terms of office**

- (1) Subject to this Division, an appointed member holds office for the term specified in his or her instrument of appointment (not exceeding 4 years) but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not hold office for a total of more than 8 years.

### **3 Allowances for appointed members**

An appointed member is entitled to be paid such allowances as the relevant Ministers from time to time determine in respect of the member.

### **4 Vacancy in office of appointed member**

(1) The office of an appointed member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the relevant Ministers, or
- (d) is removed from office by the relevant Ministers under this clause, or
- (e) is absent from 3 consecutive meetings of the Advisory Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the relevant Ministers or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Advisory Council for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person.

(2) The relevant Ministers may remove an appointed member from office at any time.

(3) The Authority may request that the relevant Ministers exercise their power under subclause (2) to remove a person from office if, in the opinion of the Authority, the person becomes unable to adequately represent the interests that the member was appointed to represent, or is unable to adequately provide the expertise that the member was appointed to provide.

(4) The relevant Ministers may, but need not, remove a person from office in response to a request from the Authority under subclause (3).

### **5 Filling of vacancy in office of appointed member**

If the office of an appointed member becomes vacant, the relevant Ministers are to appoint a person to fill the office in accordance with this Act.

### **6 Chairperson**

Meetings of the Advisory Council are to be chaired, alternately, by the Director-General of the Department of Primary Industries and the Director-General of the Department of

Environment and Climate Change.

## **7 General procedure for calling and holding meetings of Advisory Council**

- (1) The procedure for the calling and holding of meetings of the Advisory Council is to be determined by the relevant Ministers.
- (2) The Advisory Council is to hold not more than 2 meetings each calendar year, unless otherwise directed by the relevant Ministers.

## **8 Quorum**

The quorum for a meeting of the Advisory Council consists of a majority of its members for the time being.

## **9 Voting**

A recommendation supported by a majority of votes cast at a meeting of the Advisory Council at which a quorum is present is the recommendation of the Advisory Council.

## **10 Disclosure of pecuniary interests**

- (1) A member of the Advisory Council:
  - (a) who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Advisory Council, and
  - (b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest to the chairperson of the Advisory Council.
- (2) A disclosure by a member at a meeting of the Advisory Council that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under this clause.
- (3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the chairperson otherwise determines:

(a) be present during any deliberation of the Advisory Council with respect to the matter, or

(b) take part in any decision of the Advisory Council with respect to the matter.

(4) A contravention of this clause does not invalidate any decision of the Advisory Council.

### **11 Functions of members**

(1) The members of the Advisory Council are to ensure that the Advisory Council exercises its functions conferred or imposed by section 33.

(2) The functions of the members do not include the expenditure of funds on behalf of the Advisory Council or representing the relevant Ministers, unless they are expressly authorised to do so by the relevant Ministers.

### **12 Alternate members**

(1) The relevant Ministers may, from time to time, appoint a person to be the alternate of an appointed member, and the relevant Ministers may revoke any such appointment.

(2) In the absence of an appointed member, the member's alternate may, if available, act in the place of the member.

(3) While acting in the place of an appointed member, the alternate of the member:

(a) has all of the functions of the member and is taken to be the member, and

(b) is entitled to be paid such allowances as the relevant Ministers may from time to time determine in respect of the person.

(4) For the purposes of this clause, a vacancy in the office of an appointed member is taken to be an absence of the appointed member.

(5) For the purposes of this clause, the functions of an appointed member do not include the member's functions as the Chairperson, unless the relevant Ministers otherwise direct.

### **13 Transaction of business outside meetings or by telephone**

(1) The Advisory Council may, if it thinks fit, transact any of its business by the circulation of papers among all of the members of the Advisory Council for the time being, and a resolution in writing approved in writing by a majority of the members is taken to be a decision of the Advisory Council.

(2) The Advisory Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting

can be heard by the other members.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1), or

(b) a meeting held in accordance with subclause (2),

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Advisory Council.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Advisory Council.

(5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **Schedule 3 Savings, transitional and other provisions**

(Section 50)

### **Part 1 Preliminary**

#### **1 Regulations**

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Marine Parks Amendment Act 2000*

*Marine Parks Amendment Act 2008*

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## Part 2 Provisions consequent on enactment of this Act

### 2 Regulations relating to aquatic reserves

- (1) If an aquatic reserve under the *Fisheries Management Act 1994* is revoked by a declaration of a marine park under this Act, the provisions of the regulations under Division 2 of Part 7 of that Act relating to the aquatic reserve (as in force on the declaration of the marine park) continue to have effect in relation to the marine park and are taken to be regulations under this Act and may be amended or repealed accordingly.
- (2) Despite subclause (1), on the commencement of this clause, provisions the same as the provisions of Parts 1 and 9 of the *Fisheries Management (Aquatic Reserves) Regulation 1995* (as in force immediately before 1 September 2000) are taken to form a regulation that may be cited as the *Marine Parks (Solitary Islands) Regulation 2000*.
- (3) The *Marine Parks (Solitary Islands) Regulation 2000* is taken to be a regulation made under this Act and may be amended or repealed accordingly.
- (4) Part 2 of the *Subordinate Legislation Act 1989* does not apply to a regulation taken to have been made under this Act by the operation of this clause.
- (5) For the purposes of section 10 of the *Subordinate Legislation Act 1989*:
  - (a) a regulation taken to have been made under this Act by the operation of subclause (1) is taken to have been published on the revocation of the relevant declaration referred to in that subclause, and
  - (b) the regulation referred to in subclause (3) is taken to have been published on the date of commencement of this clause.
- (6) Sections 39, 40 and 41 of the *Interpretation Act 1987* do not apply to a regulation taken to have been made by the operation of this clause.
- (7) In any regulation taken to have been made under this Act by the operation of this clause:
  - (a) a reference to the relevant aquatic reserve is taken to be a reference to a marine park, and
  - (b) a reference to the Director-General of the Department of Primary Industries is taken to be a reference to the Authority.
- (8) A defence under section 36 or 37 of the *Fisheries Management Act 1994* applies to an offence against a regulation referred to in subclause (4).

## Part 3 Provisions consequent on enactment of Marine Parks

## Amendment Act 2000

### 3 Declaration of certain marine parks

- (1) The declarations of the Jervis Bay Marine Park and the Solitary Islands Marine Park published in the Gazette on 2 January 1998 and Lord Howe Island Marine Park published in the Gazette on 26 February 1999:
  - (a) are taken to have been validly proclaimed in accordance with the provisions of Part 2 as in force at the time each of those proclamations was made, and
  - (b) are revoked on the commencement of this clause.
- (2) On the commencement of this clause:
  - (a) the areas described in Part 1 of Schedule 4 are declared to be a marine park to be known as “Jervis Bay Marine Park”, and
  - (b) the areas described in Part 2 of Schedule 4 are declared to be a marine park to be known as “Solitary Islands Marine Park”, and
  - (c) the areas described in Part 3 of Schedule 4 are declared to be a marine park to be known as “Lord Howe Island Marine Park”.
- (3) The declaration of an area to be a marine park by the operation of subclause (2) is taken to be a declaration made in accordance with section 6 and may be revoked or varied in accordance with this Act.

- (4) In Schedule 4:

**Lord Howe Island** has the same meaning as **Island** in section 3 (1) of the [Lord Howe Island Act 1953](#).

**tidal lands** means any area of land that is covered from time to time by tidal waters, and that is above the lowest astronomical tide level.

**tidal limit** means to the limit of tidal influence at mean high water mark.

**tidal waters** means any area of waters of the sea or subject to tidal influence.

- (5) Latitudes and longitudes referred to in Schedule 4 are latitudes and longitudes determined by reference to the Australian Geodetic Datum 1966 (AGD66).

### 4 Advisory committees

- (1) An advisory committee established by the Authority under section 35 and in existence immediately before the commencement of Schedule 1 [15] to the [Marine Parks Amendment Act 2000](#) is taken on that commencement to have been established under that section by the relevant Ministers.



- (2) A person holding office as chairperson of an advisory committee under section 35 immediately before the commencement of Schedule 1 [17] to the *Marine Parks Amendment Act 2000* is taken on that commencement to have been appointed as chairperson by the relevant Ministers.

## 5 Marine park rangers

A person who, immediately before the commencement of section 35A, was authorised under paragraph (a) or (b) of the definition of **marine park ranger** in section 4 (as in force immediately before the commencement of Schedule 1 [2] to the *Marine Parks Amendment Act 2000*) to be a marine park ranger is taken to have been appointed by the relevant Ministers as a marine park ranger under section 35A.

## Part 4 Provisions consequent on enactment of *Marine Parks Amendment Act 2008*

### 6 Definitions

In this Part:

**amending Act** means the *Marine Parks Amendment Act 2008*.

**existing zoning plan** means a zoning plan prescribed by regulations in force immediately before the repeal of section 16 by the amending Act.

### 7 Existing zoning plans for marine parks

- (1) On the repeal of section 16 by the amending Act, an existing zoning plan is taken to have been made for the purposes of Division 1A of Part 3 of this Act (as inserted by the amending Act).
- (2) Despite section 17D (1) (a), the review date for the purposes of that section for the first review of the Solitary Islands Marine Park Zoning Plan and the Jervis Bay Marine Park Zoning Plan is the date of commencement of section 17D.

### 8 Existing marine park advisory committee

- (1) An advisory committee in existence under section 35 immediately before its substitution by the amending Act is taken to have been validly established under section 35 as so substituted.
- (2) A person who, immediately before the substitution of section 35 by the amending Act, was a member of an advisory committee for a marine park continues to be a member of the advisory committee for the marine park for the remainder of the term of office.

### 9 Existing operational plans for marine parks

An operational plan that was in force immediately before the substitution of section 25 by

the amending Act is taken to have been adopted under that section as so substituted.

#### **10 Existing marine park rangers**

A person who, immediately before the amendment of section 35A by the amending Act, was a marine park ranger is taken to have been validly appointed as a marine park ranger under section 35A as so amended.

#### **11 Existing nominees**

A nomination in force under section 44 immediately before the substitution of that section by the amending Act is taken to be a nomination under that section as so substituted.

### **Schedule 4 Declaration of marine parks**

(Schedule 3, clause 3)

#### **Part 1 Jervis Bay Marine Park**

All Crown lands beneath tidal and coastal waters including Jervis Bay and its tidal tributaries to mean high water mark, within the area set out below, together with the waters within that area but not including any area within Booderee National Park as proclaimed under the *National Parks and Wildlife Conservation Act 1975* of the Commonwealth:

- (a) commencing at a point at mean high water mark at the most northerly point of Kinghorn Point reef on Warrain Beach (34°57'54"S, 150°46'42"E),
- (b) then due east to a position at 34°57'54"S, 150°47'12"E being 500 metres seaward of the territorial sea baseline (declared under section 7 of the *Seas and Submerged Lands Act 1973* of the Commonwealth in the Commonwealth of Australia Gazette S29 of 9 February 1983) at the most northerly point of Kinghorn Point reef on Warrain Beach,
- (c) then generally in a south-easterly direction to a position at 34°59'36"S, 150°50'30"E being 1500 metres due north of the most northerly point at Little Beecroft Head,
- (d) then generally in a south-easterly direction to a position at 35°00'54"S, 150°52'00"E being a point 1500 metres due east of the most easterly point at the territorial sea baseline of Beecroft Head,
- (e) then generally in a southerly direction to a position at 35°04'36"S, 150°51'00"E being a point 1500 metres due east of the most easterly point at the territorial sea baseline of Crocodile Head,
- (f) then generally in a south-westerly direction to a position at 35°06'36"S, 150°48'18"E being a point 1500 metres due south of the most southerly point at the territorial sea baseline of Point Perpendicular,
- (g) then generally in a southerly direction to a position at 35°10'18"S, 150°46'18"E being a point 1500 metres due east of the most easterly point at the territorial sea baseline of Cape St George,
- (h) then generally in a south-westerly direction to a position at 35°12'54"S, 150°41'42"E being a point 1500 metres due south of the most southerly point at the territorial sea baseline of St Georges Head,

- (i) then generally in a north-westerly direction to a position at 35°11'6"S, 150°35'42"E being a point at mean high water mark of the most southerly point of Bherwerre Beach,
- (j) then generally north along the coast at mean high water mark of Bherwerre Beach, Bherwerre Peninsula and all its tidal tributaries, Bowen Island, Jervis Bay and all its tidal tributaries, Beecroft Peninsula and all its tidal tributaries, Currarong Beach, and Kinghorn Point reef, to the point of commencement described in paragraph (a) above.

## **Part 2 Solitary Islands Marine Park**

All Crown lands beneath tidal and coastal waters to mean high water mark, within the area set out below, together with the waters within that area:

- (a) commencing at a point at mean high water mark at the most easterly point of Plover Island (29°40'24"S, 153°19'49"E),
- (b) then along a line drawn along latitude 29°40'24"S, to a point 3 nautical miles due east of the territorial sea baseline (declared under section 7 of the [Seas and Submerged Lands Act 1973](#) of the Commonwealth in the Commonwealth of Australia Gazette S29 of 9 February 1983),
- (c) then generally in a southerly direction, including all coastal waters within 3 nautical miles of the territorial sea baseline of the coast, and within 3 nautical miles of the territorial sea baseline of North West Rock, North Solitary Island, North Rock, North West Solitary Island, South West Solitary Island, South Solitary Island and Split Solitary Island, to a point 3 nautical miles due east of the territorial sea baseline at the eastern most point of Muttonbird Island,
- (d) then along a line drawn along latitude 30°18'25"S, to a point at mean high water mark of the eastern most point of Muttonbird Island (30°18'25"S, 153°9'12"E),
- (e) then generally in a northerly direction along the coast at mean high water mark, including all rivers, estuaries, bays, lagoons and inlets upstream to their tidal limit, and tidal lands, including Plover Island, to the point of commencement described in paragraph (a) above.

## **Part 3 Lord Howe Island Marine Park**

All Crown lands beneath tidal and coastal waters surrounding Lord Howe Island to mean high water mark, together with those waters.