



New South Wales

# Marine Estate Management Bill 2014

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill 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.

## Outline of provisions

### Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** states the objects of the proposed Act.

**Clause 4** defines certain words and expressions used in the proposed Act, including a definition of the *principles of ecologically sustainable development* that requires the effective integration of economic, social and environmental considerations in decision-making processes.

**Clause 5** provides that a reference in the proposed Act to “relevant Ministers” is a reference to the Minister for the Environment and the Minister for Primary Industries acting together.

**Clause 6** defines the term *marine estate* for the purposes of the proposed Act.

## **Part 2 Administration**

### **Division 1 Marine Estate Management Authority**

**Clause 7** establishes an advisory committee to be called the Marine Estate Management Authority. 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 the Department of Trade and Investment, Regional Infrastructure and Services, and
- (c) the Chief Executive of the Office of Environment and Heritage, and
- (d) the Secretary of the Department of Planning 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).

**Clause 8** sets out the functions of the Authority, which include the following:

- (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**

**Clause 9** enables the relevant Ministers to establish a Marine Estate Expert Knowledge Panel. The Marine Estate Expert Knowledge Panel may provide advice to the Authority on any matter referred to it by the Authority. A 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. Regulations under the proposed Act 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.

### **Part 3 Marine estate management strategy**

**Clause 10** states the purpose of a marine estate management strategy, being 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 the proposed Act.

**Clause 11** provides that the Authority is to prepare a draft marine estate management strategy and submit the draft strategy to the relevant Ministers for approval.

**Clause 12** sets out the contents of a draft marine estate management strategy. Such a 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.

**Clause 13** deals with consultation on a draft marine estate management strategy.

**Clause 14** provides that the Authority is to submit a copy of the draft marine estate management strategy to the relevant Ministers for approval.

**Clause 15** deals with the approval of the marine estate management strategy. The relevant Ministers may approve a draft marine estate management strategy:

- (a) without alteration, or
- (b) with such alteration as the relevant Ministers think fit.

**Clause 16** deals with the publication of a marine estate management strategy.

**Clause 17** deals with the amendment, replacement or revocation of a marine estate management strategy.

**Clause 18** provides for the periodic review of the marine estate management strategy. The relevant Ministers may cause a review of the marine estate management strategy 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.

A review under the proposed section is to be carried out by an independent person, body or panel appointed by the relevant Ministers. The relevant Ministers may set the terms of reference for such reviews. The person, body or panel conducting the review is to prepare a report on the review and submit it to the Authority. The Authority is to consider that report and submit it, and any advice the Authority has regarding the review, to the relevant Ministers.

**Clause 19** deals with the implementation of the marine estate management strategy. The relevant Ministers are to have regard to the marine estate management strategy in the exercise of the relevant Ministers' functions under the proposed Act. 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.

### **Part 4 Threat and risk assessment**

**Clause 20** provides that the Authority must ensure that an assessment of threats and risks to the marine estate is periodically carried out. 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.

A threat and risk assessment under the proposed section is to be commenced:

- (a) as soon as possible after:
  - (i) in the case of the first assessment—the commencement of the proposed 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.

Clause 21 provides that the Authority must prepare a report summarising each threat and risk assessment. The threat and risk assessment report is to be provided to the relevant Ministers. 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 under the proposed Act.

## Part 5 Marine parks and aquatic reserves

### Division 1 Marine parks

Clause 22 sets out the purposes of marine parks. 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. 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.

Clause 23 enables the Governor to proclaim as marine parks areas of waters of the sea or subject to tidal influence, areas of water land adjacent to such waters and areas of land within such waters or covered from time to time by such waters.

Clause 24 enables the Governor, by proclamation, to assign a name to, or alter the name of, a marine park.

Clause 25 prevents the declaration of a marine park being revoked except by an Act of Parliament.

Clause 26 enables the area of a marine park to be varied by proclamation. A variation proclamation is disallowable by Parliament.

Clause 27 provides that the declaration of an area as a marine park revokes any declaration of the area as an aquatic reserve under the *Fisheries Management Act 1994*.

Clause 28 provides that land reserved or dedicated for a public purpose (including reserved or dedicated under the *National Parks and Wildlife Act 1974* or any other Act) may be declared as a marine park and may continue to be used for that public purpose so long as the use is not inconsistent with the proposed Act or the regulations under the proposed Act.

Clause 29 provides that the declaration of an area as a marine park does not affect any existing aquaculture permit or aquaculture lease under the *Fisheries Management Act 1994*. However, such leases cannot be renewed unless aquaculture is permitted in the relevant area by the regulations under the proposed Act.

Clause 30 requires the Minister administering the *Crown Lands Act 1989* to consult with the relevant Ministers before approving of any change of use, or the conversion, sale or disposal of lands leased under that Act and situated within a marine park.

**Clause 31** requires a copy of any proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* that relates to land within a marine park to be served on the relevant Ministers.

**Clause 32** provides that if an owner of land whose consent is required 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. (*Diligent inquiry* is defined in clause 79).

## **Division 2 Aquatic reserves**

**Clause 33** sets out the purposes of aquatic reserves. 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. 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.

**Clause 34** enables the relevant Ministers, by notice published in the Gazette, to declare an area (or areas) specified in the notice to be an aquatic reserve.

**Clause 35** provides that the relevant Ministers are required to obtain the appropriate consent before declaring an area to be an aquatic reserve.

**Clause 36** provides that if an owner of land whose consent is required 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. (*Diligent inquiry* is defined in clause 79).

**Clause 37** provides that a declaration of an aquatic reserve in relation to an area is not affected by an existing interest in respect of land in the area or a change of ownership of land in the area.

**Clause 38** enables the relevant Ministers, subject to the proposed section, to revoke or vary the declaration of an aquatic reserve by notice published in the Gazette. Such a revocation or variation is disallowable by Parliament.

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

**Clause 39** enables regulations to be made that make provision for or with respect to the management, protection and conservation of marine parks and aquatic reserves.

**Clause 40** enables other regulations to be made regulating or prohibiting activities within marine parks and aquatic reserves.

**Clause 41** provides that a person is guilty of an offence if the person contravenes a provision of the regulations referred to in this proposed Division or proposed Division 4, being a contravention that is designated by the regulations as a serious offence. The offence carries a maximum penalty of 1,000 penalty units (in the case of a corporation) or 500 penalty units (in any other case).

## **Division 4 Marine park and aquatic reserve management rules**

**Clause 42** enables regulations to be made that make provision for or with respect to the use and management of a marine park or an aquatic reserve by means of management rules set out in the regulations. 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.

**Clause 43** deals with the making of management rules for marine parks and aquatic reserves (including public notice of draft management rules).

**Clause 44** provides for the review of management rules for marine parks and aquatic reserves. 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.

**Clause 45** deals with amending or replacing management rules for marine parks and aquatic reserves.

**Clause 46** provides that 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 Lands Act 1989*, 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**

**Clause 47** provides that 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.

**Clause 48** requires a management plan:

- (a) to state the environmental, economic and social values to be conserved by the marine park or aquatic reserve, and
- (b) to identify threats to those values, and
- (c) to state the management objectives of the marine park or aquatic reserve in relation to those values and threats, and
- (d) to specify actions to achieve those management objectives, based on a consideration of risks, and
- (e) to set out the programs to be implemented for managing the marine park or aquatic reserve, and
- (f) to 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.

**Clause 49** deals with the preparation of management plans for marine parks and aquatic reserves.

**Clause 50** deals with the publication of management plans for marine parks and aquatic reserves.

**Clause 51** deals with the alteration or replacement of management plans for marine parks and aquatic reserves.

**Clause 52** requires the relevant Ministers to periodically review each management plan to determine whether the plan remains appropriate for securing the objects of the proposed Act and the purposes of the marine park or aquatic reserve. A review under the proposed 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.

**Clause 53** requires functions of the relevant Ministers or any authorised officers in relation to a marine park or an aquatic reserve to be exercised in accordance with the management plan for the marine park or aquatic reserve. 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**

**Clause 54** makes it unlawful to prospect or mine for minerals in a marine park or an aquatic reserve. The provision does not apply to or in respect of certain existing licences, permits, authorisations or leases. However, no renewal or extension of such a licence, permit, authorisation or lease may be granted except as expressly authorised by an Act of Parliament.

**Clause 55** places obligations on consent authorities and determining authorities (within the meaning of the *Environmental Planning and Assessment Act 1979*) in relation to proposed development or activities within a marine park or an aquatic reserve.

**Clause 56** places obligations on consent authorities and determining authorities (within the meaning of the *Environmental Planning and Assessment Act 1979*) in relation to proposed development or activities in the locality of a marine park or an aquatic reserve.

## **Division 7      Marine park and aquatic reserve notifications**

**Clause 57** provides that the relevant Ministers may, 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*).

**Clause 58** deals with the publication of marine park and aquatic reserve notifications.

**Clause 59** contains other machinery provisions dealing with marine park and aquatic reserve notifications.

**Clause 60** deals with amendments to and revocations of marine park and aquatic reserve notifications.

**Clause 61** provides that the regulations may make provision for or with respect to giving effect to marine park and aquatic reserve notifications or to any other matter relating to such notifications.

**Clause 62** contains certain offences relating to contraventions of marine park and aquatic reserve notifications.

## **Division 8      Miscellaneous**

**Clause 63** deals with the removal of wrecked vessels and other property from marine parks and aquatic reserves.

**Clause 64** enables the relevant Ministers to recover the administrative costs of preparing and giving notices under proposed section 63.

**Clause 65** provides that any requirement made by or under the proposed Part is in addition to any requirement under any other Act or statutory instrument.

## **Part 6      Enforcement**

**Clause 66** sets out the persons who are *authorised officers* for the purposes of the proposed Act, being:

- (a) a person appointed as an authorised officer, 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.

The provision also deals with the appointment, and revocation of appointment, of authorised officers.

**Clause 67** applies certain provisions of the *Fisheries Management Act 1994* relating to powers of entry, search and seizure for the purposes of enforcing provisions of the proposed Act.

**Clause 68** requires persons to state their name and address or give other information to authorised officers in certain circumstances.

**Clause 69** deals with the liability of vehicle owners for certain parking offences.

**Clause 70** enables penalty notices to be issued for offences under the proposed Act or the regulations under the proposed Act.

**Clause 71** deals with proceedings for an offence against the proposed Act or the regulations under the proposed Act.

**Clause 72** provides for the time in which proceedings for offences under the proposed Act or the regulations under the proposed Act are to be commenced.

**Clause 73** makes directors and other persons concerned in the management of a corporation liable for offences committed by the corporation under the proposed Act or the regulations if the person knowingly authorised or permitted the contravention of the provision of the proposed Act or the regulations.

## **Part 7 Finance**

**Clause 74** establishes a Marine Protected Areas Fund for the purposes of the proposed Act.

## **Part 8 Miscellaneous**

**Clause 75** provides that the proposed Act binds the Crown.

**Clause 76** enables the relevant Ministers to delegate to the Authority or any person a function conferred by or under the proposed Act on the relevant Ministers (other than the power of delegation).

**Clause 77** deals with the service of documents generally.

**Clause 78** deals with the service of documents on native title holders.

**Clause 79** defines the term *diligent inquiry* for the purposes of the proposed Act.

**Clause 80** deals with the resolution of disputes.

**Clause 81** authorises arrangements with the Commonwealth for the purposes of exercising functions under the proposed Act over waters subject to the control of the Commonwealth.

**Clause 82** deals with the liability of 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 for matters or things done or omitted to be done in good faith for the purpose of executing the proposed or any other Act.

**Clause 83** enables regulations to be made for the purposes of the proposed Act.

**Clause 84** requires the relevant Ministers to review the operation of the proposed Act after 5 years from the commencement of the proposed Act.

## **Schedule 1 Constitution and procedure of Authority**

**Schedule 1** contains provisions relating to the constitution and procedure of the Marine Estate Management Authority.

## **Schedule 2 Savings, transitional and other provisions**

**Schedule 2** enables regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act and contains savings, transitional and other provisions consequent on the enactment of the proposed Act.



### **Schedule 3 Repeals**

Schedule 3 repeals the *Marine Parks Act 1997* and provisions of the *Fisheries Management Act 1994* relating to aquatic reserves.

### **Schedule 4 Amendment of other Acts**

Schedule 4 amends the Acts specified in the Schedule.

### **Table of concordance**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions of the proposed Act</b>	<b>Corresponding provisions of Marine Parks Act 1997</b>	<b>Corresponding provisions of Fisheries Management Act 1994</b>
Part 2, Division 1	Part 5	—
Sec 7	Sec 29	—
Sec 8	Sec 30	—
Sec 19	—	Sec 193
Part 5, Division 1	Part 2	—
Sec 23	Sec 6	—
Sec 24	Sec 7	—
Sec 25	Sec 8	—
Sec 26	Sec 9	—
Sec 27	Sec 10	—
Sec 28	Sec 11	—
Sec 29	Sec 12	—
Sec 30	Sec 13	—
Sec 31	Sec 14	—
Sec 32	Sec 14A	—
Part 5, Division 2	—	Part 7, Division 2, Subdivision 1
Sec 34	—	Sec 194
Sec 35	—	Sec 195
Sec 36	—	Sec 195A
Sec 37	—	Sec 195C
Sec 38	—	Sec 196
Part 5, Division 3	Part 3, Division 1	—
Sec 39	Sec 15	—
Sec 40	Sec 17	Sec 197
Sec 41	Sec 17A	—
Part 5, Division 4	Part 3, Division 1A	—
Sec 42	Sec 17B	—
Sec 43	Sec 17C	—

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions of the proposed Act</b>	<b>Corresponding provisions of Marine Parks Act 1997</b>	<b>Corresponding provisions of Fisheries Management Act 1994</b>
Sec 44	Sec 17D	—
Sec 45	Sec 17E	—
Sec 46	Sec 17F	—
Part 5, Division 5	Part 4	Sec 197A
Sec 51	Sec 26	—
Sec 53	Sec 27	—
Part 5, Division 6	Part 3, Division 2	Part 7, Division 2, Subdivision 2
Sec 54	Sec 18	Sec 197B
Sec 55	Sec 19	Sec 197C
Sec 56	Sec 20	Sec 197D
Part 5, Division 7	Part 3, Division 3	Part 7, Division 2, Subdivision 3
Sec 57	Sec 20A	—
Sec 58	Sec 20B	—
Sec 59	Secs 20C and 20E	—
Sec 60	Sec 20D	—
Sec 61	Sec 20F	—
Sec 62	Sec 20G	—
Part 5, Division 8	Part 3, Division 4	—
Sec 63	Sec 20H	—
Sec 65	Sec 22	—
Part 6	Part 7	—
Sec 66	Sec 35A	—
Sec 67	Sec 36	—
Sec 70	Sec 38	—
Sec 71	Sec 39	—
Sec 72	Sec 40	—
Sec 73	Sec 41	—
Part 7	Part 8	—
Sec 74	Sec 42	—
Part 8	Part 9	—
Sec 75	Sec 43	—
Sec 76	Sec 43A	—
Sec 77	Sec 44A	—
Sec 78	Sec 44B	—
Sec 79	Sec 44C	—
Sec 80	Sec 46	—

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions of the proposed Act</b>	<b>Corresponding provisions of Marine Parks Act 1997</b>	<b>Corresponding provisions of Fisheries Management Act 1994</b>
Sec 81	Sec 47	—
Sec 83	Sec 48	—
Sec 84	Sec 49	—