

Marine Estate Management Act 2014 No 72

[2014-72]



New South Wales

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Marine Estate Management Act 2014 No 72



New South Wales

An Act to provide for the strategic exercise of government functions in the management of the marine estate of New South Wales; for the declaration and management of marine parks and aquatic reserves; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Marine Estate Management Act 2014*.

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 provide for the management of the marine estate of New South Wales consistent with the principles of ecologically sustainable development in a manner that—
 - (i) promotes a biologically diverse, healthy and productive marine estate, and
 - (ii) facilitates—
 - economic opportunities for the people of New South Wales, including opportunities for regional communities, and
 - the cultural, social and recreational use of the marine estate, and
 - the maintenance of ecosystem integrity, and
 - the use of the marine estate for scientific research and education,
- (b) to promote the co-ordination of the exercise, by public authorities, of functions in relation to the marine estate,
- (c) to provide for the declaration and management of a comprehensive system of marine parks and aquatic reserves.

4 Definitions

(1) In this Act—

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

aquatic reserve means an aquatic reserve declared under Division 2 of Part 5.

authorised officer—see section 66.

Authority means the Marine Estate Management Authority established under Division 1 of Part 2.

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 has the same meaning as it has in the [Crown Land Management Act 2016](#).

diligent inquiry—see section 79.

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

management plan for a marine park or an aquatic reserve means the management plan for the marine park or aquatic reserve adopted under Division 5 of Part 5.

management rules for a marine park or an aquatic reserve means the management rules for the marine park or aquatic reserve set out in a regulation referred to in section 42.

marine park means a marine park declared under Division 1 of Part 5.

marine estate—see section 6.

Marine Protected Areas Fund means the Marine Protected Areas Fund established under section 74.

mineral includes coal, shale or petroleum.

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

owner has the same meaning as it has 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.

possession of a thing includes having the thing under control at any place, even though some other person has physical possession of the thing.

principles of ecologically sustainable development—see subsection (2).

public authority includes—

- (a) a Minister of the Crown, or
- (b) a government department, or
- (c) a statutory body representing the Crown, or
- (d) the trustee or trustees of land reserved or dedicated for any public use or purpose, or
- (e) a State owned corporation, or
- (f) a member of staff or other person who exercises functions on behalf of any of the above.

public water land means land submerged by water (whether permanently or intermittently), being—

- (a) Crown land, or
- (b) land vested in a local council or public authority, or
- (c) land vested in trustees for public recreation or for any other public purpose, or
- (d) land acquired by the Minister administering the [Fisheries Management Act 1994](#) under Division 1 of Part 8 of that Act,

but does not include land which is the subject of an aquaculture lease under that Act or land of which a person has exclusive possession under a lease under any other Act.

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.

relevant Ministers—see section 5.

vessel has the same meaning as it has in the [Marine Safety Act 1998](#).

wetlands includes marshes, mangroves, swamps, or other areas that form a shallow body of water when inundated intermittently or permanently with brackish or salt water, and where the inundation determines the type and productivity of the soils and the plant and animal communities.

Note—

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) For the purposes of this Act, the **principles of ecologically sustainable development** require the effective integration of economic, social and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following—
- (a) the precautionary principle,
 - (b) inter-generational equity,
 - (c) conservation of biological diversity and ecological integrity,
 - (d) improved valuation, pricing and incentive mechanisms.
- (3) Notes included in 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 for the Environment and the Minister for Agriculture and Western New South Wales.
- (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.

6 Meaning of “marine estate”

In this Act, the **marine estate** means the following—

- (a) the coastal waters of the State within the meaning of Part 10 of the [Interpretation Act 1987](#),
- (b) estuaries (being any part of a river whose level is periodically or intermittently affected by coastal tides) up to the highest astronomical tide,

- (c) lakes, lagoons and other partially enclosed bodies of water that are permanently, periodically or intermittently open to the sea,
 - (d) coastal wetlands (including saltmarsh, mangroves and seagrass),
 - (e) lands immediately adjacent to, or in the immediate proximity of, the coastal waters of the State that are subject to oceanic processes (including beaches, dunes, headlands and rock platforms),
 - (f) any other place or thing declared by the regulations to be the marine estate,
- but does not include any place or thing declared by the regulations not to be the marine estate.

Part 2 Administration

Division 1 Marine Estate Management Authority

7 Establishment of Marine Estate Management Authority

- (1) There is established by this Act an advisory committee to be called the Marine Estate Management Authority.
- (2) The Authority consists of—
 - (a) a person appointed by the relevant Ministers who is to be the Chairperson of the Authority, and
 - (b) the Secretary of Regional NSW, and
 - (c) a Public Service senior executive principally involved in the administration of the *Biodiversity Conservation Act 2016* and who is designated by the Secretary of the Department of Planning, Industry and Environment, and
 - (d) a Public Service senior executive principally involved in the administration of the *Environmental Planning and Assessment Act 1979* and who is designated by the Secretary of the Department of Planning, Industry and Environment, and
 - (e) the Secretary of the Department of Transport, and
 - (f) a person appointed by the relevant Ministers to chair the Marine Estate Expert Knowledge Panel (if the Panel has been established).
- (3) Schedule 1 deals with the constitution and procedure of the Authority.
- (4) For the purposes of this clause—

Public Service senior executive has the meaning given by the *Government Sector Employment Act 2013*, Part 4, Division 4.

8 Functions of the Authority

- (1) The Authority has the functions that 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 advise the relevant Ministers on the management of the marine estate and in relation to any matter referred to it by the relevant Ministers,
 - (b) to undertake assessments of threats and risks to the marine estate,
 - (c) to prepare a draft marine estate management strategy for submission to the relevant Ministers in consultation with the relevant public service agencies,
 - (d) without limiting paragraph (a), to advise the relevant Ministers on the implementation of the marine estate management strategy by public authorities,
 - (e) to promote collaboration and co-ordination between public authorities in their exercise of functions relating to the management of the marine estate,
 - (f) to foster consultation with the community in relation to the management of the marine estate and the preparation of the marine estate management strategy.

Division 2 Marine Estate Expert Knowledge Panel

9 Establishment and functions of Marine Estate Expert Knowledge Panel

- (1) The relevant Ministers may establish a Marine Estate Expert Knowledge Panel.
- (2) The Marine Estate Expert Knowledge Panel may provide advice to the Authority on any matter referred to it by the Authority.
- (3) The regulations may make provision for the constitution and procedures of the Marine Estate Expert Knowledge Panel. However, in establishing any such Panel, the relevant Ministers must seek to include on the Panel persons with expertise in the fields of the ecological, economic or social sciences.
- (4) The Marine Estate Expert Knowledge Panel is not subject to the control and direction of the relevant Ministers or the Authority in respect of any advice it provides to the Authority.

Part 3 Marine estate management strategy

10 Purpose of marine estate management strategy

The purpose of a marine estate management strategy is to set the over-arching strategy for the State government to co-ordinate the management of the marine estate with a focus on achieving the objects of this Act.

11 Preparation of draft marine estate management strategy

- (1) The Authority is to prepare a draft marine estate management strategy and submit the draft strategy to the relevant Ministers for approval.
- (2) A draft marine estate management strategy is to be prepared and submitted as soon as practicable after the commencement of this section and at any later times specified by the relevant Ministers.
- (3) In preparing a draft marine estate management strategy, the Authority is to consider the following—
 - (a) the objects of this Act,
 - (b) any principles for managing the marine estate specified or set out in the regulations,
 - (c) any relevant threat and risk assessment report prepared under this Act,
 - (d) any other matter that the relevant Ministers direct or that is prescribed by the regulations.

12 Contents of draft marine estate management strategy

A draft marine estate management strategy must—

- (a) state the vision and priorities for management of the marine estate, and
- (b) include any other matters that the relevant Ministers may direct to be included in the strategy or that may be prescribed by the regulations.

13 Consultation on draft marine estate management strategy

- (1) Before submitting a draft marine estate management strategy to the relevant Ministers for approval, the Authority must—
 - (a) consult on the draft strategy by giving such public notice that the draft strategy has been prepared and undertaking such public exhibition of the draft strategy as is required by the regulations, and
 - (b) seek the advice of Local Land Services and any person or body to which the draft marine estate management strategy is required to be referred by the regulations.
- (2) The Authority must submit a report on any such consultation and advice with the copy of the draft marine estate management strategy submitted to the relevant Ministers for approval.
- (3) The relevant Ministers, in approving a draft marine estate management strategy, are to have regard to any such report.

- (4) A failure to comply with this section does not invalidate a marine estate management strategy.

14 Submission of draft marine estate management strategy for approval

The Authority is to submit a copy of the draft marine estate management strategy to the relevant Ministers for approval.

15 Approval of draft marine estate management strategy

- (1) The relevant Ministers may, by order published in the Gazette, approve a draft marine estate management strategy submitted to them—
- (a) without alteration, or
 - (b) with such alteration as the relevant Ministers think fit.
- (2) A marine estate management strategy takes effect on the date that the order is published in the Gazette or from a later date specified in the order.
- (3) An order under subsection (1) must include a copy of the marine estate management strategy to which the order relates.

16 Publication of marine estate management strategy

As soon as practicable after a marine estate management strategy is approved, the relevant Ministers are to arrange for a copy of the strategy to be published on the relevant NSW Government website.

17 Amendment, replacement or revocation of strategy

- (1) A marine estate management strategy may be amended or replaced by a subsequent strategy prepared and approved in accordance with this Part.
- (2) A draft marine estate management strategy that amends or replaces an approved strategy is to be prepared by the Authority if requested by the relevant Ministers.
- (3) The relevant Ministers may, by order published in the Gazette, revoke a marine estate management strategy, wholly or in part.
- (4) The revocation of the marine estate management strategy takes effect on—
- (a) the day the order is published in the Gazette, or
 - (b) if a later date is specified in the order—the date specified.

18 Periodic review of marine estate management strategy

- (1) The relevant Ministers are to ensure that the marine estate management strategy is periodically reviewed.

- (2) The relevant Ministers may cause a review under this section to be undertaken at any time, but must ensure a review is commenced as soon as possible after—
 - (a) in the case of the first review—the period of 10 years has elapsed since the date that the strategy was approved, and
 - (b) in any other case—the period of 10 years has elapsed since the conclusion of the previous review.
- (3) A review under this section is to be carried out by an independent person, body or panel appointed by the relevant Ministers.
- (4) The relevant Ministers may set the terms of reference for such reviews.
- (5) The person, body or panel conducting the review must have regard to any relevant threat and risk assessment report prepared under this Act.
- (6) The person, body or panel conducting the review is to prepare a report on the review and submit it to the Authority.
- (7) The Authority is to consider that report and submit it, and any advice the Authority has regarding the review, to the relevant Ministers.

19 Implementation of marine estate management strategy

- (1) The relevant Ministers are to have regard to the marine estate management strategy in the exercise of the relevant Ministers' functions under this Act.
- (2) Public authorities are to have regard to the marine estate management strategy to the extent that the strategy is relevant to the exercise of their functions.
- (3) This section—
 - (a) does not render the exercise of a function invalid because—
 - (i) it was made without regard to the marine estate management strategy, or
 - (ii) it is inconsistent with achieving the outcomes of the marine estate management strategy, and
 - (b) does not require or authorise action that is inconsistent with any statutory or other legal obligation of a Minister or a public authority.

Part 4 Threat and risk assessment

20 Assessment of threats and risks to marine estate

- (1) The Authority must ensure that an assessment of threats and risks to the marine estate is periodically carried out.

- (2) The purpose of the threat and risk assessment is—
 - (a) to identify threats to the environmental, economic and social values of the marine estate, and
 - (b) to assess the risks associated with those identified threats, and
 - (c) to inform marine estate management decisions by prioritising those threats and risks according to the level of impact on the values derived from the marine estate.
- (3) A threat and risk assessment under this section is to be commenced—
 - (a) as soon as possible after—
 - (i) in the case of the first assessment—the commencement of this section, and
 - (ii) in any other case—the period of 10 years has elapsed since the previous assessment, and
 - (b) at any other time determined by the relevant Ministers.
- (4) The Authority is to carry out the threat and risk assessment in accordance with any standard prescribed by the regulations for the purpose of this section.

21 Threat and risk assessment report

- (1) The Authority must prepare a report summarising each threat and risk assessment.
- (2) The threat and risk assessment report is to be provided to the relevant Ministers.
- (3) However, before the threat and risk assessment report is provided to the relevant Ministers, the Authority must consult on a draft of the report by giving such public notice that a draft report has been prepared and undertaking such public exhibition of the draft report as is required by the regulations.

Part 5 Marine parks and aquatic reserves

Division 1 Marine parks

22 Purposes of marine parks

- (1) The primary purpose of a marine park is to conserve the biological diversity, and maintain ecosystem integrity and ecosystem function, of bioregions in the marine estate.
- (2) The secondary purposes of a marine park are, where consistent with the primary purpose—
 - (a) to provide for the management and use of resources in the marine park in a

manner that is consistent with the principles of ecologically sustainable development, and

- (b) to enable the marine park to be used for scientific research and education, and
- (c) to provide opportunities for public appreciation and enjoyment of the marine park, and
- (d) to support Aboriginal cultural uses of the marine park.

23 Declaration of marine parks

- (1) The Governor, on the recommendation of the relevant Ministers, may, by proclamation, declare an area described in the proclamation to be a marine park.
- (2) The relevant Ministers must not recommend to the Governor that an area be declared a marine park unless the relevant Ministers have considered—
 - (a) the marine estate management strategy (if one has been approved), and
 - (b) any relevant threat and risk assessment report prepared under this Act.
- (3) The area that may 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.
- (4) 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 Land Management Act 2016*, 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.
- (5) 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.
- (6) 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.

24 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.

25 Revocation of marine park

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

26 Variation of area of marine park

- (1) The Governor, on the recommendation of the relevant Ministers, may from time to time, by proclamation, vary the area of a marine park.
- (2) The relevant Ministers must not recommend to the Governor a variation of the area of a marine park unless the relevant Ministers have considered—
 - (a) the marine estate management strategy (if one has been approved), and
 - (b) any relevant threat and risk assessment report prepared under this Act.
- (3) The relevant Ministers must not recommend to the Governor a variation to a marine park to remove an area unless the relevant Ministers are satisfied that the area is no longer required to be part of the marine park in order to attain the purposes of marine parks set out in this Division.
- (4) 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.
- (5) The provisions of section 23 (3)–(6) 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.

27 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.
- (2) An area within a marine park cannot be declared to be an aquatic reserve.

28 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 or management rules.

- (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).

29 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* that is in force at the time of the declaration.
- (2) However, any such 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*.
- (4) In this section, **aquaculture** has the same meaning as in the *Fisheries Management Act 1994*.

30 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 Land Management Act 2016*.
- (2) The Minister administering the *Crown Land Management Act 2016* 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.

31 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 relevant Ministers by the authority proposing to acquire the land.

32 Consent of owners

If an owner of land whose consent is required under section 23 or 26 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.

Division 2 Aquatic reserves

33 Purposes of aquatic reserves

- (1) The primary purpose of an aquatic reserve is to conserve biological diversity, or particular components of biological diversity (such as specific ecosystems, communities or species), in a specified area of the marine estate.
- (2) The secondary purposes of an aquatic reserve are, where consistent with the primary purpose—
 - (a) to provide for the management and use of resources in the aquatic reserve in a manner that is consistent with the principles of ecologically sustainable development, and
 - (b) to enable the aquatic reserve to be used for scientific research and education, and
 - (c) to provide opportunities for public appreciation and enjoyment of the aquatic reserve, and
 - (d) to support Aboriginal cultural uses of the aquatic reserve.

34 Declaration of aquatic reserves

- (1) The relevant Ministers may, by notice published in the Gazette, declare an area (or areas) specified in the notice to be an aquatic reserve.
- (2) Land that is the subject of an aquaculture lease under the [Fisheries Management Act 1994](#) may be declared to be an aquatic reserve. However, nothing in this Division prevents the lessee from undertaking aquaculture in accordance with that Act in the area concerned during the currency of the lease.
- (3) Land that is dedicated for a public purpose may be declared to be an aquatic reserve. However, nothing in this Division prevents the land from being used for the purpose for which it is dedicated or permits the land to be used contrary to the provisions of any Act or statutory instrument applying to the land.

35 Consent required for declarations

- (1) The relevant Ministers are required to obtain the appropriate consent before declaring an area to be an aquatic reserve.
- (2) The appropriate consent for an area (other than an area of public water land) is the consent of the owner of the land concerned.
- (3) The appropriate consent for an area of public water land is—
 - (a) in the case of public water land that is Crown land—the consent of the Minister administering the [Crown Land Management Act 2016](#), and

(b) in the case of public water land that is vested in a local or public authority or in trustees for a public purpose—the consent of that authority or those trustees.

(4) This section does not apply—

(a) to an area of water and the land submerged by that water below mean high water mark, or

(b) to an area vested in the relevant Ministers, or

(c) to an area subject to an aquaculture lease under the *Fisheries Management Act 1994*.

36 Consent of owners

If an owner of land whose consent is required under section 35 to the declaration of an area as an aquatic reserve cannot, after diligent inquiry, be found or identified, the declaration may be made without the consent of that owner.

37 Existing interests and changes in ownership

(1) A declaration of an aquatic reserve 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.

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

38 Revocation or variation of declaration of aquatic reserve

(1) The relevant Ministers may, subject to this section, revoke or vary the declaration of an aquatic reserve by notice published in the Gazette.

(2) Before a declaration is revoked or varied, the relevant Ministers must cause notice of the proposed revocation or variation to be tabled in both Houses of Parliament.

(3) Either House of Parliament may pass a resolution disallowing the proposed revocation or variation at any time after notice of the proposal is tabled in that House, but only if notice of the resolution was given within 15 sitting days of that House after notice of the proposal was so tabled.

(4) If notice of a resolution to disallow a proposed revocation or variation is duly given, the relevant Ministers may not revoke or vary the declaration unless the resolution is not passed or it is withdrawn or lapses.

(5) The provisions of sections 35–37 apply to a variation of a declaration that adds an

area to an aquatic reserve in the same way as those provisions apply to the declaration of an aquatic reserve.

Division 3 Regulations for the management, protection and conservation of marine parks and aquatic reserves

39 Regulations relating to marine parks and aquatic reserves generally

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

40 Other regulations for marine parks and aquatic reserves

Without affecting the generality of section 39, the regulations may make provision for or with respect to the following matters—

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

- (l) the information to be provided to the relevant Ministers by an applicant for, or the holder of, any permit under this Act, including the circumstances in which any such information must be verified by statutory declaration.

41 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 4, being a contravention that is designated by the regulations as a serious offence.

Maximum penalty—

- (a) in the case of a corporation, 1,000 penalty units, or
- (b) in any other case, 500 penalty units.

Division 4 Marine park and aquatic reserve management rules

42 Regulations relating to management rules for marine parks and aquatic reserves

- (1) Without affecting the generality of Division 3, the regulations may make provision for or with respect to the use and management of a particular marine park or an aquatic reserve by means of management rules set out in the regulations.
- (2) The management rules for a marine park or an aquatic reserve may include provisions for or with respect to the following—
 - (a) the classification of areas within that marine park or an aquatic reserve into zones,
 - (b) the purpose of any such zone,
 - (c) the uses that are permitted or prohibited within any such zone,
 - (d) the management of any such zone.
- (3) The relevant Ministers must not recommend the making of regulations that establish, replace or amend any management rules 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 any management rules.

43 Making management rules for marine parks and aquatic reserves

- (1) The relevant Ministers may cause draft management rules to be prepared for a marine park or an aquatic reserve.
- (2) In preparing draft management rules, the relevant Ministers must have regard to—

- (a) the marine estate management strategy (if one has been approved), and
 - (b) any relevant threat and risk assessment report prepared under this Act.
- (3) The relevant Ministers are to seek the advice of the Authority regarding the preparation of the draft management rules.
- (4) The relevant Ministers are to cause public notice to be given of the draft management rules.
- (5) The notice is to—
- (a) specify the address of each place at which copies of the draft management rules are available, and
 - (b) invite submissions to be made on the draft management rules before the date specified in the notice (being a date not less than 2 months after the date of the notice), and
 - (c) specify the address to which submissions are to be forwarded.
- (6) The relevant Ministers are to consider any submissions made before the date referred to in subsection (5) (b), or such later date as the relevant Ministers allow.

44 Review of management rules for marine parks and aquatic reserves

- (1) The relevant Ministers are to conduct a review of the management rules for each marine park and aquatic reserve every 10 years to determine whether the management rules remain appropriate for securing the purposes of marine parks or aquatic reserves (as appropriate). The relevant Ministers may conduct such a review at such other times as the relevant Ministers consider necessary.
- (2) In conducting a review, the relevant Ministers are to prepare a report that—
- (a) includes an assessment of any existing arrangements for the marine park or aquatic reserve, and
 - (b) makes recommendations for the management of the marine park or aquatic reserve.

45 Amending or replacing management rules for marine parks and aquatic reserves

- (1) The relevant Ministers may, at any time, recommend the making of a regulation to amend or replace the management rules for a marine park or an aquatic reserve.
- (2) Without limiting subsection (1), the relevant Ministers may recommend the making of a regulation to amend or replace the management rules for a marine park or an aquatic reserve 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 or aquatic reserve,
 - (d) the making of a proclamation varying the area of the marine park or a notice varying the area of the aquatic reserve (as relevant).
- (3) Section 43 applies to the making of a regulation to amend or replace the management rules for a marine park or an aquatic reserve in the same way as it applies to the making of management rules under that section unless the relevant Ministers are of the opinion that—
- (a) the amendment or replacement is to be made as a consequence of any event referred to in subsection (2) (a)–(c), or
 - (b) the proposed amendment or replacement corrects a technical error or inconsistency.

46 Relationship of management rules with plans of management

If an area within a marine park or an aquatic reserve is subject to a plan of management under the *National Parks and Wildlife Act 1974* or the *Crown Land Management Act 2016*, the management rules for the marine park or aquatic reserve prevail over the plan of management to the extent of any inconsistency.

Division 5 Management plans

47 Management plans for marine parks and aquatic reserves

- (1) The relevant Ministers—
- (a) must cause a management plan to be prepared and adopted for each marine park, and
 - (b) may cause a management plan to be prepared and adopted for an aquatic reserve.
- (2) A management plan may be prepared—
- (a) for one or more marine parks, or
 - (b) for one or more aquatic reserves, or

(c) for one or more marine parks and one or more aquatic reserves.

- (3) The relevant Ministers must not adopt a management plan for a marine park or an aquatic reserve unless the relevant Ministers are satisfied that the provisions of this Division have been complied with in the making of the plan.
- (4) Failure to comply with any provision of this Division does not affect the validity of a management plan.

48 Content of management plans

A management plan must—

- (a) state the environmental, economic and social values to be conserved by the marine park or aquatic reserve, and
- (b) identify threats to those values, and
- (c) state the management objectives of the marine park or aquatic reserve in relation to those values and threats, and
- (d) specify actions to achieve those management objectives, based on a consideration of risks, and
- (e) set out the programs to be implemented for managing the marine park or aquatic reserve, and
- (f) include any other matters that the relevant Ministers consider necessary to be included in the management plan or that the regulations require to be included.

49 Preparation of management plans for marine parks and aquatic reserves

- (1) The relevant Ministers are, in preparing a draft management plan for a marine park or an aquatic reserve, to have regard to—
- (a) any relevant threat and risk assessment report prepared under this Act, and
- (b) the provisions of this Act and any regulations under this Act.

Note—

The relevant Ministers are required by section 19 to have regard to the marine estate management strategy in the exercise of their functions under this Act.

- (2) The relevant Ministers are to cause public notice to be given of the draft management plan.
- (3) The notice is to—
- (a) specify the address of each place at which copies of the draft management plan are available, and

- (b) invite submissions to be made on the draft management plan before the date specified in the notice (being a date not less than 2 months after the date of the notice), and
 - (c) specify the address to which submissions are to be forwarded.
- (4) The relevant Ministers are to consider any submissions made before the date referred to in subsection (3) (b), or such later date as the relevant Ministers allow.
 - (5) The relevant Ministers are to adopt a management plan for a marine park or an aquatic reserve as soon as practicable and, before doing so, may make changes to the draft plan that they think appropriate to take account of the submissions from the public.

50 Publication of management plans

The relevant Ministers must, as soon as is reasonably practical, ensure that each adopted management plan is published on the website of Regional NSW.

51 Alteration or replacement of management plans for marine parks and aquatic reserves

- (1) The relevant Ministers may, at any time, amend or replace the management plan for a marine park or an aquatic reserve.
- (2) Without limiting subsection (1), the relevant Ministers may amend or replace the management plan for a marine park or an aquatic reserve as a consequence of a review conducted under section 52.
- (3) Sections 49 and 50 apply to the amendment or replacement of a management plan under this section in the same way as those sections apply to the initial management plan for a marine park or an aquatic reserve.

52 Periodic review of management plans

- (1) The relevant Ministers are to periodically review each management plan to determine whether the plan remains appropriate for securing the objects of this Act and the purposes of the marine park or aquatic reserve (or, if relevant, both).
- (2) A review under this section is to be commenced as soon as possible after—
 - (a) in the case of the first review—the period of 10 years has elapsed since the date that the management plan was adopted, and
 - (b) in any other case—the period of 10 years has elapsed since the conclusion of the previous review.
- (3) The relevant Ministers may conduct such a review at such other times as the relevant Ministers consider necessary.

53 Operations under management plans

- (1) Any functions of the relevant Ministers or any authorised officers in relation to a marine park or an aquatic reserve are required to be exercised in accordance with the management plan for the marine park or aquatic reserve.
- (2) However, the exercise of those functions is not invalid because of a contravention of any such plan.

Division 6 Development and activities within marine parks and aquatic reserves

54 Mining in marine parks and aquatic reserves prohibited

- (1) It is unlawful to prospect or mine for minerals in a marine park or an aquatic reserve.
- (2) The *Offshore Minerals Act 1999*, the *Mining Act 1992*, the *Petroleum (Onshore) Act 1991* and the *Petroleum (Offshore) Act 1982* do not apply to or in respect of any area within a marine park or an aquatic reserve.
- (3) This section does not apply to or in respect of any licence, permit, authorisation or lease in force under any of those Acts—

(a) in relation to a marine park—as at 1 August 1997, and

Note—

Section 18 of the *Marine Parks Act 1997* (the predecessor of this provision in relation to marine parks) commenced on 1 August 1997.

(b) in relation to an aquatic reserve—as at 31 March 2002.

Note—

Section 197B of the *Fisheries Management Act 1994* (the predecessor of this provision in relation to aquatic reserves) commenced on 31 March 2002.

However, no renewal or extension of such a licence, permit, authorisation or lease may be granted after those dates 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.

55 Development within marine parks and aquatic reserves—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 or an aquatic reserve, a consent authority must—
 - (a) take into consideration—
 - (i) if there are management rules for the marine park or aquatic reserve, the purposes of the zone within which the area concerned is situated as specified in those management rules, and
 - (ii) the permissible uses of the area concerned under the regulations or those management rules, and
 - (iii) if a management plan for the marine park or aquatic reserve has been made, the objectives of the marine park or aquatic reserve, and
 - (iv) any relevant marine park or aquatic reserve notifications, 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 a marine park or an aquatic reserve unless the Minister has—
 - (a) taken into consideration—
 - (i) if there are management rules for the marine park or aquatic reserve, the purposes of the zone within which the area concerned is situated as specified in those management rules, and
 - (ii) the permissible uses of the area concerned under the regulations or the management rules, and
 - (iii) if a management plan for the marine park or aquatic reserve has been made, the objectives of the marine park or aquatic reserve, and
 - (iv) any relevant marine park or aquatic reserve notifications, and
 - (b) in the case of an activity for which an environmental impact statement is required to be prepared under the *Environmental Planning and Assessment Act 1979*, Division 5.1, Subdivision 3, 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 unless the determining authority has—
- (a) taken into consideration—
 - (i) if there are management rules for the marine park or aquatic reserve, the purposes of the zone within which the area concerned is situated as specified in those management rules, and
 - (ii) the permissible uses of the area concerned under the regulations or the management rules, and
 - (iii) if a management plan for the marine park or aquatic reserve has been made, the objectives of the marine park or aquatic reserve, and
 - (iv) any relevant marine park or aquatic reserve notifications, and
 - (b) in the case of an activity for which an environmental impact statement is required to be prepared under the *Environmental Planning and Assessment Act 1979*, Division 5.1, Subdivision 3, 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) if there are management rules for the marine park or aquatic reserve, the purposes of the zone within which the area concerned is situated as specified in those management rules, and
 - (b) the permissible uses of the area concerned under the regulations or the management rules, and
 - (c) if a management plan for the marine park or aquatic reserve has been made, the objectives of the marine park or aquatic reserve, and
 - (d) any relevant marine park or aquatic reserve notifications.
- (5) The provisions of the *Environmental Planning and Assessment Act 1979*, section 4.13(8), (9), (10) and (11), 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 the *Environmental Planning and Assessment Act 1979*, section 3.18(3) (however expressed) is to be read as a reference to the purposes of marine parks or aquatic reserves and the permissible uses of the area concerned under the regulations.

(7) In this section—

activity has the same meaning as in the *Environmental Planning and Assessment Act 1979*, Division 5.1.

56 Development affecting marine parks and aquatic reserves—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 or an aquatic reserve, the consent authority must take into consideration the objects of this Act, the permissible uses of the area concerned under the regulations or the management rules and any advice given to it by the relevant Ministers about the impact on the marine park or aquatic reserve 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 or aquatic reserve and their habitat, the consent authority must consult with the relevant Ministers 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 or an aquatic reserve in purported compliance with the *Environmental Planning and Assessment Act 1979*, Division 5.1 unless—
 - (a) the determining authority has taken into consideration the purposes of marine parks or aquatic reserves, the regulations and any advice given to it by the relevant Ministers on the impact on the marine park or aquatic reserve 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 aquatic reserve or their habitat, the determining authority has consulted with the relevant Ministers.

Division 7 Marine park and aquatic reserve notifications

57 Prohibition of activities in marine parks and aquatic reserves

- (1) The relevant Ministers may from time to time, by notification published in the Gazette, prohibit the carrying out of any specified activity (including the taking of fish)—
 - (a) in a marine park or part of a marine park (a **marine park notification**), or
 - (b) in an aquatic reserve or part of an aquatic reserve (an **aquatic reserve notification**).
- (2) A notification under this Division—

- (a) may apply absolutely or subject to conditions, and
- (b) without limiting paragraph (a), may prohibit the carrying out of an activity unless the consent of the relevant Ministers or a permit issued by the relevant Ministers has been obtained, and
- (c) must specify the activities that are prohibited and the area to which it applies, and
- (d) may only apply to the marine park or aquatic reserve specified in the notification, and
- (e) has effect despite any provision of the regulations.

58 Publication of marine park and aquatic reserve notifications

A notification under this Division is to be published—

- (a) on the website of Regional NSW, and
- (b) by causing a copy of the notification to be exhibited in a prominent place or places adjacent to the marine park or aquatic reserve to which the notification applies.

59 General provisions relating to marine park and aquatic reserve notifications

- (1) A notification under this Division takes effect on the publication of the notification in the Gazette or on a later date specified in the notification.
- (2) A notification under this Division 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.
- (3) Sections 42, 43 and 45 of the *Interpretation Act 1987* apply to notifications under this Division 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 notifications, the amendment or repeal of notifications and judicial notice and presumptions as to validity of notifications.

60 Amendment or revocation of marine park and aquatic reserve notifications

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

61 Regulations relating to marine park and aquatic reserve notifications

The regulations may make provision for or with respect to giving effect to notifications under this Division or to any other matter relating to notifications.

62 Offence provisions

- (1) A person who carries out any activity in contravention of a notification under this Division is guilty of an offence.

Maximum penalty—

- (a) in the case of a corporation, 1,000 penalty units, or
- (b) 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 notification under this Division is guilty of an offence.

Maximum penalty—

- (a) in the case of a corporation, 500 penalty units, or
- (b) 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 8 Miscellaneous

63 Removal of wrecked vessels and other property from marine parks and aquatic reserves

- (1) In this section—

person responsible for removable property means—

- (a) the person who caused the property to be in the marine park or aquatic reserve, 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 relevant Ministers may, by notice in writing, direct the person responsible for any removable property in a marine park or an aquatic reserve to remove the property within such time as is specified in the notice.
- (3) A person who fails, without reasonable excuse, to comply with a direction under subsection (2) is guilty of an offence.

Maximum penalty—

- (a) in the case of a corporation, 1,000 penalty units, or
 - (b) in any other case, 200 penalty units or imprisonment for 3 months, or both.
- (4) The relevant Ministers may remove, or authorise the removal of, any removable property in such manner as the relevant Ministers think fit (whether or not the relevant Ministers have 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.
- (5) The relevant Ministers may, subject to and in accordance with the regulations, dispose of anything removed under this section.
- (6) If, in the opinion of the relevant Ministers, significant environmental damage has been, or is likely to be, caused by removable property in a marine park or an aquatic reserve, the relevant Ministers may take such steps as the relevant Ministers consider 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.
- (7) The relevant Ministers may recover as a debt in a court of competent jurisdiction the reasonable costs and expenses incurred by the relevant Ministers in the exercise of the relevant Ministers' powers under this section from the person responsible for the removable property.
- (8) Except in the case of an emergency, the relevant Ministers must not give a direction for the removal of any removable property, or remove or authorise the removal of any removable property, that the relevant Ministers are of the opinion is likely to have significant cultural or ecological value unless the relevant Ministers have made an assessment of that cultural or ecological value.
- (9) If a person who pays the costs and expenses incurred by the relevant Ministers under this section was not the person who caused the removable property to be in the marine park or aquatic reserve, those costs and expenses may be recovered by that person as a debt in a court of competent jurisdiction from the person who caused the

removable property to be in the marine park or aquatic reserve.

- (10) If the person given a notice under this section complies with the notice but was not the person who caused the removable property to be in the marine park or aquatic reserve, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who caused the removable property to be in the marine park or aquatic reserve.

64 Fees for administrative costs relating to notices

- (1) The purpose of this section is to enable the relevant Ministers to recover the administrative costs of preparing and giving notices under section 63.
- (2) A person who is given a notice under section 63 must, within 30 days, pay the fee prescribed by the regulations into the Marine Protected Areas Fund.
- (3) The relevant Ministers may—
- (a) extend the time for payment of the fee, on the application of a person to whom subsection (2) applies, or
 - (b) waive payment of the whole or any part of the fee, on the relevant Ministers' own initiative or on the application of a person to whom subsection (2) applies.
- (4) If a person does not pay the fee within the time provided under this section, the relevant Ministers may recover the fee as a debt in a court of competent jurisdiction.

65 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 or an aquatic reserve.

Part 6 Enforcement

66 Authorised officers

- (1) For the purposes of this Act, an **authorised officer** means—
- (a) a person appointed as an authorised officer in accordance with this section, or
 - (b) a person in the Public Service appointed as a fisheries officer under the *Fisheries Management Act 1994* (subject to any conditions, limitations or restrictions contained in the officer's instrument of authority under that Act), or
 - (c) a police officer.
- (2) The relevant Ministers may appoint an officer or employee of a Public Service agency

or a public or local authority as an authorised officer for the purposes of this Act.

- (3) The relevant Ministers are not to appoint as an authorised officer 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.
- (4) The relevant Ministers may, in and by the instrument of the officer's authority under this Act, limit the functions that an authorised officer appointed by the relevant Ministers may exercise under this Act (including limiting the purposes for which or the area in which those functions may be exercised).
- (5) A reference in this Act or in an instrument under this Act to an authorised officer is to be construed subject to any such limitation.
- (6) The relevant Ministers may, at any time, revoke an appointment of an authorised officer or revoke or vary any limitation of the functions of an authorised officer.

67 Application of Fisheries Management Act 1994

- (1) Divisions 1–4 of Part 9 (Enforcement) of the *Fisheries Management Act 1994* (other than sections 243 and 244)—
 - (a) apply to and in respect of an authorised officer 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 an authorised officer, 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 Chief Executive of the Office of Environment and Heritage, and
 - (e) a reference to a forfeiture offence is to be read as a reference to an offence against this Act or the regulations that is declared by the regulations to be a forfeiture offence, and

- (f) a reference to “any waters” or “waters to which this Act applies” is to be read as a reference to waters within the marine estate, and
 - (g) a reference to Part 7 or 7A of the *Fisheries Management Act 1994* is to be read as a reference to Part 5 of this Act, and
 - (h) a reference to that Act or the regulations under that Act is to be read as a reference to this Act or the regulations under this Act, respectively.
- (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 and aquatic reserves.

68 Requirement to state name and address or give other information

- (1) An authorised officer may—
 - (a) require a person whom the officer reasonably suspects has committed an offence under this Act or the regulations to state the person’s full name and place of residence, and
 - (b) require the driver of a motor vehicle in a marine park or an aquatic reserve to produce his or her driver licence and to state the person’s full name and place of residence.
- (2) If an authorised officer suspects on reasonable grounds that the driver of a motor vehicle has committed an offence under this Act or the regulations, the authorised officer may—
 - (a) require the owner of the vehicle, or the person in whose name it is registered, or the person having the custody of the vehicle, to give information (which must, if so required, be given in the form of a statement in writing, signed by that owner or person) as to the name and place of residence of the driver, or
 - (b) require any other person to give any information that is in that person’s power to give and that may lead to the identification of the driver.
- (3) A person must not—
 - (a) without lawful excuse, refuse or fail to comply with a requirement made of the person under this section, or
 - (b) in purported compliance with a requirement under this section, give or furnish information or evidence or produce a document knowing it to be false or misleading in a material particular.

Maximum penalty—10 penalty units.

- (4) A person does not commit an offence in respect of a requirement made under this section if—
- (a) the authorised officer does not, at the time when the officer makes the requirement, show the person the officer's identification card, or
 - (b) the authorised officer does not, at the time when the officer makes the requirement, warn the person that it would be an offence not to comply with the requirement.
- (5) In a prosecution for an offence in respect of a failure or refusal to comply with a requirement under subsection (2) (a), it is a defence if the defendant satisfies the court that the defendant did not know and could not with reasonable diligence have ascertained the name or place of residence of the driver concerned, or both, as the case requires.
- (6) If a statement in writing purporting to be furnished under subsection (1) (a) and to contain particulars of the name and place of residence of the driver of a motor vehicle at the time of the commission of an alleged offence is produced in any court in proceedings for the offence against the person named in the statement as the driver, the statement is, if that person does not appear before the court, evidence without proof of signature that the person was the driver of the vehicle at that time.

69 Liability of vehicle owner for parking offences

- (1) In this section—

owner of a vehicle includes the responsible person for the vehicle within the meaning of the *Road Transport Act 2013*.

parking offence means the offence committed by a person who, in contravention of the regulations made under this Act—

- (a) moors or parks a vehicle, or
- (b) causes or permits a vehicle to be moored or parked or to stand or wait.

vehicle includes motor vehicle and vessel.

- (2) If a parking offence occurs in relation to a vehicle, the person who at the time of the occurrence of the offence is the owner of the vehicle is, by virtue of this section, guilty of an offence under the regulation concerned as if the owner were the actual offender guilty of the parking offence unless—
- (a) in any case where the parking offence is dealt with under section 70—the person satisfies the authorised officer referred to in the notice served under that section

that the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used, or

- (b) in any other case—the court is satisfied that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used.
- (3) This section does not affect the liability of an actual offender in respect of a parking offence but, if a penalty has been imposed on or recovered from any person in relation to any parking offence, no further penalty may be imposed on or recovered from any other person for the offence.
- (4) Despite subsection (2), an owner of a vehicle is not, by virtue of this section, guilty of an offence if—
- (a) in any case where the offence is dealt with under section 70, the owner—
 - (i) within 21 days after service on the owner of a notice under that section alleging that the owner has been guilty of that offence, supplies, in the form required by the notice, the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence, or
 - (ii) satisfies the authorised officer that the owner does not know, and cannot with reasonable diligence ascertain, that name and address, or
 - (b) in any other case, the owner—
 - (i) within 21 days after service on the owner of a court attendance notice in respect of that offence supplies by statutory declaration to the informant the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence, or
 - (ii) satisfies the court that the owner did not know and could not with reasonable diligence have ascertained that name and address.
- (5) If a form under subsection (4) is produced in any proceedings against the person named in the form that relate to the offence in respect of which it was supplied, the form is evidence that the person so named was in charge of the vehicle at all relevant times relating to that offence.
- (6) Without limiting the form that may be required by the notice under subsection (4), the required form may be an electronic form accessible at a website specified in the notice.
- (7) An owner of a vehicle who supplies a statutory declaration setting out the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence is taken to have done so in the required form.

70 Penalty notices

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence (or is, by virtue of section 69, guilty of a parking offence within the meaning of that section).
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) A penalty notice that relates to an offence of which the owner of a vehicle is guilty by virtue of section 69 may be issued to the owner by being addressed to the owner (without naming the owner or stating the owner's address) and being left on, or attached to, the vehicle. This subsection does not limit the manner in which any such penalty notice may be issued under section 21 of the *Fines Act 1996*.
- (4) The *Fines Act 1996* applies to a penalty notice issued under this section.

Note—

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (5) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (6) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

71 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations may be dealt with—
 - (a) summarily before the Local Court, or
 - (b) summarily before the Land and Environment Court.
- (2) If proceedings are brought in the 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, \$22,000.

72 Time within which proceedings may be commenced

- (1) 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 the later of the following—
 - (a) 2 years after the date alleged to be the date on which the offence was committed,
 - (b) 2 years after the date on which evidence of the alleged offence first came to the

attention of any relevant authorised officer.

- (2) If subsection (1) (b) is relied on for the purpose of commencing proceedings for an offence, the process by which the proceedings are commenced must contain particulars of the date on which evidence of the offence first came to the attention of any relevant authorised officer and need not contain particulars of the date on which the offence was committed.
- (3) The date on which evidence first came to the attention of any relevant authorised officer is the date specified in the process by which the proceedings are commenced, unless the contrary is established.
- (4) In this section, **evidence** of an offence means evidence of any act or omission constituting the offence.

73 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 7 Finance

74 Marine Protected Areas Fund

- (1) There is to be established in the Special Deposits Account a Marine Protected Areas Fund.
- (2) The Fund is to be administered by the Secretary of Regional NSW.
- (3) There is to be paid into the Fund—
 - (a) all fees, charges and other amounts payable under this Act in connection with marine parks or aquatic reserves, and
 - (b) any gift or bequest of money made for payment into the Fund.
- (4) There may be paid out of the Fund all charges, costs and expenses incurred in, or in connection with, the following—
 - (a) the administration of Parts 5 (Marine parks and aquatic reserves) and 6

(Enforcement) of this Act,

(b) the carrying out of research into matters relating to the management of marine parks and aquatic reserves,

(c) the conduct of consultation for the purpose of the management of marine parks and aquatic reserves,

(d) the operation of the Marine Estate Expert Knowledge Panel.

(5) The costs and expenses referred to in subsection (4) include, without limitation, the costs and expenses incurred by the following persons or bodies in the carrying out of functions under, or in connection with, Parts 5 and 6 of this Act—

(a) the relevant Ministers,

(b) the Authority,

(c) any Public Service agency.

Part 8 Miscellaneous

75 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.

76 Delegations

(1) The relevant Ministers may delegate to the Authority or any person a function conferred by or under this Act on the relevant Ministers (other than the power of delegation conferred by this subsection).

(2) Despite subsection (1), the Authority or other person may sub-delegate to any person any such function that has been delegated to the Authority or person, but only if the terms of the delegation authorise the Authority or person to sub-delegate that function.

77 Service of documents generally

(1) 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
- (iv) sending it by email to an email address specified by the person (in correspondence or otherwise) as an address to which emails to the person may be sent for the purposes of this Act, 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, or
- (iii) sending it by email to an email address specified by the body corporate (in correspondence or otherwise) as an address to which emails to the body corporate may be sent for the purposes of this Act.

- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

78 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 77 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 77, 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.

79 Meaning of “diligent inquiry”

- (1) For the purposes of this Act, 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*,
 - (ii) the General Register of Deeds kept under the *Conveyancing Act 1919*,
 - (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, or at an entrance to, the land concerned, a notice—
- (i) stating that it is intended to declare the land as part of a marine park or an aquatic reserve, and
 - (ii) inviting the owner of the land to contact the relevant Ministers at a specified address,
- (c) publishing a notice referred to in paragraph (b) in a manner approved by the relevant Ministers having regard to the object of bringing notices of that kind to the attention of persons who may be owners of the relevant land.
- (2) For the purposes of sections 32 and 36, 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 or declaration is served by the relevant Ministers in accordance with section 78, 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.

80 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.

81 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 is authorised by this Act.

82 Personal liability

A matter or thing done or omitted to be done by the relevant Ministers, the Authority, a member of the Authority, an authorised officer or a person acting under the direction of the relevant Ministers or the Authority does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject the relevant Ministers, a member, an authorised officer or a person so acting personally to any action, liability, claim or demand.

83 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) Without limiting subsection (1), regulations may be made for or with respect to the following matters—
 - (a) fees and other amounts payable under this Act or the regulations, and the circumstances under which such fees and amounts may be waived, reduced and remitted,
 - (b) the forms or other documents to be used for the purposes of this Act and the regulations.
- (3) A regulation may make provision for or with respect to the exemption of any person, matter or thing from the operation of this Act or any specified provision of this Act, either unconditionally or subject to conditions.
- (4) The regulations may apply, adopt or incorporate any publication (including any standard) as in force at a particular time or from time to time.
- (5) A regulation may create an offence punishable by a penalty not exceeding 200 penalty units.

84 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 commencement of 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.

Schedule 1 Constitution and procedure of Authority

(Section 7 (3))

Part 1 General

1 Definitions

In this Schedule—

appointed member means the Chairperson and any person who is appointed by the relevant Ministers to chair the Marine Estate Expert Knowledge Panel.

Chairperson means the Chairperson of the Authority.

member means any member of the Authority.

Part 2 Constitution

2 Terms of office of members

Subject to this Schedule and the regulations, an appointed member holds office for such period (not exceeding 4 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Part-time appointments

Appointed members hold office as part-time members.

4 Remuneration

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the relevant Ministers may from time to time determine in respect of the member.

5 Deputies

- (1) A member (other than an appointed member) may, from time to time, appoint a person to be the deputy of the member, and may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

6 Vacancy in office of 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 Authority of which reasonable notice has been given to the member personally or by post, except on leave granted by the relevant Ministers or unless the member is excused by the relevant Ministers 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, or
 - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The relevant Ministers may remove an appointed member from office at any time and for any or no reason.

7 Filling of vacancy in office of appointed member

If the office of any appointed member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

8 Chairperson

- (1) The Chairperson vacates office as Chairperson if he or she—
 - (a) resigns that office by instrument in writing addressed to the relevant Ministers, or
 - (b) ceases to be a member of the Authority.
- (2) The relevant Ministers may at any time remove the Chairperson from office as a member of the Authority.

9 Effect of certain other Acts

- (1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to an appointed member of the

Authority.

(2) If, by or under any Act, provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

Part 3 Procedure

10 General procedure

The procedure for the calling of meetings of the Authority and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Authority.

11 Quorum

The quorum for a meeting of the Authority is a majority of its members for the time being.

12 Presiding member

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

13 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.

14 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 Savings, transitional and other provisions

Part 1 General

1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

(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) Any such provision of the regulations has effect despite anything to the contrary in this Schedule. The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

(4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, 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 Definitions

In this Part—

former Act means the *Marine Parks Act 1997*, as in force immediately before its repeal by this Act.

former aquatic reserve Division means Division 2 of Part 7 of the *Fisheries Management Act 1994*, as in force immediately before its repeal by this Act.

repeal date means the date on which the former Act is repealed by this Act.

3 Saving of marine parks and aquatic reserves

- (1) A marine park under the former Act immediately before the repeal date is taken to be a marine park declared under this Act with the name assigned to that marine park under the former Act.
- (2) An aquatic reserve under the former aquatic reserve Division immediately before its repeal is taken to be an aquatic reserve declared under this Act.

4 Saving of marine parks regulations under former Act

- (1) The following regulations under the former Act as in force immediately before the repeal date are taken to have been made under this Act—

- (a) the *Marine Parks Regulation 2009*,
- (b) the *Marine Parks (Zoning Plans) Regulation 1999*.

This does not prevent the future amendment or repeal of those regulations.

- (2) The provisions of a zoning plan for a marine park under the *Marine Parks (Zoning Plans) Regulation 1999* are taken to be management rules for the marine park made under this Act and, to avoid doubt, that regulation is taken to be a regulation that sets out management rules.
- (3) For the purposes of the application of section 44 to such zoning plans, the 10 year period referred to in that section is taken to begin on the commencement of that section.
- (4) For the purposes of the *Subordinate Legislation Act 1989*, the *Marine Parks Regulation 2009* is taken to have been made when it was made under the former Act.

5 Saving of operational plans for marine parks

An operational plan in force under the former Act before the repeal date continues to have effect in respect of the marine park to which it applied immediately before the repeal date

until superseded by a management plan containing provisions in accordance with this Act.

6 Abolition of former corporate and statutory bodies

(1) On the repeal date—

- (a) each former corporate or statutory body is abolished, and
- (b) each person appointed as a member of the former corporate or statutory body ceases to hold office as such a member, and
- (c) any assets, rights and liabilities (if any) of the former corporate or statutory body become the assets, rights and liabilities of the Crown.

(2) A person who ceases to hold office as a member of the former corporate or statutory body is not entitled to any remuneration or compensation because of the loss of that office.

(3) In this clause—

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

former corporate or statutory body means the following bodies as constituted under the former Act—

- (a) the Marine Parks Authority,
- (b) the Marine Parks Advisory Council,
- (c) each advisory committee for each marine park.

liabilities means all liabilities, debts and obligations (whether present or future and whether vested or contingent and whether personal or assignable).

rights means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent and whether personal or assignable).

7 Marine Parks Fund

On the repeal of the former Act—

- (a) the Marine Parks Fund under that Act is abolished, and
- (b) any balance standing to the credit of that Fund is transferred to the Marine Protected Areas Fund established under this Act.

8 Marine park rangers taken to be authorised officers

- (1) On the repeal date, a person who was a marine park ranger for the purposes of a provision of the former Act that corresponds to a provision of this Act is taken to be an authorised officer for the purposes of a corresponding provision of this Act.
- (2) The authority of such an authorised officer is subject to the same conditions, limitations or restrictions as the authority was subject to under the former Act.

9 Documents prepared for the purposes of former Act

If—

- (a) a certificate or other document prepared or created under or for the purposes of a provision of the former Act or the former aquatic reserve Division was in force immediately before the repeal of that provision by this Act, and
- (b) a similar certificate or document could be prepared or created under or for the purposes of a corresponding provision of this Act,

that certificate or document continues to have effect as if it had been prepared or created under or for the purposes of that corresponding provision.

10 Saving of marine park closures and aquatic reserve notifications

- (1) A marine park closure in force under the former Act before the repeal date continues to have effect in respect of the marine park or part of the marine park to which it applied immediately before the repeal of that Act as if it were a marine park notification under this Act.
- (2) An aquatic reserve notification in force under the former aquatic reserve Division before the repeal of that Division continues to have effect in respect of the aquatic reserve or part of the aquatic reserve to which it applied immediately before that repeal as if it were an aquatic reserve notification under this Act.

11 Construction of certain references

Subject to this Schedule and the regulations, a reference in any Act or instrument to a provision of the former Act or the former aquatic reserve Division for which there is a corresponding provision in this Act extends to the corresponding provision of this Act.

12 General saving

Subject to this Schedule and the regulations—

- (a) anything begun before the repeal date under a provision of the former Act or the former aquatic reserve Division for which there is a corresponding provision in this Act may be continued and completed under the former Act or the former aquatic reserve Division as if this Act had not been enacted, and

(b) subject to paragraph (a), anything done under a provision of the former Act or the former aquatic reserve Division for which there is a corresponding provision in this Act (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of this Act.

13 Preparation of marine park management rules is not subject to pending amendments to zoning plans

Despite clause 12, the fact that, before the repeal of the former Act, the Marine Parks Authority had commenced under section 17E (3) of that Act preparing a draft zoning plan to amend a zoning plan, does not prevent the relevant Ministers exercising their functions under section 45 of this Act (including the making of management rules that replace a zoning plan).

Schedules 3, 4 (Repealed)