

South Australia

# Marine Parks Act 2007

An Act to provide for a system of marine parks for the State; and for other purposes.

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## Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Marine Parks Act 2007*.

### **3—Interpretation**

(1) In this Act—

**activity** includes the storage or possession of anything (including something in liquid or gaseous form);

**associate**—see subsection (2);

**authorised officer** means a person appointed under Part 4 Division 3;

**business** includes a business not carried on for profit or gain;

**business day** means any day except a Saturday or a Sunday or other public holiday;

**Chief Executive** means the Chief Executive of the Department and includes a person for the time being acting in that position;

**coastal waters of the State** means any part of the sea that is from time to time included in the coastal waters of the State by virtue of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth;

**condition** includes a limitation;

**contravene** includes fail to comply with;

**Council** means the Parks and Wilderness Council established under the *National Parks and Wildlife Act 1972*;

**council** means a council within the meaning of the *Local Government Act 1999*;

**Department** means the administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act;

**domestic partner** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

**ERD Court** means the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*;

**general duty of care** means the duty under Part 5;

***harm***—see subsection (4);

***indigenous land use agreement*** means an indigenous land use agreement registered under Part 2 Division 3 of the *Native Title Act 1993* of the Commonwealth;

***land*** includes air above land;

***management plan*** means a management plan under Part 3 Division 2;

***marine park*** means an area established as a marine park under Part 3 Division 1;

***permit*** means a permit under Part 3 Division 4;

***place*** includes any land, water, premises or structure;

***prohibiting or restricting an activity***—see subsection (5);

***protection order*** means a protection order under Part 6 Division 1;

***public authority*** includes a Minister, statutory authority or council;

***related operational Act*** means an Act declared by the regulations to be a related operational Act;

***reparation order*** means a reparation order under Part 6 Division 1;

***restrict*** includes regulate;

***sea*** includes land beneath sea and air above sea;

***special purpose area***—see section 5;

***spouse***—a person is the spouse of another if they are legally married;

***statutory authorisation*** means an approval, consent, licence, permit or other authorisation or entitlement granted, arising or required under an Act;

***statutory instrument*** means—

- (a) a plan, program or policy; or
- (b) any other instrument of a prescribed kind,

made under an Act;

***taking action to make good harm***—see subsection (6);

***vehicle*** includes aircraft;

***vessel*** means—

- (a) a ship, boat or vessel; or
- (b) an air-cushion vehicle, or other similar craft, used on water; or
- (c) a surf board, wind surf board, motorised jet ski, water skis or other similar device on which a person rides through water; or
- (d) a structure that is designed to float in water;

***waters*** includes land beneath waters and air above waters;

***zone***—see section 4.

- (2) For the purposes of this Act, a person is an ***associate*** of another if—

- (a) they are partners; or

- (b) 1 is a spouse, domestic partner, parent or child of another; or
  - (c) they are both trustees or beneficiaries of the same trust, or 1 is a trustee and the other is a beneficiary of the same trust; or
  - (d) 1 is a body corporate or other entity (whether inside or outside Australia) and the other is a director or member of the governing body of the body corporate or other entity; or
  - (e) 1 is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in 5 per cent or more of the share capital of the body corporate or other entity; or
  - (f) they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth; or
  - (g) a chain of relationships can be traced between them under any 1 or more of the above paragraphs.
- (3) For the purposes of subsection (2), a **beneficiary** of a trust includes an object of a discretionary trust.
- (4) For the purposes of this Act—
- (a) **harm** includes—
    - (i) a risk of harm, and future harm; and
    - (ii) anything declared by regulation to be harm to a marine park; and
  - (b) harm need not be permanent but must be more than transient or tenuous in nature.
- (5) For the purposes of this Act, a reference to **prohibiting or restricting an activity** within a marine park, or a zone or other area of a marine park, includes a reference to prohibiting or restricting access (including access by aircraft) to the marine park or zone or area.
- (6) For the purposes of this Act, **taking action to make good harm** to a marine park includes taking the following action:
- (a) minimising, managing or containing the harm;
  - (b) remedying the harm;
  - (c) addressing the consequences resulting from the harm;
  - (d) compensating for any loss or adverse impacts arising from the harm.
- (7) For the purposes of this Act, the Minister may, in assessing the costs of taking action to make good harm to a marine park, apply any assumptions determined by the Minister to be reasonable in the circumstances.

#### 4—Meaning of zone

- (1) For the purposes of this Act, a **zone** is an area within a marine park that—
- (a) has boundaries defined by the management plan for the marine park; and
  - (b) is identified by the management plan as a particular type of zone depending on the degree of protection required within the area.

- (2) It is intended that the regulations will make provision for the following types of zones:
- (a) a ***general managed use zone***—being a zone primarily established so that an area may be managed to provide protection for habitats and biodiversity within a marine park, while allowing ecologically sustainable development and use;
  - (b) a ***habitat protection zone***—being a zone primarily established so that an area may be managed to provide protection for habitats and biodiversity within a marine park, while allowing activities and uses that do not harm habitats or the functioning of ecosystems;
  - (c) a ***sanctuary zone***—being a zone primarily established so that an area may be managed to provide protection and conservation for habitats and biodiversity within a marine park, especially by prohibiting the removal or harm of plants, animals or marine products;
  - (d) a ***restricted access zone***—being a zone primarily established so that an area may be managed by limiting access to the area.
- (3) The regulations may, for the purposes of a zone, apply various prohibitions or restrictions to the different types of zones.
- (4) The regulations may provide for other matters associated with the establishment or management of a zone (including by regulating other activities or circumstances that may arise by virtue of the creation or existence of a zone).

## 5—Meaning of special purpose area

For the purposes of this Act, a ***special purpose area*** is an area within a marine park, identified as a special purpose area and with boundaries defined by the management plan for the marine park, in which specified activities, that would otherwise be prohibited or restricted as a consequence of the zoning of the area, will be permitted under the terms of the management plan.

## 6—Interaction with other Acts

- (1) Subject to subsection (2), this Act is in addition to the provisions of any other Act.
- (2) The prohibitions or restrictions applying within a marine park under this Act will, to the extent prescribed by the regulations, have effect despite the provisions of any other Act.

## 7—Act binds Crown

This Act binds the Crown in right of this State and also, so far as the legislative power of the State extends, the Crown in all its other capacities, but not so as to impose any criminal liability on the Crown.

## Part 2—Objects of Act

### 8—Objects

- (1) The objects of this Act are—
  - (a) to protect and conserve marine biological diversity and marine habitats by declaring and providing for the management of a comprehensive, adequate and representative system of marine parks; and
  - (b) to assist in—
    - (i) the maintenance of ecological processes in the marine environment; and
    - (ii) the adaptation to the impacts of climate change in the marine environment; and
    - (iii) protecting and conserving features of natural or cultural heritage significance; and
    - (iv) allowing ecologically sustainable development and use of marine environments; and
    - (v) providing opportunities for public appreciation, education, understanding and enjoyment of marine environments.
- (2) For the purposes of this Act, ecologically sustainable development comprises the use, protection, conservation, development and enhancement of the marine environment in a way, and at a rate, that will enable people and communities to provide for their economic, social and physical well-being and for their health and safety while—
  - (a) sustaining the potential of the marine environment to meet the reasonably foreseeable needs of future generations; and
  - (b) safeguarding the life-supporting capacities and processes of the marine environment; and
  - (c) avoiding, remedying or mitigating any adverse effects of activities on the marine environment.
- (3) The following principles should be taken into account in connection with achieving ecologically sustainable development for the purposes of this Act:
  - (a) decision-making processes should effectively integrate both long term and short term economic, environmental, social and equity considerations;
  - (b) if there are threats of serious or irreversible harm to the marine environment, lack of full scientific certainty should not be used as a reason for postponing measures to prevent harm;
  - (c) decision-making processes should be guided by the need to evaluate carefully the risks of any situation or proposal that may adversely affect the marine environment and to avoid, wherever practicable, causing any serious or irreversible harm to the marine environment;

- (d) the present generation should ensure that the health, diversity and productivity of the marine environment is maintained or enhanced for the benefit of future generations;
- (e) a fundamental consideration should be the conservation of biological diversity and ecological integrity;
- (f) environmental factors should be taken into account when valuing or assessing assets or services, costs associated with protecting or restoring the marine environment should be allocated or shared equitably and in a manner that encourages the responsible use of the marine environment, and people who obtain benefits from the marine environment, or who adversely affect or consume natural resources, should bear an appropriate share of the costs that flow from their activities;
- (g) if the management of the marine environment requires the taking of remedial action, the first step should, insofar as is reasonably practicable and appropriate, be to encourage those responsible to take such action before resorting to more formal processes and procedures;
- (h) consideration should be given to Aboriginal heritage, and to the interests of the traditional owners of any land or other natural resources;
- (i) consideration should be given to other heritage issues, and to the interests of the community in relation to conserving heritage items and places;
- (j) the involvement of the public in providing information and contributing to processes that improve decision-making should be encouraged;
- (k) the responsibility to achieve ecologically sustainable development should be seen as a shared responsibility between the State government, the local government sector, the private sector, and the community more generally.

## **9—Administration of Act to achieve objects**

The Minister, the ERD Court and other persons or bodies involved in the administration of this Act, and any other person or body required to consider the operation or application of this Act (whether acting under this Act or another Act), must act consistently with, and seek to further, the objects of this Act.

## **Part 3—Marine parks**

### **Division 1—Establishment of marine parks**

#### **10—Establishment of marine parks**

- (1) The Governor may, by proclamation made on the recommendation of the Minister—
  - (a) establish a specified area as a marine park; and
  - (b) assign a name to the marine park so established.
- (2) The Minister must, in formulating a recommendation for the purposes of subsection (1), seek, and have regard to, the advice of the Council.



- (3) The area to be specified by proclamation as a marine park is to consist of a part of the sea that is within the limits of the State or the coastal waters of the State, and may include land or waters held by, or on behalf of, the Crown within or adjacent to the specified part of the sea.
- (4) A proclamation under this section—
  - (a) must define the boundaries of the marine park; and
  - (b) may, on the recommendation of the Minister, contain provisions (*interim protection orders*) that prohibit or restrict activities within the marine park with a view to ensuring that areas in a marine park are not adversely affected prior to the adoption by the Minister of a management plan for the marine park.
- (5) The Minister must take into account the following matters before making a recommendation under subsection (4)(b)—
  - (a) any management arrangements that are already applying in relation to the area; and
  - (b) any development authorisations that have been given under the *Development Act 1993* in relation to the area; and
  - (c) any advice received from the Council,and may take into account such other matters as the Minister thinks fit.
- (6) A person must not contravene an interim protection order contained in a proclamation under this section.  
Maximum penalty: \$100 000 or imprisonment for 2 years.
- (7) The Minister must, after the Governor has established a marine park under this section, in the manner prescribed by the regulations, give public notice of the making of the relevant proclamation and, in so doing—
  - (a) specify a place or places where copies of the proclamation may be inspected or purchased; and
  - (b) invite submissions from interested persons within a period (of at least 6 weeks) specified by the Minister on the boundaries of the marine park.
- (8) The Minister must consider any submissions received under subsection (7)(b) and may, after taking into account any matters or advice determined by the Minister to be relevant in the circumstances, recommend to the Governor that the boundaries of the marine park be altered.
- (9) The Governor may, by subsequent proclamation (whether or not a process under subsection (7) or (8) has been completed)—
  - (a) abolish a marine park established under this section; or
  - (b) on the recommendation of the Minister, alter the boundaries of a marine park established under this section; or
  - (c) alter the name of a marine park established under this section; or
  - (d) on the recommendation of the Minister, vary or revoke an interim protection order contained in a proclamation under this section.

- (10) The Minister must, in formulating a recommendation for the purposes of paragraphs (b) and (d) of subsection (9), seek, and have regard to, the advice of the Council.
- (11) Subject to subsection (13), a proclamation must not be made under subsection (9)(a) or (b), by virtue of which an area ceases to be, or ceases to be included in, a marine park, except in accordance with a resolution passed by both Houses of Parliament.
- (12) Notice of a motion for a resolution under subsection (11) must be given at least 14 sitting days before the motion is passed.
- (13) Subsection (11) does not apply to a proclamation made on the recommendation of the Minister under subsection (8) within 6 months of the publication of a notice under subsection (7).

## **Division 2—Management of marine parks**

### **11—Interpretation**

In this Division—

- (a) a reference to a *draft management plan* includes a reference to a draft amendment to, or a draft revocation of, a management plan previously made under this Part; and
- (b) a reference to a *management plan* includes a reference to an amendment to, or a revocation of, a management plan previously made under this Part; and
- (c) a reference to an *initial management plan* for a marine park means the management plan first declared by the Governor to be an authorised management plan for the marine park after the establishment of the marine park.

### **12—Management of marine parks**

The Minister must manage a marine park in accordance with a management plan for the park.

### **13—General nature and content of management plans**

- (1) A management plan for a marine park—
  - (a) must be consistent with the objects of this Act and set out strategies for achieving those objects in relation to the park; and
  - (b) must establish the various types of zones within the park and define their boundaries; and
  - (c) may identify and define the boundaries of special purpose areas within the park and set out the activities that will be permitted in the areas; and
  - (d) may direct the management of day-to-day issues associated with any aspect of the park, or the use or protection of the park (including scientific monitoring or research); and
  - (e) may provide guidelines with respect to the granting of permits for various activities that might be allowed within the park.

- (2) A management plan must take into account—
- (a) the provisions of a document identified by the Minister, by notice in the Gazette, as the State's general strategic plan; and
  - (b) the provisions of the Planning Strategy and any relevant Development Plan under the *Development Act 1993*; and
  - (c) the provisions of the State NRM Plan and any relevant regional NRM plan under the *Natural Resources Management Act 2004*; and
  - (d) the provisions of any relevant environment protection policy under the *Environment Protection Act 1993*; and
  - (e) the provisions of any indigenous land use agreement; and
  - (f) the provisions of any statutory instrument under a related operational Act (insofar as is relevant to the operation of this Act and reasonably practicable).

#### **14—Procedure for making or amending management plans**

- (1) The Minister must, as soon as practicable after the establishment of a marine park, commence the process for the making of a management plan in relation to the park (with the view of completing the management plan within 3 years of the date of the relevant proclamation).
- (2) The Minister must review a management plan at least once in every 10 years.
- (3) The Minister may propose the amendment of a management plan at any time.
- (4) The Minister must, in relation to a proposal to make or amend a management plan—
  - (a) by notice published in the Gazette, in a newspaper circulating generally within the State and on a website determined by the Minister, give notice of the intention to make or amend a management plan; and
  - (b) publish on a website, determined by the Minister, a statement of the environmental, economic and social values of the area concerned; and
  - (c) prepare a draft of the management plan or amendment and a statement (an ***impact statement***) of the expected environmental, economic and social impacts of the management plan or amendment; and
  - (d) seek the views of—
    - (i) all relevant Ministers; and
    - (ii) the Council; and
    - (iii) a representative of all signatories to any indigenous land use agreement that is in force in relation to any of the area comprising the marine park; and
    - (iv) a representative of any native title holders or claimants that have a native title determination or registered native title claim; and
    - (v) such persons or bodies as the Minister determines to be leading representatives of—
      - (A) the environment and conservation sector; and
      - (B) local government; and

- (C) the commercial fishing industry; and
    - (D) the aquaculture industry; and
    - (E) the recreational fishing sector; and
    - (F) the mining and petroleum industries; and
    - (G) the tourism sector; and
    - (H) the general business sector,
  - in relation to the draft; and
  - (e) publish the draft management plan and impact statement on a website determined by the Minister (so as to be accessible and capable of being printed without a charge imposed by the Minister), and make copies of the plan and impact statement available for inspection (without charge) or purchase at a place or places determined by the Minister; and
  - (f) by notice published in the Gazette, in a newspaper circulating generally within the State and on a website determined by the Minister, give notice of the place or places at which copies of the draft plan and impact statement are available for inspection (without charge) or purchase and specify an address to which interested persons may send written representations in relation to the draft within the period specified in the notice (being not less than 6 weeks from the date of publication of the notice).
- (5) The Minister may, in relation to the preparation of a draft to make or amend a management plan, seek the views of any person as he or she sees fit.
- (6) If the Minister is of the opinion that a draft amendment of a management plan is not substantive in nature—
- (a) the Minister need not prepare a statement of environmental, economic and social values or an impact statement; and
  - (b) the Minister may dispense with the requirements of subsection (4)(f).
- (7) At the end of the period referred to in the notice under subsection (4)(f) and, in any event, before adopting a draft management plan, the Minister—
- (a) must consider any views expressed to the Minister under this section in relation to the draft and any representations made by members of the public in response to the notice; and
  - (b) may make such alterations to the draft as the Minister thinks necessary or desirable.
- (8) On adopting a draft management plan, the Minister may refer the plan to the Governor and the Governor may, by notice in the Gazette—
- (a) declare the draft to be an authorised management plan; and
  - (b) fix a day on which the plan will come into operation.
- (9) The Minister must, within 6 sitting days after the declaration of a management plan for a marine park, cause copies of the plan to be laid before both Houses of Parliament.

- (10) A failure of the Minister to comply with a requirement of this section does not affect the validity of a management plan.
- (11) In this section—  
*relevant Minister* means a Minister responsible for the administration of a related operational Act.

### 15—Parliamentary scrutiny

Sections 10 and 10A of the *Subordinate Legislation Act 1978* apply to an authorised management plan for a marine park (other than an initial management plan) as if it were a regulation within the meaning of that Act.

### 16—Availability and evidence of management plans

- (1) Copies of each management plan and of any other document referred to in a management plan must be kept available for inspection (without charge) by the public during ordinary office hours at a place or places determined by the Minister.
- (2) Each management plan must also be published on a website determined by the Minister.
- (3) In legal proceedings, evidence of the contents of a management plan or of a document referred to in a management plan may be given by production of a document certified by the Minister as a true copy of the plan or other document.
- (4) An apparently genuine document purporting to be a certificate of the Minister will be accepted as such in the absence of proof to the contrary.

## Division 3—Regulation of activities within marine parks

### 17—Zones

- (1) Subject to this Act, a person must not contravene a provision of the regulations prohibiting or restricting activities within a zone of a marine park.  
Maximum penalty: \$100 000 or imprisonment for 2 years.
- (2) If the circumstances of an alleged offence against subsection (1) are constituted by a person undertaking recreational fishing by use of a hand line or rod and line, a prosecution cannot be commenced against the person unless the person had previously been given a warning in the prescribed manner and form by an authorised officer and, in allegedly committing the offence, acted in contravention of that warning.
- (3) For the purposes of subsection (2), a certificate executed by an authorised officer certifying as to the giving of a warning specified in the certificate constitutes proof of the matters so certified in the absence of proof to the contrary.
- (4) Subsection (2) does not apply if it is alleged that the offence was committed in a restricted access zone.
- (5) In this section, *hand line*, *recreational fishing* and *rod and line* have the same respective meanings as in the *Fisheries Management Act 2007*.

## **18—Temporary prohibition or restriction of activities**

- (1) The Minister may, by notice published in the Gazette, in a newspaper circulating generally within the State and on a website determined by the Minister, prohibit or restrict specified activities within a marine park, or a zone or other area of a marine park, for a maximum period of 90 days.
- (2) The Minister may prohibit or restrict specified activities under subsection (1) if, in the Minister's opinion, such a prohibition or restriction is necessary in circumstances of urgency—
  - (a) to protect a species of plant or animal; or
  - (b) to protect a feature of natural or cultural heritage significance; or
  - (c) to protect public safety.
- (3) The Minister may, by notice published in the Gazette, in a newspaper circulating generally within the State and on a website determined by the Minister, amend, extend or revoke a prohibition or restriction under subsection (1).
- (4) The maximum period for which a prohibition or restriction may operate under this section is 180 days.
- (5) A person must not contravene a prohibition or restriction under this section.  
Maximum penalty: \$100 000 or imprisonment for 2 years.

## **Division 4—Permits**

### **19—Permits for activities**

- (1) The Minister may grant a permit to a person to engage in an activity within a marine park, or a zone or other area of a marine park, that would otherwise be prohibited or restricted under Division 3.
- (2) The regulations may limit the activities for which a permit may be granted under this section.
- (3) An applicant for a permit under this section must make the application in a manner and form determined by the Minister.
- (4) The Minister must refuse to grant a permit if the granting of the permit is precluded by the regulations, and may refuse to grant a permit if, in the Minister's opinion, the application should be refused—
  - (a) because the applicant is not a fit and proper person to hold the permit; or
  - (b) because to grant the permit would be prejudicial to the interests of conservation; or
  - (c) for any other sufficient reason, having regard to any applicable guidelines in the management plan for the marine park or the objects of this Act.
- (5) A permit—
  - (a) must specify the purpose or purposes for which it is issued; and
  - (b) is subject to such conditions as the Minister thinks fit; and

- (c) may, if the holder of the permit has, in the opinion of the Minister, contravened this Act, be revoked by the Minister by notice in writing given to the person; and
  - (d) may be revoked by the Minister by instrument in writing given to the holder of the permit if, in the opinion of the Minister, it is in the interests of conservation to do so.
- (6) A condition of a permit may require compliance with a specified code of practice, standard or other document as in force at a specified time or as in force from time to time.
- (7) A permit—
  - (a) comes into operation on the day fixed in the permit for its commencement or if no such day is fixed, on the day on which it is granted; and
  - (b) expires on the day fixed in the permit for its expiry or, if no such day is fixed, on the expiration of 12 months from the day on which it came into operation.
- (8) The conditions of a permit may be varied—
  - (a) if a permit is issued for a period of more than 12 months, on the expiration of 12 months from the day on which it came into operation; or
  - (b) at the discretion of the Minister if—
    - (i) the holder of the permit contravenes this Act; or
    - (ii) in the opinion of the Minister, there is significant risk of harm to a marine park occurring; or
    - (iii) a management plan for a marine park is amended resulting in an alteration of the zones, or the boundaries of the zones, of the marine park; or
  - (c) at any time—
    - (i) with the consent of the applicant; or
    - (ii) as provided for by the regulations or a condition of the permit.
- (9) A permit granted under this section may be transferred only if it is a permit for a prescribed activity or a permit of a prescribed class and the transfer complies with any prescribed conditions.

## **20—Contravention of condition of permit**

If the holder of a permit, or a person acting in the employment or with the authority of the holder of a permit, contravenes a condition of the permit, the holder of the permit is guilty of an offence.

Maximum penalty: \$100 000 or imprisonment for 2 years.

## **Division 5—Affected statutory authorisations**

### **21—Affected statutory authorisations**

- (1) If the rights conferred by a statutory authorisation under another Act are affected by the creation of a zone or the imposition of a temporary prohibition or restriction of activities within a marine park, the Minister must pay fair and reasonable compensation to the holder of the statutory authorisation or, if the Minister considers it appropriate to do so, compulsorily acquire, and pay fair and reasonable compensation for, the statutory authorisation, or any interest (or part of any interest) under a statutory authorisation.
- (2) The regulations may, for the purposes of this section—
  - (a) provide for a scheme for the payment of compensation to the holders of statutory authorisations whose rights are affected by the creation of a zone or the imposition of a temporary prohibition or restriction of activities within a marine park;
  - (b) provide for a scheme of compulsory acquisition and the payment of compensation to persons whose statutory authorisations, or any interests under a statutory authorisation, are compulsorily acquired;
  - (c) prescribe the method of calculation of amounts payable as compensation under this section;
  - (d) provide for a process of objection and appeal in relation to the payment of compensation under this section.
- (3) This section, and regulations made for the purposes of this section, will have effect in relation to a statutory authorisation under another Act, despite the provisions of the other Act.

## **Part 4—Administration**

### **Division 1—Minister**

#### **22—Functions and powers of Minister**

- (1) The Minister has the following functions under this Act:
  - (a) to examine and keep under review the need for areas to be constituted as marine parks;
  - (b) to seek and assess community nominations for marine parks after taking into account the objects of this Act;
  - (c) to prepare and keep under review marine park management plans;
  - (d) to ensure necessary protections are in place through the prohibition or restriction of activities within marine parks under this Act;
  - (e) to issue permits for activities that may be allowed within marine parks under this Act;



- (f) to consult with relevant persons, bodies or authorities, including indigenous peoples with an association with a marine park, about the measures that should be taken to further the objects of this Act;
  - (g) as far as reasonably practicable and appropriate, to act to integrate the administration of this Act with the administration of other legislation that may affect a marine park;
  - (h) to institute, supervise or promote programs to protect, maintain or improve marine parks;
  - (i) to conduct or promote public education in relation to the protection, improvement or enhancement of marine parks;
  - (j) to keep the state of marine parks under review;
  - (k) to enforce the general duty of care;
  - (l) such other functions as are assigned to the Minister by or under this or any other Act.
- (2) The Minister has the power to do anything necessary, expedient or incidental to—
- (a) performing the functions of the Minister under this Act; or
  - (b) administering this Act; or
  - (c) furthering the objects of this Act.
- (3) Without limiting subsection (2), the Minister may, subject to and in accordance with, the *Land Acquisition Act 1969*, acquire land for the purposes of this Act.

## **23—Delegation**

- (1) The Minister may delegate to a person or body (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this Act.
- (2) A delegation under this section—
- (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the Minister to act in any matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

## **Division 2—Functions of Parks and Wilderness Council under this Act**

### **29—Functions of Council**

- (1) The Council has the following functions:
- (a) to provide advice to the Minister on the establishment of marine parks, including—
    - (i) advice on any community nominations for marine parks; and
    - (ii) advice on the areas to be specified as marine parks;

- (b) to provide advice to the Minister in relation to the introduction, variation or revocation of interim protection orders;
  - (c) to provide advice to the Minister in relation to a proposal to alter the boundaries of a marine park;
  - (d) to provide advice to the Minister in relation to a proposal to establish or alter a zone within a marine park;
  - (e) to provide advice to the Minister in relation to the management of marine parks, the formulation and operation of management plans under this Act, and the extent to which the objects of the Act are being achieved through the implementation of management plans under this Act;
  - (f) to provide advice to the Minister on ways to promote community participation in the management of marine parks and the conservation of relevant marine environments;
  - (g) to carry out such other functions as may be assigned to the Council by or under this Act or by the Minister.
- (2) The Council must, in providing advice to the Minister, take into account the objects of this Act.

## **Division 3—Authorised officers**

### **32—Appointment of authorised officers**

- (1) The following persons are authorised officers under this Act:
- (a) fisheries officers under the *Fisheries Management Act 2007*;
  - (b) wardens under the *National Parks and Wildlife Act 1972*;
  - (c) police officers;
  - (d) persons of a class prescribed by regulation or persons appointed by the Minister, being persons who must, in either case, be employed in the public service of the State.
- (2) If the area of a marine park includes land within the area of a council, the Minister may appoint persons, nominated by the council, to be authorised officers under this Act.
- (3) The Minister may, at any time—
- (a) revoke the appointment of an authorised officer appointed by the Minister; or
  - (b) limit the powers of an authorised officer appointed by the Minister.
- (4) The Minister may, by notice in the Gazette, limit the powers of a class of persons constituted as authorised officers.

### **33—Identification of authorised officers**

- (1) A person appointed by the Minister as an authorised officer under this Act must be issued with an identity card—
- (a) containing the person's name and a photograph of the person; and
  - (b) stating that the person is an authorised officer under this Act; and

- (c) stating any limitations on the authorised officer's powers.
- (2) If the powers of an authorised officer appointed by the Minister have been limited, the identity card issued to the authorised officer must contain a statement of those limitations.
- (3) An authorised officer (other than a police officer in uniform) must, at the request of another person in relation to whom the authorised officer intends to exercise powers under this Part, produce for the other person's inspection—
  - (a) if the officer was appointed by the Minister—the identity card issued to the officer under this section; or
  - (b) if the officer is an authorised officer because the person holds an office under another Act—the identity card issued to the officer under that Act.
- (4) If a person in possession of an identity card issued to the person under this section ceases to be an authorised officer, the person must immediately return the identity card to the Minister.

Maximum penalty: \$250.

### **34—Powers of authorised officers**

- (1) An authorised officer may, as may reasonably be required in connection with the administration, operation or enforcement of this Act—
  - (a) enter any place; or
  - (b) inspect any place, works, plant or equipment; or
  - (c) enter and inspect any vessel or vehicle, and for that purpose require a vessel or vehicle to stop, or to be presented for inspection at a place and time specified by the authorised officer; or
  - (d) give directions with respect to the stopping or movement of a vessel, vehicle, plant, equipment or other thing; or
  - (e) require a person apparently in charge of a vessel or vehicle to facilitate entry and inspection of the vessel or vehicle; or
  - (f) seize and retain anything that the authorised officer reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act; or
  - (g) place any buoys, markers or other items or equipment in order to assist in environmental testing or monitoring; or
  - (h) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity; or
  - (i) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration, operation or enforcement of this Act to answer questions in relation to those matters; or

- (j) with the authority of a warrant issued by a magistrate, require a person to produce specified documents or documents of a specified kind, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process; or
  - (k) examine, copy or take extracts from a document or information so produced or require a person to provide a copy of such a document or information; or
  - (l) take photographs, films, audio, video or other recordings; or
  - (m) examine or test a vessel, vehicle, plant, equipment, fitting or other thing, or cause or require it to be so examined or tested, or seize it or require its production for such examination or testing; or
  - (n) require a person holding a statutory authorisation or required to hold a statutory authorisation to produce the statutory authorisation for inspection; or
  - (o) give directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration, operation or enforcement of this Act; or
  - (p) exercise other prescribed powers.
- (2) An authorised officer must not exercise a power conferred by subsection (1) in respect of a place of residence except on the authority of a warrant issued by a magistrate (but such a power may be exercised in respect of a vessel or vehicle).
- (3) An authorised officer, in exercising powers under this section, may be accompanied by such assistants as are reasonably required in the circumstances.
- (4) An authorised officer may, on the authority of a warrant issued by a magistrate, use force to enter a place, vessel or vehicle.
- (5) A magistrate must not issue a warrant under subsection (2) or subsection (4) in relation to a place, vessel or vehicle unless satisfied that there are reasonable grounds to believe—
  - (a) that a contravention of this Act has been, is being, or is about to be, committed in or on the place, vessel or vehicle; or
  - (b) that something may be found in or on the place, vessel or vehicle that has been used in, or constitutes evidence of, a contravention of this Act; or
  - (c) that the circumstances require immediate action.
- (6) An application for the issue of a warrant under this section—
  - (a) may be made either personally or by telephone; and
  - (b) must be made in accordance with any procedures prescribed by the regulations.

### **35—Hindering etc persons engaged in administration of Act**

- (1) A person who—
  - (a) without reasonable excuse hinders or obstructs an authorised officer or other person engaged in the administration of this Act; or
  - (b) fails to answer a question put by an authorised officer to the best of his or her knowledge, information or belief; or

- (c) produces a document or record that he or she knows, or ought to know, is false or misleading in a material particular; or
  - (d) fails without reasonable excuse to comply with a requirement or direction of an authorised officer under this Act; or
  - (e) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
  - (f) falsely represents, by words or conduct, that he or she is an authorised officer,
- is guilty of an offence.

Maximum penalty: \$10 000.

- (2) A person (other than an authorised officer) who, without the permission of the Minister, removes, destroys or interferes with any marker, peg or other item or equipment placed under section 34(1)(g) is guilty of an offence.

Maximum penalty: \$10 000.

### **36—Protection from self-incrimination**

A person is not obliged to answer a question or to produce a document or record as required under this Part if to do so might tend to incriminate the person or make the person liable to a penalty.

## **Part 5—General duty of care**

### **37—General duty of care**

- (1) A person must take all reasonable measures to prevent or minimise harm to a marine park through his or her actions or activities.
- (2) In determining what measures are required to be taken, regard must be had, amongst other things, to—
  - (a) the nature of the harm; and
  - (b) the sensitivity of the environment that may be affected and the potential impact of the harm; and
  - (c) the practicality and financial implications of any alternative action, and the current state of technical and scientific knowledge; and
  - (d) any degrees of risk that may be involved; and
  - (e) the significance of the marine park to the State and to the environment and economy of the State; and
  - (f) the extent to which an act or activity may have a cumulative effect on a marine park; and
  - (g) if a statutory authorisation has been granted in respect of the action or activity, any assessment made in connection with the granting of the authorisation of potential harm to the marine park as a result of the action or activity and the extent to which any such harm was intended to be prevented or minimised through the attachment of conditions to the authorisation.
- (3) A person will be taken not to be in contravention of subsection (1) if the person is acting in circumstances prescribed by the regulations.

- (4) A person who contravenes subsection (1) is not, on account of the contravention alone, guilty of an offence but—
  - (a) compliance with the duty may be enforced by the issuing of a protection order under Part 6; and
  - (b) a reparation order or reparation authorisation may be issued under that Part in respect of the contravention.

## **Part 6—Protection and other orders**

### **Division 1—Orders**

#### **38—Protection orders**

- (1) The Minister may issue a protection order under this Division for the purpose of securing compliance with this Act.
- (2) A protection order—
  - (a) must be in the form of a written notice served on the person to whom the notice is issued; and
  - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
  - (c) must state the grounds on which it is made with reasonable particularity; and
  - (d) may impose any requirement reasonably required for the purpose for which the order is issued including 1 or more of the following:
    - (i) a requirement that the person discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from the Minister;
    - (ii) a requirement that the person not carry on a specified activity except at specified times or subject to specified conditions;
    - (iii) a requirement that the person take specified action in a specified way, and within a specified period; and
  - (e) must state that the person may, within 14 days, appeal to the ERD Court against the order.
- (3) An authorised officer may, if of the opinion that urgent action is required for the protection of a marine park, issue an emergency protection order imposing requirements of a kind referred to in subsection (2)(d) as reasonably required for the protection of the marine park.
- (4) An emergency protection order may be issued orally but, in that event, the person to whom the order is issued must be advised immediately of the person's right to appeal to the ERD Court against the order.
- (5) If an emergency protection order is issued orally, the authorised officer who issued it must confirm it in writing at the earliest opportunity (and in any event within 2 business days) by written notice given to the person to whom it applies.

- (6) If an emergency protection order is issued, the order will cease to have effect on the expiration of 72 hours from the time of its issuing unless confirmed by a written protection order issued by the Minister and served on the relevant person.
- (7) The Minister may, by written notice served on a person to whom a protection order has been issued, vary or revoke the order.
- (8) A person to whom a protection order is issued must comply with the order.  
Maximum penalty: \$10 000.
- (9) A person must not hinder or obstruct a person complying with a protection order.  
Maximum penalty: \$10 000.

### **39—Action on non-compliance with protection order**

- (1) If the requirements of a protection order are not complied with, the Minister may take any action required by the order.
- (2) Action to be taken by the Minister under subsection (1) may be taken on the Minister's behalf by an authorised officer or another person authorised by the Minister for the purpose.
- (3) A person taking action under this section may enter any relevant place, vessel or vehicle at any reasonable time.
- (4) The reasonable costs incurred by the Minister in taking action under this section may be recovered by the Minister as a debt from the person who failed to comply with the requirements of the protection order.
- (5) If an amount is recoverable from a person by the Minister under this section—
  - (a) the Minister may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
  - (b) the amount together with any interest charge so payable is until paid a charge in favour of the Minister on any land owned by the person in relation to which the protection order is registered under Division 2.

### **40—Reparation orders**

- (1) If the Minister is satisfied that a person has caused harm to a marine park by contravention of this Act, the Minister may issue a reparation order requiring the person—
  - (a) to take specified action within a specified period to make good any resulting harm to the marine park; or
  - (b) to make a payment or payments into an approved account for the reasonable costs incurred, or to be incurred, in taking action to make good any resulting harm to the marine park,or both.

- (2) A reparation order—
- (a) must be in the form of a written notice served on the person to whom it is issued; and
  - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
  - (c) must state the grounds on which it is made with reasonable particularity; and
  - (d) may include requirements for action to be taken to prevent or mitigate further harm to the marine park, or for a plan of action to be prepared to the satisfaction of the Minister; and
  - (e) may include requirements for specified tests or monitoring; and
  - (f) may include requirements for furnishing to the Minister specified results or reports; and
  - (g) may include requirements that the person to whom it is issued appoint or engage a person with specified qualifications to prepare a plan or report or to undertake tests or monitoring required by the order; and
  - (h) in the case of an order requiring payment into an approved account, may provide that payments must occur in accordance with a scheme specified by the Minister (either at the time of the making of the order or at a later time when the extent or impact of any action has been assessed or finally determined); and
  - (i) must state that the person may, within 14 days, appeal to the ERD Court against the order.
- (3) An authorised officer may, if of the opinion that urgent action is required to prevent or mitigate further harm, issue an emergency reparation order containing requirements of a kind referred to in subsection (2), other than a requirement for payment into an approved account.
- (4) An emergency reparation order may be issued orally, but, in that event, the person to whom it is issued must be advised immediately of the person's right to appeal to the ERD Court against the order.
- (5) If an emergency reparation order is issued orally, the authorised officer who issued it must confirm it in writing at the earliest opportunity (and in any event within 2 business days) by written notice given to the person to whom it applies.
- (6) If an emergency reparation order is issued, the order will cease to have effect on the expiration of 72 hours from the time of its issuing unless confirmed by a written reparation order issued by the Minister and served on the relevant person.
- (7) The Minister or an authorised officer may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in an emergency or other reparation order a requirement for an act or omission that might otherwise constitute a contravention of this Act and, in that event, a person incurs no criminal liability under this Act for compliance with the requirement.
- (8) The Minister may, by written notice served on a person to whom a reparation order has been issued, vary or revoke the order.



- (9) A person to whom a reparation order is issued must comply with the order.  
Maximum penalty: \$10 000.

#### **41—Action on non-compliance with a reparation order**

- (1) If the requirements of a reparation order are not complied with, the Minister may take any action required by the order.
- (2) Action taken by the Minister under subsection (1) may be taken on the Minister's behalf by an authorised officer or another person authorised by the Minister for the purpose.
- (3) A person taking action under this section may enter any relevant place, vessel or vehicle at any reasonable time.
- (4) The reasonable costs incurred by the Minister in taking action under this section to make good harm to the marine park may be recovered by the Minister as a debt from the person who failed to comply with the requirements of the reparation order.
- (5) If an amount is recoverable from a person by the Minister under this section—
- (a) the Minister may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
  - (b) the amount together with any interest charge so payable is until paid a charge in favour of the Minister on any land owned by the person in relation to which the reparation order is registered under Division 2.

#### **42—Reparation authorisations**

- (1) If the Minister is satisfied that a person has caused harm to a marine park by a contravention of this Act, the Minister may (whether or not a reparation order has been issued to the person) issue a reparation authorisation under which authorised officers or other persons authorised by the Minister for the purpose may take specified action on the Minister's behalf to make good any resulting harm to the marine park.
- (2) A reparation authorisation—
- (a) must be in the form of a written notice; and
  - (b) must specify the person alleged to have caused the harm (whether by name or a description sufficient to identify the person); and
  - (c) must state the grounds on which it is made with reasonable particularity; and
  - (d) may include authorisation for action to be taken to prevent or mitigate further harm to the marine park.
- (3) The Minister must, as soon as practicable after issuing a reparation authorisation, serve a copy of the authorisation on the person alleged to have caused the harm.
- (4) The Minister may, by notice in writing, vary or revoke a reparation authorisation and must, as soon as practicable after doing so, serve a copy of the notice on the person alleged to have caused the harm.

- (5) If a person other than an authorised officer is authorised to take action under subsection (1), the following provisions apply:
  - (a) the Minister must issue the person with an instrument of authority;
  - (b) the person may exercise such powers of an authorised officer as are reasonably required for the purpose of taking action under that subsection;
  - (c) the provisions of this Act apply in relation to the exercise of such powers by the person in the same way as in relation to an authorised officer;
  - (d) the person must produce the instrument of authority for the inspection of any person in relation to whom the person intends to exercise powers of an authorised officer.
- (6) A person taking action under a reparation authorisation may enter any relevant place, vessel or vehicle at any reasonable time.
- (7) The reasonable costs incurred by the Minister in taking action under a reparation authorisation to make good harm to the marine park may be recovered by the Minister as a debt from the person who caused the relevant harm.
- (8) If an amount is recoverable from a person by the Minister under this section—
  - (a) the Minister may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
  - (b) the amount together with any interest charge so payable is until paid a charge in favour of the Minister on any land owned by the person in relation to which the reparation authorisation is registered under Division 2.

### **43—Related matters**

- (1) The Minister should, so far as is reasonably practicable, consult with any public authority that may also have power to act with respect to the particular matter before the Minister issues an order or authorisation under this Division.
- (2) Subsection (1) does not apply—
  - (a) where action is being taken under this Act as a matter of urgency; or
  - (b) in any other circumstance of a prescribed kind.
- (3) A person cannot claim compensation from—
  - (a) the Minister or the Crown; or
  - (b) an authorised officer; or
  - (c) a person acting under the authority of the Minister or an authorised officer,in respect of a requirement imposed under this Division, or on account of an act or omission done or made in the exercise (or purported exercise) of a power under this Division.

## Division 2—Registration of orders and effect of charges

### 44—Registration

- (1) If—
  - (a) the Minister issues an order or authorisation under Division 1; and
  - (b) the order or authorisation is issued in relation to an activity carried out on land, or requires a person to take action on or in relation to land,the Minister may apply to the Registrar-General for the registration of the order or authorisation in relation to that land.
- (2) An application under this section must—
  - (a) define the land to which it relates; and
  - (b) comply with any requirement imposed by the Registrar-General for the purposes of this section.
- (3) The Registrar-General must on—
  - (a) due application under subsection (2); and
  - (b) lodgement of a copy of the relevant order or authorisation,register the order or authorisation in relation to the land by making such entries in any register book, memorial or other book or record in the Lands Titles Registration Office or in the General Registry Office as the Registrar-General thinks fit.
- (4) An order or authorisation registered under this section is binding on each owner and occupier from time to time of the land.
- (5) The Registrar-General must, on application by the Minister, cancel the registration of an order or authorisation in relation to land and make such endorsements to that effect in the appropriate register book, memorial or other book or record in respect of the land as the Registrar-General thinks fit.
- (6) The Minister may, if the Minister thinks fit, apply to the Registrar-General for cancellation of the registration of an order or authorisation under this section in relation to land, and must do so—
  - (a) on revocation of the order or authorisation; or
  - (b) in relation to—
    - (i) an order—
      - (A) on full compliance with the requirements of the order;
      - (B) if the Minister has taken action under Division 1 to carry out the requirements of the order—on payment to the Minister of any amount recoverable by the Minister under that Division in relation to the action so taken; or
    - (ii) an authorisation—on payment to the Minister of any amount recoverable by the Minister under Division 1 in relation to the action taken in pursuance of the authorisation.

## **45—Effect of charge**

A charge imposed on land under Division 1 has priority over—

- (a) any prior charge on the land (whether or not registered) that operates in favour of a person who is an associate of the owner of the land; and
- (b) any other charge on the land other than a charge registered prior to registration under this Division of the relevant order or authorisation in relation to the land.

## **Part 7—Appeals to ERD Court**

### **46—Appeals to ERD Court**

- (1) The following appeals may be made to the ERD Court:
  - (a) a person who is refused a permit may appeal to the Court against the decision of the Minister to refuse the permit;
  - (b) a person who has been granted a permit may appeal to the Court against a decision of the Minister revoking the permit or imposing or varying a condition of the permit;
  - (c) a person to whom a protection order or reparation order has been issued may appeal to the ERD Court against the order or a variation of the order.
- (2) An appeal must be made in a manner and form determined by the Court, setting out the grounds of the appeal.
- (3) Subject to this section, an appeal by a person against a decision referred to in subsection (1)(a) or (b) must be made within 21 days after the person receives notice in writing of the decision.
- (4) Subject to this section, an appeal by a person against an order or a variation of an order referred to in subsection (1)(c) must be made within 21 days after the person receives notice in writing of the order or variation.
- (5) The Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be made within the period fixed by this section.
- (6) Unless otherwise determined by the Court, an appeal must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to that appeal).
- (7) Subject to subsection (8), the institution of an appeal does not affect the operation of the decision or order to which the appeal relates.
- (8) The Court may, on application by a party to an appeal, make an order staying or otherwise affecting the operation or implementation of the whole or a part of a decision or order if the Court is satisfied that it is appropriate to do so having regard to—
  - (a) the possible consequences to the marine park and the interests of any persons who may be affected by the appeal; and

- (b) the need to secure the effectiveness of the hearing and determination of the appeal.
- (9) An order under subsection (8)—
  - (a) may be varied or revoked by the Court by further order; and
  - (b) is subject to such conditions as are specified in the order; and
  - (c) has effect until—
    - (i) the end of the period of operation (if any) specified in the order; or
    - (ii) the decision of the Court on the appeal comes into operation,whichever is the earlier.
- (10) The Court must not make an order under subsection (8) unless each party to the appeal has been given a reasonable opportunity to make submissions in relation to the matter.
- (11) The Court may, on hearing an appeal under this section—
  - (a) confirm, vary or revoke the decision or order appealed against;
  - (b) order or direct a person or body to take such action as the Court thinks fit, or to refrain (either temporarily or permanently) from such action or activity as the Court thinks fit;
  - (c) make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.

## **Part 8—Civil remedies**

### **47—Civil remedies**

- (1) Applications may be made to the ERD Court for 1 or more of the following orders:
  - (a) if a person has engaged, is engaging or is proposing to engage in conduct in contravention of this Act—an order restraining the person from engaging in the conduct and, if the Court considers it appropriate to do so, requiring the person to take specified action;
  - (b) if a person has refused or failed, is refusing or failing or is proposing to refuse or fail to take action required by this Act—an order requiring the person to take that action;
  - (c) if a person has caused harm to a marine park by a contravention of this Act—an order requiring the person to take specified action to make good any resulting harm to the marine park and, if appropriate, to take specified action to prevent or mitigate further harm;
  - (d) if the Minister has incurred costs in taking action to prevent or make good harm to a marine park caused by a contravention of this Act—an order against the person who committed the contravention for payment of the reasonable costs and expenses incurred in taking that action;
  - (e) if the Court considers it appropriate to do so, an order against a person who has contravened this Act for payment (for the credit of the Consolidated Account) of an amount in the nature of exemplary damages determined by the Court;

- (f) if the Court considers it appropriate to do so, an order against a person who has contravened this Act to take specified action to publicise—
    - (i) the contravention of this Act; and
    - (ii) the harm flowing from the contravention; and
    - (iii) the other requirements of the order made against the person.
- (2) The power of the Court to make an order restraining a person from engaging in conduct of a particular kind may be exercised—
  - (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial harm if the first-mentioned person engages in conduct of that kind.
- (3) The power of the Court to make an order requiring a person to take specified action may be exercised—
  - (a) if the Court is satisfied that the person has refused or failed to take that action—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to take that action; or
  - (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will refuse or fail to take that action—whether or not the person has previously refused or failed to take that action and whether or not there is an imminent danger of substantial harm if the first-mentioned person refuses or fails to take that action.
- (4) In assessing an amount to be ordered in the nature of exemplary damages, the Court must have regard to—
  - (a) any harm to a marine park or detriment to the public interest resulting from the contravention; and
  - (b) any financial saving or other benefit that the respondent stood to gain by committing the contravention; and
  - (c) any other matter it considers relevant.
- (5) The power to order payment of an amount in the nature of exemplary damages may only be exercised by a Judge of the Court.
- (6) An application under this section may be made—
  - (a) by the Minister; or
  - (b) by an authorised officer; or
  - (c) by any person whose interests are affected by the subject matter of the application; or
  - (d) by any other person with the leave of the Court.

- (7) Before the Court may grant leave for the purposes of subsection (6)(d), the Court must be satisfied that—
  - (a) the proceedings on the application would not be an abuse of the process of the Court; and
  - (b) there is a real or significant likelihood that the requirements for the making of an order under subsection (1) on the application would be satisfied; and
  - (c) it is in the public interest that the proceedings should be brought.
- (8) An application under this section may be made in a representative capacity (but, if so, the consent of all persons on whose behalf the application is made must be obtained).
- (9) An application may be made without notice to the other party and, if the Court is satisfied on the application that the respondent has a case to answer, it may grant leave to the applicant to serve a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.
- (10) An application under this section must, in the first instance, be referred to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the application).
- (11) If, on an application under this section or before the determination of the proceedings commenced by the application, the Court is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.
- (12) An interim order—
  - (a) may be made on an application made without notice to the other party; and
  - (b) may be made whether or not the proceedings have been referred to a conference; and
  - (c) will be made subject to such conditions as the Court thinks fit; and
  - (d) will not operate after the proceedings in which it is made are finally determined.
- (13) The Court may order an applicant in proceedings under this section—
  - (a) to provide security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed; and
  - (b) to give an undertaking as to the payment of any amount that may be awarded against the applicant under subsection (14).
- (14) If, on an application under this section alleging a contravention of this Act, the Court is satisfied—
  - (a) that the respondent has not contravened this Act; and
  - (b) that the respondent has suffered loss or damage as a result of the actions of the applicant; and
  - (c) that in the circumstances it is appropriate to make an order under this provision,

the Court may, on the application of the respondent (and in addition to any order as to costs), require the applicant to pay to the respondent an amount, determined by the Court, to compensate the respondent for the loss or damage suffered by the respondent.

- (15) The Court may, if it considers it appropriate to do so, either on its own initiative or on the application of a party, vary or revoke an order previously made under this section.
- (16) Proceedings under this section based on a contravention of this Act may be commenced at any time within 3 years after the date of the alleged contravention or, with the authorisation of the Attorney-General, at a later time.
- (17) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorise the commencement of proceedings under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.
- (18) The Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.
- (19) Without limiting the generality of subsection (18), in determining whether to make any order in relation to costs the Court may have regard to the following matters (so far as they are relevant):
  - (a) whether the applicant is pursuing a personal interest only in bringing the proceedings or is furthering a wider group interest or the public interest;
  - (b) whether or not the proceedings raise significant issues relating to the administration of this Act.

## **Part 9—Provisions relating to official insignia**

### **48—Interpretation**

- (1) In this Part—

*official insignia* means—

- (a) a design declared by the Minister to be a logo for the purposes of this Part; or
  - (b) the name of a marine park proclaimed under this Act, whether appearing or used in full or in an abbreviated form; or
  - (c) a combination of a logo under paragraph (a) and a name.
- (2) For the purposes of this Part, goods will be taken to be marked with official insignia if the insignia is affixed or annexed to, marked on, or incorporated in or with—
  - (a) the goods; or
  - (b) any covering or container in which the goods are wholly or partly enclosed; or
  - (c) anything placed in or attached to any such covering or container; or
  - (d) anything that is attached to the goods or around which the goods are wrapped or wound.



#### **49—Declaration of logo**

The Minister may, by notice in the Gazette—

- (a) declare a design to be a logo for the purposes of this Part; or
- (b) vary or revoke a declaration under paragraph (a).

#### **50—Protection of official insignia**

- (1) The Crown has a proprietary interest in all official insignia.
- (2) A person must not, without the consent of the Minister, in the course of a trade or business—
  - (a) sell goods marked with official insignia; or
  - (b) use official insignia for the purpose of promoting the sale of goods or services or the provision of any benefits.

Maximum penalty: \$10 000.

- (3) A person must not, without the consent of the Minister, assume a name or description that consists of, or includes, official insignia.

Maximum penalty: \$10 000.

- (4) A consent under this section—
  - (a) may be given with or without conditions (including conditions requiring payment to the Minister); and
  - (b) may be given generally by notice in the Gazette or by notice in writing addressed to an applicant for the consent; and
  - (c) may be revoked by the Minister for contravention of a condition by notice in writing given personally or by post to a person who has the benefit of the consent.
- (5) The Supreme Court may, on the application of the Minister, grant an injunction to restrain a breach of this section.
- (6) The court by which a person is convicted of an offence against this section may, on the application of the Minister, order the convicted person to pay compensation of an amount fixed by the court to the Minister.
- (7) Subsections (5) and (6) do not derogate from any civil remedy that may be available to the Minister apart from those subsections.

#### **51—Seizure and forfeiture of goods**

- (1) If—
  - (a) goods apparently intended for a commercial purpose are marked with official insignia; and
  - (b) an authorised officer suspects on reasonable grounds that the use of the insignia has not been authorised by the Minister,the authorised officer may seize those goods.

- (2) If goods have been seized under this section and—
- (a) proceedings are not instituted for an offence against section 50(2) in relation to the goods within 3 months of their seizure; or
  - (b) after proceedings have been instituted and completed, the defendant is not convicted,
- the person from whom they were seized is entitled to recover—
- (c) the goods or, if they have been destroyed, compensation equal to the market value of the goods at the time of their seizure; and
  - (d) compensation for any loss suffered by reason of the seizure of the goods.
- (3) An action for the payment of compensation under subsection (2) may be brought against the Minister in any court of competent jurisdiction.
- (4) The court by which a person is convicted of an offence against section 50(2) may order that goods to which the offence relates be forfeited to the Crown.
- (5) Any goods forfeited to the Crown may be sold or disposed of as the Minister thinks fit.

## **Part 10—Miscellaneous**

### **52—Native title**

Any prohibitions or restrictions (including the general duty of care) applying within a marine park under this Act have effect subject to native title and native title rights and interests.

### **54—False or misleading information**

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty:

- (a) if the person made the statement knowing that it was false or misleading—\$20 000 or imprisonment for 2 years;
- (b) in any other case—\$10 000.

### **55—Continuing offence**

- (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—
- (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
  - (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

- (2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

## **56—Offences by bodies corporate**

- (1) If a body corporate commits an offence against this Act, each member of the governing body, and the manager of the body corporate, are guilty of an offence and liable to the same penalty as is prescribed for the principal offence where the offender is a natural person.
- (2) A person may be prosecuted and convicted of an offence under this section whether or not the body corporate has been prosecuted or convicted of the offence committed by the body corporate.

## **57—Additional orders on conviction**

If a person is convicted of an offence against this Act, the court by which the conviction is recorded may, in addition to any penalty that it may impose, make 1 or more of the following orders:

- (a) an order requiring the person to take any specified action (including an order to take action to make good harm to a marine park or to rectify any other consequences of a contravention of this Act, or to ensure that a further contravention does not occur);
- (b) an order that the person pay to the Crown an amount determined by the court to be equal to the costs of taking action to make good harm to a marine park or rectifying any other consequences of a contravention of this Act;
- (c) an order that the person pay to the Crown an amount determined by the court to be equal to a fair assessment or estimate of the financial benefit that the person, or an associate of the person, has gained, or can reasonably be expected to gain, as a result of the commission of an offence against this Act.

## **58—General defence**

It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from a failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

## **59—Criminal jurisdiction of ERD Court**

Offences constituted by this Act lie within the criminal jurisdiction of the ERD Court.

## **60—Confidentiality**

- (1) A person engaged or formerly engaged in the administration of this Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—
  - (a) as required or authorised by or under this Act or any other Act or law; or
  - (b) with the consent of the person to whom the information relates; or
  - (c) in connection with the administration of this Act; or

- (d) to an agency or instrumentality of this State, the Commonwealth or another State or Territory of the Commonwealth for the purposes of the proper performance of its functions.

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
  - (a) the person to whom the information was disclosed; or
  - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

## **61—Service**

- (1) A notice, order or other document required to be given or sent to, or served on, a person for the purposes of this Act may—
  - (a) be given to the person personally; or
  - (b) be posted in an envelope addressed to the person at the person's last known residential or (in the case of a corporation) registered address; or
  - (c) be left for the person at the person's last known residential or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or
  - (d) be transmitted by fax or email to a fax number or email address (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) Without limiting the effect of subsection (1), a notice, order or other document required to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

## **62—Evidentiary provisions**

- (1) In any proceedings, a certificate executed by the Minister certifying as to a matter relating to—
  - (a) a permit or whether a person held a permit; or
  - (b) the appointment or non-appointment of a person as an authorised officer; or
  - (c) a delegation or authority under this Act; or
  - (d) a notice, order or authorisation of the Minister under this Act; or
  - (e) any other decision of the Minister,constitutes proof of the matters so certified in the absence of proof to the contrary.

- (2) An apparently genuine document purporting to be an authorisation, notice, order, certificate or other document, or a copy of an authorisation, notice, order, certificate or other document, issued or executed by the Minister or an authorised officer will be accepted as such in the absence of proof to the contrary.
- (3) In proceedings for an offence against this Act, evidence of a distance, height, depth or position as determined by the use of an electronic, sonic, optical, mechanical or other device by an authorised officer will be accepted as proof of the distance, height, depth or position in the absence of proof to the contrary.
- (4) In proceedings for an offence against this Act, a statement made in evidence by an authorised officer that a place or area described or indicated by him or her was or was not within a specified marine park or zone or other area within a marine park will be accepted as proof of the matter so stated in the absence of proof to the contrary.
- (5) In any proceedings for the recovery of reasonable costs incurred by the Minister under this Act, a certificate executed by the Minister detailing the costs and the purpose for which they were incurred constitutes proof of the matters so certified in the absence of proof to the contrary.

### 63—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (a) exempt classes of persons or activities from the application of this Act or specified provisions of this Act, either unconditionally or subject to specified conditions; or
  - (b) prescribe fees to be paid in respect of any matter under this Act and provide for the payment of fees by instalments and for the recovery or waiver of fees or instalments of fees; or
  - (c) create offences punishable by a fine not exceeding \$5 000; or
  - (d) fix expiation fees for alleged offences against this Act or the regulations (being a fee not exceeding \$750); or
  - (e) make provision facilitating proof of the commission of offences against the regulations.
- (3) Regulations under this Act may—
  - (a) be of general application or limited application; or
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply; or
  - (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister.
- (4) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of the *Statutes Amendment (Boards and Committees—Abolition and Reform) Act 2015*.
- (5) A provision of a regulation made under subsection (4) may, if the regulation so provides, take effect from the commencement of this subsection or from a later day.

- (6) To the extent to which a provision takes effect under subsection (5) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
- (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation amended by principal Act

The *Marine Parks Act 2007* amended the following:

*Aquaculture Act 2001*  
*Coast Protection Act 1972*  
*Development Act 1993*  
*Environment Protection Act 1993*  
*Fisheries Management Act 2007*  
*Harbors and Navigation Act 1993*  
*Historic Shipwrecks Act 1981*  
*Mining Act 1971*  
*Natural Resources Management Act 2004*  
*Offshore Minerals Act 2000*  
*Petroleum and Geothermal Energy Act 2000*  
*Petroleum (Submerged Lands) Act 1982*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2007	60	<i>Marine Parks Act 2007</i>	29.11.2007	22.5.2008 ( <i>Gazette</i> 22.5.2008 p1718) except ss 10—21, 32—63 & Sch 1—6.11.2008 ( <i>Gazette</i> 6.11.2008 p5055)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 89 (ss 207 & 208)—1.2.2010 ( <i>Gazette</i> 28.1.2010 p320)
2010	24	<i>Marine Parks (Parliamentary Scrutiny) Amendment Act 2010</i>	2.12.2010	2.12.2010
2011	11	<i>Statutes Amendment (Personal Property Securities) Act 2011</i>	14.4.2011	Pt 15 (s 46)—16.6.2011 ( <i>Gazette</i> 16.6.2011 p2610)

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<b>2015</b>	<b>8</b>	<i>Statutes Amendment (Boards and Committees—Abolition and Reform) Act 2015</i>	<b>18.6.2015</b>	<b>Pt 22 (ss 118—123)—1.7.2015 (Gazette 25.6.2015 p3076)</b>
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## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	1.2.2010
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.2.2010</i>
<b>s 3</b>		
<b>s 3(1)</b>		
<b>Council</b>	<b>substituted by 8/2015 s 118</b>	<b>1.7.2015</b>
Pt 3		
s 14		
s 14(9)	amended by 24/2010 s 3	2.12.2010
s 15	substituted by 24/2010 s 4	2.12.2010
s 19		
s 19(9)	inserted by 11/2011 s 46	16.6.2011
Pt 4		
<b>Pt 4 Div 2</b>		
<b>heading</b>	<b>amended by 8/2015 s 119</b>	<b>1.7.2015</b>
<i>ss 24—28</i>	<i>deleted by 8/2015 s 120</i>	<i>1.7.2015</i>
<i>s 30</i>	<i>deleted by 8/2015 s 121</i>	<i>1.7.2015</i>
Pt 4 Div 3		
s 31	<i>deleted by 84/2009 s 207</i>	<i>1.2.2010</i>
Pt 10		
s 53	<i>deleted by 84/2009 s 208</i>	<i>1.2.2010</i>
<b>s 63</b>		
<b>s 63(4)—(6)</b>	<b>inserted by 8/2015 s 122</b>	<b>1.7.2015</b>
Sch 1	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.2.2010</i>

## Transitional etc provisions associated with Act or amendments

### *Statutes Amendment (Boards and Committees—Abolition and Reform) Act 2015*

#### **123—Transitional provision**

A member of the Marine Parks Council of South Australia ceases to hold office on the commencement of this section.



## Historical versions

1.2.2010  
2.12.2010  
16.6.2011