



New South Wales

Marine Parks Bill 1997

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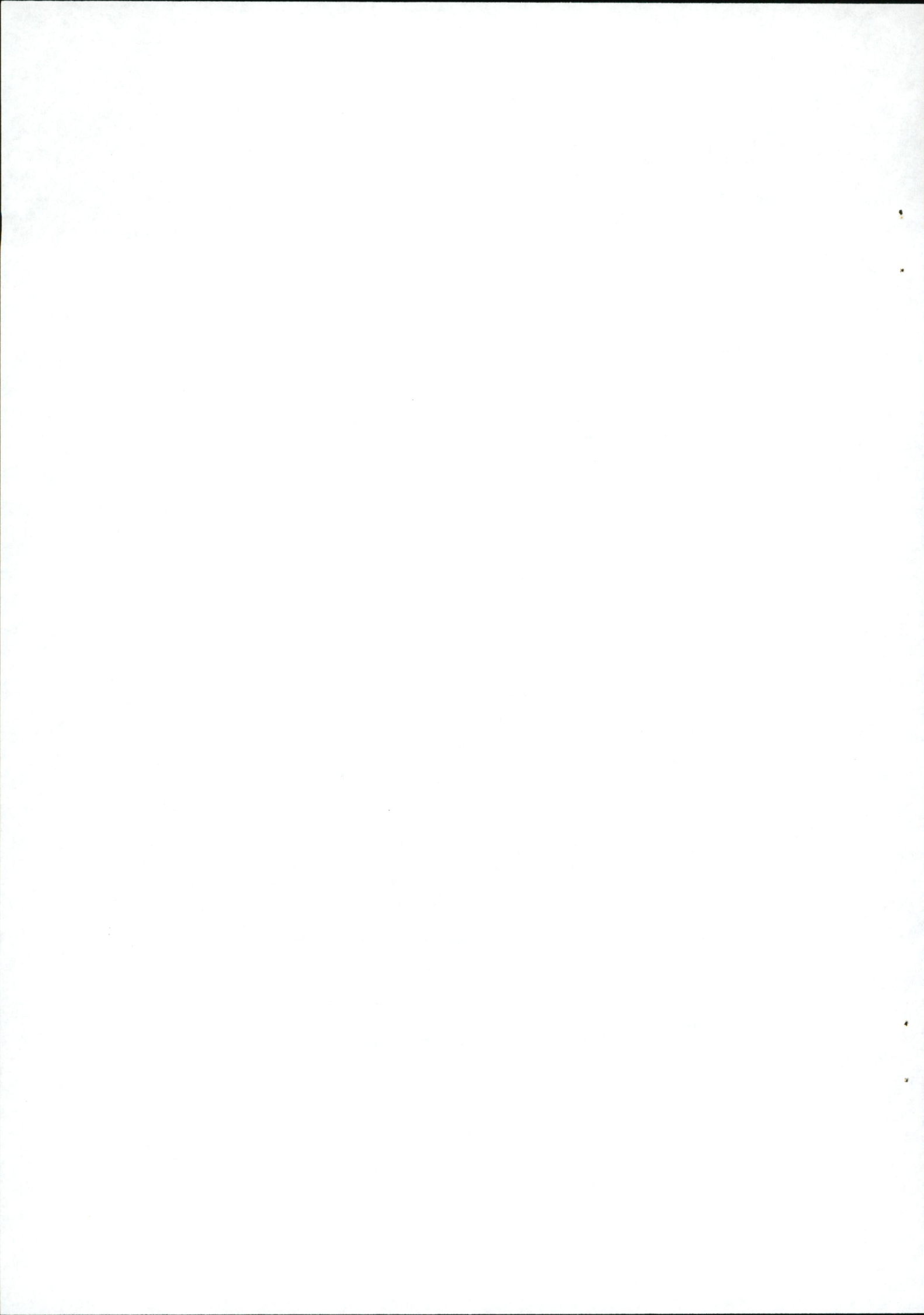
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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Clerk of the Legislative Assembly.
Legislative Assembly*



New South Wales

Marine Parks Bill 1997

Act No , 1997

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

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Marine Parks Act 1997*.

2 Commencement

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

3 Objects of Act

The objects of this Act are as follows:

- (a) to conserve marine biological diversity and marine habitats by declaring and providing for the management of a comprehensive system of marine parks, 10
- (b) to maintain ecological processes in marine parks,
- (c) where consistent with the preceding objects:
 - (i) to provide for ecologically sustainable use of fish (including commercial and recreational fishing) and marine vegetation in marine parks, and 15
 - (ii) to provide opportunities for public appreciation, understanding and enjoyment of marine parks.

4 Definitions

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In this Act:

advisory committee means an advisory committee established under section 35.

Advisory Council means the Marine Parks Advisory Council established under section 32. 25

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

Authority means the Marine Parks Authority constituted by section 29.

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

- (a) genetic diversity—the variety of genes (or units of heredity) in any population, 5
- (b) species diversity—the variety of species,
- (c) ecosystem diversity—the variety of communities of ecosystems.

Crown land means Crown land within the meaning of the *Crown Lands Act 1989*. 10

ecologically sustainable use of a marine park means the taking of plants, animals or materials from the marine park, or some other use of the marine park, in accordance with the principles and programs for ecologically sustainable development set out in section 6 (2) (a)–(d) of the *Protection of the Environment Administration Act 1991*. 15

exercise a function includes perform a duty.

function includes a power, authority or duty.

marine includes estuarine. 20

marine park means a marine park declared under section 6.

marine park ranger means:

- (a) an officer of the National Parks and Wildlife Service referred to in section 6 of the *National Parks and Wildlife Act 1974* who is authorised by the Director-General of National Parks and Wildlife to be a marine park ranger, or 25
- (b) a fisheries officer within the meaning of the *Fisheries Management Act 1994* who is authorised by the Director of NSW Fisheries to be a marine park ranger, or
- (c) a police officer. 30

mineral includes coal, shale or petroleum.

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Part 1 Preliminary

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

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

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5 Reference to relevant Ministers

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

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Part 2 Declaration of marine parks

6 Declaration of marine parks

- (1) The Governor may, by proclamation, declare an area described in the proclamation to be a marine park.
- (2) The area that can be so declared includes: 5
- (a) any area of waters of the sea or subject to tidal influence, or
 - (b) any area of water, or land, adjacent to such waters, or
 - (c) any area of land within such waters, or
 - (d) any area of land from time to time covered by such waters. 10
- (3) A proclamation must not be made under this section:
- (a) in respect of an area of Crown lands without the consent of the Minister administering the *Crown Lands Act 1989* and, in the case of occupied Crown lands, the holder and the occupier, or 15
 - (b) in respect of any other area without the consent of the owner and the occupier of land in the area.
- (4) A declaration under this section in relation to an area is not affected by a change of ownership of land in the area.

7 Name of marine park 20

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

8 Revocation of marine park 25

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

9 Variation of area of marine park

- (1) The Governor may from time to time, by proclamation, vary the area of a marine park. 30

- (2) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to a proclamation under this section in the same way as those sections apply to a statutory rule.

10 Effect of declaration on aquatic reserves 5

- (1) The declaration of an area as a marine park (or part of a marine park) revokes any declaration of the area as an aquatic reserve under the *Fisheries Management Act 1994*.
- (2) An area within a marine park cannot be declared to be an aquatic reserve under the *Fisheries Management Act 1994*. 10

11 Effect of declaration on land reserved or dedicated for public purposes (other than aquatic reserves)

- (1) Land that is reserved or dedicated for a public purpose may be declared to be a marine park under this Act.
- (2) The land may be used for the purpose for which it is reserved or dedicated to the extent that the use is not inconsistent with this Act or the regulations. 15
- (3) Nothing in this Act or the regulations permits the land to be used contrary to the provisions of any Act or statutory instrument applying to the land. 20
- (4) This section extends to land that is reserved or dedicated under the *National Parks and Wildlife Act 1974* or any other Act (other than land declared to be an aquatic reserve under the *Fisheries Management Act 1994*).

12 Effect of declaration on aquaculture 25

- (1) The declaration of an area as a marine park does not affect any aquaculture permit or aquaculture lease under the *Fisheries Management Act 1994* and in force at the time of the declaration.
- (2) However, such a lease applying to any area within a marine park must not be extended or renewed under that Act, unless the regulations provide that aquaculture is permissible in the relevant area. 30

- (3) Subsection (2) does not affect a person's entitlement to have an aquaculture lease renewed for the first time under section 167 (3) of the *Fisheries Management Act 1994*.

13 Dealings in relation to certain land leases within marine park

- (1) This section applies to land within a marine park that is leased under the *Crown Lands Act 1989*. 5
- (2) The Minister administering the *Crown Lands Act 1989* must not, under that Act, approve any change in use of land to which this section applies, or approve the conversion, sale or disposal of such land without consulting the relevant Ministers. 10

14 Compulsory acquisition of land

A copy of a proposed acquisition notice under section 11 of the *Land Acquisition (Just Terms Compensation) Act 1991* relating to land within a marine park must also be served on the Authority by the authority proposing to acquire the land. 15

Part 3 Regulation of activities in marine parks

15 Regulations relating to marine parks generally

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

- 16 Regulations relating to zoning plans for marine parks** 5
- (1) Without affecting the generality of section 15, the regulations may make provision for or with respect to classifying areas within a marine park for different uses (for example, sanctuary areas, habitat areas and general use areas) by means of zoning plans set out in the regulations. 10
 - (2) The relevant Ministers are to cause public notice to be given of proposed regulations under this section containing a zoning plan for a marine park.
 - (3) The notice is:
 - (a) to specify the address of each place at which copies of the proposed regulations may be inspected, and 15
 - (b) to invite submissions to be made on the proposed regulations within the period specified in the notice (being a period of not less than 3 months after the date of the notice), 20
 - (c) to specify the address to which such submissions are to be forwarded.
 - (4) Copies of the proposed regulations must be displayed at such places frequented by the public as the relevant Ministers consider will bring the proposed regulations to the attention of interested persons. 25
 - (5) Before taking any further action with respect to the proposed regulations, the relevant Ministers are to consider:
 - (a) any submissions made within the period specified for that purpose in the notice, and 30
 - (b) any comments from the Authority, the Advisory Council and any relevant advisory committee made within such time as the relevant Ministers allow.

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- (6) Subsections (2)–(5) apply to any proposed regulations that amend a zoning plan for a marine park, unless:
- (a) the relevant Ministers are of the opinion that the amendment is of a minor nature, and
 - (b) the relevant Ministers have consulted with the advisory committee for the marine park about the proposed amendment. 5

17 Other regulations for marine parks

Without affecting the generality of section 15, the regulations may make provision for or with respect to the following matters: 10

- (a) regulating the use and enjoyment of marine parks,
- (b) regulating or prohibiting the carrying out of activities (including commercial activities) within marine parks either generally or in relation to particular marine parks or by reference to different zones within a marine park, 15
- (c) regulating or prohibiting the taking of animals, plants or materials from or into marine parks,
- (d) regulating or prohibiting the entry into a marine park (or part of a marine park) of all persons or any class of persons, 20
- (e) removing from marine parks trespassers, persons causing annoyance or inconvenience or persons committing offences,
- (f) regulating navigation and use of vessels within marine parks, or closing a marine park or part of a marine park to vessels, 25
- (g) regulating where vessels may be moored or anchored within marine parks,
- (h) protecting cultural heritage within marine parks,
- (i) prescribing fees payable in respect of the use of a marine park or the carrying out of any activity within a marine park. 30

18 Mining in marine parks prohibited

- (1) It is unlawful to prospect or mine for minerals in a marine park, except as expressly authorised by an Act of Parliament. 35

- (2) The *Mining Act 1992*, the *Petroleum (Onshore) Act 1991* and the *Petroleum (Submerged Lands) Act 1982* do not apply to or in respect of any area within a marine park.
- (3) This section does not apply to or in respect of any licence, permit, authorisation or lease in force under any of those Acts at the commencement of this section. However, no renewal or extension of such a licence, permit, authorisation or lease may be granted after that commencement except as expressly authorised by an Act of Parliament. 5

19 Development within marine park—application of EPA Act 10

- (1) In determining a development application under Part 4 of the *Environmental Planning and Assessment Act 1979* for the carrying out of development within a marine park, a consent authority must:
- (a) take into consideration the objects of this Act and the permissible uses of the area concerned under the regulations, and 15
- (b) consult with the Authority before finally determining the application.
- (2) A determining authority must not carry out, or grant an approval to carry out, an activity within a marine park in purported compliance with Part 5 of the *Environmental Planning and Assessment Act 1979* unless the determining authority has:
- (a) taken into consideration the objects of this Act and the permissible uses of the area concerned under the regulations, and 25
- (b) consulted with the Authority before finally determining to carry out the activity or to grant the approval. 20

20 Development affecting marine park—application of EPA Act

- (1) In determining a development application under Part 4 of the *Environmental Planning and Assessment Act 1979* for the carrying out of development on land that is in the locality of a 30

marine park, the consent authority must take into consideration the objects of this Act, the permissible uses of the area concerned under the regulations and any advice given to it by the Authority about the impact on the marine park of development in the locality.

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(2) If the consent authority is of the opinion that development proposed in the development application is likely to have an effect on the plants or animals within the marine park and their habitat, the consent authority must consult with the Authority before finally determining the application.

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(3) A determining authority must not carry out, or grant an approval to carry out, an activity on land that is in the locality of a marine park in purported compliance with Part 5 of the *Environmental Planning and Assessment Act 1979* unless:

(a) the determining authority has taken into consideration the objects of this Act, the regulations and any advice given to it by the Authority on the impact on the marine park of the carrying out of an activity in the locality, and

15

(b) if the determining authority is of the opinion that the proposed activity is likely to have an effect on the plants or animals within the marine park or their habitat, the determining authority has consulted with the Authority.

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21 Relationship with Coastal Protection Act 1979

The Minister administering Part 3 of the *Coastal Protection Act 1979* must notify the Authority of the Minister's intention to give any concurrence under that Part to the carrying out of development within any area in a marine park or the use or occupation of any area in a marine park.

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22 Relationship of Part with other legislation

(1) The requirements made by or under this Part are in addition to any requirement in any other Act or statutory instrument.

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(2) In particular, the *Fisheries Management Act 1994* and the *National Parks and Wildlife Act 1974* apply to any relevant area of a marine park.

Part 4 Operational plans

23 Preparation of operational plan for marine park

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

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24 Contents and objectives of operational plan for marine park

An operational plan for a marine park is to contain a scheme of the operations that the Authority proposes to undertake or permit in or in relation to the marine park to attain the objects of this Act.

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25 Adoption of operational plan for marine park

(1) On the preparation of an operational plan for a marine park, the Authority is to refer the plan to the Advisory Council and the advisory committee for the marine park for consideration and advice.

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(2) The Authority is to consider any comments that it receives, within such period as the Authority specifies when referring the plan, from the Advisory Council or any relevant advisory committee, and may amend the operational plan to take account of any such comments.

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(3) The Authority is to submit the operational plan to the relevant Ministers, together with any comments from the Advisory Council and the advisory committee for the marine park that the Authority did not include in the operational plan.

(4) On the submission of the operational plan, the relevant Ministers are to cause public notice to be given of the proposed plan.

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(5) The notice is:

(a) to specify the address of each place at which copies of the proposed plan may be inspected, and

(b) to invite submissions to be made on the proposed plan within the period specified in the notice (being a period of not less than 3 months after the date of the notice), and

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(c) to specify the address to which such submissions are to be forwarded.

-
- (6) The relevant Ministers are to consider:
- (a) any comments made within the period specified for that purpose in the notice referred to in subsection (4), and
 - (b) any comments from the Advisory Council and the advisory committee for the marine park,
- 5
- and may amend the plan to take account of any such comments.
- (7) The relevant Ministers may:
- (a) adopt the operational plan without alteration or with such alterations as the Ministers may think fit, or
 - (b) refer the operational plan back to the Authority for further consideration.
- 10

26 Alteration or revocation of operational plan for marine park

- (1) The relevant Ministers may:
- (a) alter an operational plan for a marine park, or
 - (b) revoke the plan and substitute a new operational plan.
- 15
- (2) If the relevant Ministers propose to alter or to revoke and substitute an operational plan, the Ministers are to instruct the Authority to prepare the alteration or new plan as soon as practicable.
- (3) Except as provided by subsection (4), section 25 applies to the alteration of an operational plan for a marine park in the same way as it applies to the preparation and adoption of a new operational plan for a marine park.
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- (4) If the relevant Ministers are of the opinion that a proposed alteration to an operational plan is minor in nature, the relevant Ministers may direct that section 25 does not apply to the alteration.
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27 Operations under operational plan

- (1) Any functions of the Authority or any marine park rangers in relation to a marine park are required to be exercised in accordance with the operational plan for the marine park.
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Part 4 Operational plans

- (2) However, the exercise of those functions is not invalid because of a contravention of any such plan.

28 Relationship with other plans of management

If an area within a marine park is subject to a plan of management under the *National Parks and Wildlife Act 1974*, the operational plan for the marine park under this Act prevails over the plan of management under that Act to the extent of any inconsistency.

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Part 5 Marine Parks Authority

29 Establishment of Marine Parks Authority

- (1) There is constituted by this Act a body corporate with the corporate name of the Marine Parks Authority.
- (2) The Authority consists of: 5
 - (a) the Director-General of the Premier's Department who is to be the Chairperson of the Authority, and
 - (b) the Director of NSW Fisheries, and
 - (c) the Director-General of National Parks and Wildlife.
- (3) The Authority is, for the purposes of any Act, a statutory body representing the Crown. 10
- (4) Schedule 1 has effect with respect to the procedure of the Authority.

30 Functions of the Authority

- (1) The Authority has such functions as are conferred or imposed on it by or under this or any other Act. 15
- (2) In particular, the Authority has the following functions:
 - (a) to investigate, assess and consider proposals for marine parks or variations of the areas of marine parks,
 - (b) to make recommendations as to the appropriate classification of areas within marine parks, 20
 - (c) to prepare an operational plan in respect of each marine park,
 - (d) to manage and control activities that may affect marine biological diversity, marine habitats and marine ecological processes in marine parks, 25
 - (e) to provide for and regulate the ecologically sustainable use (including commercial and recreational fishing) of marine parks,

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Part 5 Marine Parks Authority

- (f) to disseminate information about marine parks,
- (g) to encourage public appreciation, understanding and enjoyment of marine parks and, where consistent with the other functions of the Authority, public recreation in marine parks,
- (h) to encourage and permit, when appropriate, scientific research into the ecology of marine systems.

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31 Staff of the Authority

The Authority may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of the National Parks and Wildlife Service, NSW Fisheries or any other government department or public or local authority.

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Part 6 Marine Parks Advisory Council and advisory committees

32 Establishment of Marine Parks Advisory Council

- (1) There is established by this Act a Marine Parks Advisory Council. 5
- (2) The Advisory Council consists of the Director of NSW Fisheries, the Director-General of National Parks and Wildlife and the following members appointed by the relevant Ministers:
- (a) one member to represent the Commonwealth Government,
 - (b) two members to represent the interests of marine conservation, at least one being an expert in marine conservation, 10
 - (c) one member with expertise in marine science,
 - (d) one member to represent the interests of Aboriginal people, 15
 - (e) one member to represent the interests of the tourism industry,
 - (f) one member to represent the interests of commercial fishers,
 - (g) one member to represent the interests of recreational fishers, 20
 - (h) one member to represent the interests of scuba divers.
- (3) The relevant Ministers must publicly call for nominations to the positions referred to in subsection (2) (other than subsection (2) (a)). 25

33 Functions of Marine Parks Advisory Council

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

- (2) In particular, the Advisory Council is, on the request of the relevant Ministers or the Authority, to advise on any of the following matters:
- (a) proposals for marine parks and variations of the areas of marine parks, 5
 - (b) the appropriate classification of areas within marine parks,
 - (c) the conservation of marine biological diversity within marine parks,
 - (d) the ecologically sustainable use of marine parks,
 - (e) the public use and enjoyment of marine parks, 10
 - (f) any other matter relating to the operation of this Act and the regulations.
- 34 Provisions relating to members and procedure of Advisory Council**
- Schedule 2 has effect. 15
- 35 Marine parks advisory committees**
- (1) The Authority must establish an advisory committee for each marine park.
 - (2) An advisory committee is to include at least 9 members representing the interests of the National Parks and Wildlife Service, NSW Fisheries, marine conservation, Aboriginal people, the tourism industry, commercial fishers, recreational fishers, scuba divers and local councils. 20
 - (3) The Authority is to nominate a member of an advisory committee to be the chairperson of the advisory committee. 25
 - (4) The principal function of an advisory committee is to advise the Authority on the management of the marine park or marine parks for which it was established.
 - (5) The provisions of Schedule 2 apply to an advisory committee in the same way as they apply to the Advisory Council with any necessary modifications, including modifications prescribed by the regulations. 30

Part 7 Enforcement

36 Application of Fisheries Management Act 1994

- (1) Divisions 1–4 of Part 9 (Enforcement) of the *Fisheries Management Act 1994*:
- (a) apply to and in respect of a marine park ranger in the same way as those provisions apply to and in respect of a fisheries officer, and 5
- (b) apply to and in respect of an offence against this Act or the regulations in the same way as they apply to and in respect of a fisheries offence. 10
- (2) In so applying those provisions:
- (a) a reference to a fisheries officer is to be read as a reference to a marine park ranger, and
- (b) a reference to the Minister is to be read as a reference to the relevant Ministers, and 15
- (c) a reference to a fisheries offence is to be read as a reference to an offence against this Act or the regulations, and
- (d) a reference to the Director includes a reference to the Director-General of National Parks and Wildlife. 20
- (3) The application of Divisions 1–4 of Part 9 of the *Fisheries Management Act 1994* under this section is subject to such other modifications as are prescribed by the regulations.
- (4) An offence against the provisions so applied is an offence against this Act. 25
- (5) This section does not limit the application of the *Fisheries Management Act 1994* to marine parks.

37 Application of National Parks and Wildlife Act 1974

- (1) Sections 157, 158 and 159 of the *National Parks and Wildlife Act 1974* apply to and in respect of an offence against this Act or the regulations in the same way as they apply to and in respect of an offence against that Act or the regulations under that Act. 30

- (2) In so applying those provisions:
- (a) a reference to the Director-General includes a reference to the Director of NSW Fisheries, and
 - (b) a reference to an officer of the Service or a person duly authorised by the Minister is to be read as a reference to a marine park ranger, and 5
 - (c) a reference to an offence against that Act is to be read as a reference to an offence under this Act, and
 - (d) a reference to an offence against the regulations under that Act is to be read as a reference to an offence against the regulations under this Act. 10
- (3) The application of sections 157, 158 and 159 of the *National Parks and Wildlife Act 1974* under this section is subject to such other modifications as are prescribed by the regulations.
- (4) An offence against the provisions so applied is an offence against this Act. 15
- (5) This section does not limit the application of the *National Parks and Wildlife Act 1974* to marine parks.

38 Penalty notices

- (1) A marine park ranger may serve a penalty notice on a person if it appears to the ranger that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations. 20
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section. 25
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence. 30
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence. 35

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- (6) The regulations may:
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty for an offence if dealt with under this section, and 5
 - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty that could be imposed for the offence by a court. 10
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.
- 39 Proceedings for offences** 15
- (1) Proceedings for an offence against this Act or the regulations may be dealt with:
- (a) summarily before a Local Court constituted by a Magistrate sitting alone, or
 - (b) summarily before the Land and Environment Court. 20
- (2) If proceedings are brought in a Local Court, the maximum penalty that the Local Court may impose for the offence is, despite any other provision of this Act or the regulations, \$10,000.
- 40 Time within which proceedings may be commenced** 25
- Despite the *Justices Act 1902* or any other Act, proceedings for an offence against this Act or the regulations may be commenced not later than 2 years after the date alleged to be the date on which the offence was committed.

41 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention. 5
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision. 10
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

Part 8 Finance

42 Marine Parks Fund

- (1) There is to be established in the Special Deposits Account a Marine Parks Fund into which are to be paid:
- (a) all fees and charges under this Act, and 5
 - (b) any money received in connection with the administration of this Act.
- (2) There may be paid out of the Fund all charges, costs and expenses incurred in the administration of this Act, including:
- (a) the costs and expenses incurred by the relevant Ministers, the Director of NSW Fisheries, the Director-General of National Parks and Wildlife and the Authority in the carrying out of functions under this Act, and 10
 - (b) such costs and expenses of the Advisory Council or advisory committees as are approved by the relevant Ministers. 15

Clause 43 Marine Parks Bill 1997

Part 9 Miscellaneous

Part 9 Miscellaneous

43 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities. 5

44 Nominees

- (1) The Director-General of the Premier's Department may nominate an officer of the Premier's Department to act in the Director-General's place at any meeting of the Authority.
- (2) The Director-General of National Parks and Wildlife may nominate an officer of the National Parks and Wildlife Service to act in the Director-General's place at any meeting of the Authority or the Advisory Council. 10
- (3) The Director of NSW Fisheries may nominate an officer of NSW Fisheries to act in the Director's place at any meeting of the Authority or the Advisory Council. 15
- (4) A nominee appointed under this section by the Director-General of the Premier's Department has, while acting in the place of the Director-General at a meeting, the functions of the Director-General, and is taken to be the Director-General, for the purposes of that meeting. 20
- (5) A nominee appointed under this section by the Director-General of National Parks and Wildlife has, while acting in the place of the Director-General at a meeting, the functions of the Director-General, and is taken to be the Director-General, for the purposes of that meeting. 25
- (6) A nominee appointed under this section by the Director of NSW Fisheries has, while acting in the place of the Director at a meeting, the functions of the Director, and is taken to be the Director, for the purposes of that meeting. 30

45 Native title rights and interests

This Act does not affect the operation of the *Native Title Act 1993* of the Commonwealth or the *Native Title (New South Wales) Act 1994* in respect of the recognition of native title rights and interests within the meaning of the Commonwealth Act or in any other respect.

5

46 Resolution of disputes

- (1) Any dispute arising under this Act between the relevant Ministers may be resolved by the Premier.
- (2) Any dispute arising under this Act between two or more public authorities may be resolved by agreement between the Ministers responsible for those public authorities or, if agreement cannot be reached, by the Premier. 10
- (3) A Minister or public authority must comply with any direction arising out of the resolution of a dispute under this section and for that purpose is empowered to do so, despite the provisions of this or any other Act. 15

47 Arrangements with Commonwealth

- (1) The relevant Ministers may enter into arrangements with the Commonwealth or Commonwealth authorities for the exercise of functions under this Act with respect to waters under the control of the Commonwealth. 20
- (2) The exercise of those functions in accordance with those arrangements are authorised by this Act.

48 Regulations

25

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units. 30

Clause 49 Marine Parks Bill 1997

Part 9 Miscellaneous

49 Review of Act

- (1) The relevant Ministers are to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. 5
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years. 10

50 Savings, transitional and other provisions

Schedule 3 has effect.

51 Amendment of other Acts

The Acts specified in Schedule 4 are amended as set out in that Schedule. 15

Schedule 1 Provisions relating to procedure of Authority

(Section 29)

1 Definition

In this Schedule:

5

member means a member of the Authority.

2 General procedure for calling and holding meetings of Authority

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

10

3 Quorum

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

4 Presiding member

(1) The Chairperson of the Authority (or, in the absence of the Chairperson, the member chosen by the members present) is to preside at a meeting of the Authority.

15

(2) The presiding member has a deliberative vote. In the event of an equality of votes, the presiding member (if the Chairperson of the Authority) has a second or casting vote.

20

5 Voting

A decision supported by a majority of the votes cast at a meeting of the Authority at which a quorum is present is the decision of the Authority.

6 Transaction of business outside meetings or by telephone

25

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

30

Marine Parks Bill 1997

Schedule 1 Provisions relating to procedure of Authority

- (2) The Authority may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members. 5
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Authority. 10
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Authority.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned. 15

Schedule 2 Provisions relating to members and procedure of Advisory Council

(Sections 34, 35)

1 Definitions

In this Schedule:

5

appointed member means a member other than the Director of NSW Fisheries or the Director-General of National Parks and Wildlife.

member means a member of the Advisory Council.

2 Terms of office

10

(1) Subject to this Division, an appointed member holds office for the term specified in his or her instrument of appointment (not exceeding 4 years) but is eligible (if otherwise qualified) for re-appointment.

(2) A person may not hold office for a total of more than 8 years.

15

3 Allowances for appointed members

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

4 Vacancy in office of appointed member

20

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

(a) dies, or

(b) completes a term of office and is not re-appointed, or

(c) resigns the office by instrument in writing addressed to the relevant Ministers, or

25

(d) is removed from office by the relevant Ministers under this clause, or

- (e) is absent from 3 consecutive meetings of the Advisory Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the relevant Ministers or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Advisory Council for having been absent from those meetings, or 5
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or 10
- (g) becomes a mentally incapacitated person.
- (2) The relevant Ministers may remove an appointed member from office at any time.
- 5 Filling of vacancy in office of appointed member** 15
- If the office of an appointed member becomes vacant, the relevant Ministers are to appoint a person to fill the office in accordance with this Act.
- 6 Chairperson**
- Meetings of the Advisory Council are to be chaired, alternately, by the Director of NSW Fisheries and the Director-General of National Parks and Wildlife. 20
- 7 General procedure for calling and holding meetings of Advisory Council**
- (1) The procedure for the calling and holding of meetings of the Advisory Council is to be determined by the relevant Ministers. 25
- (2) The Advisory Council is to hold not more than 2 meetings each calendar year, unless otherwise directed by the relevant Ministers.

8 Quorum

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

9 Voting

A recommendation supported by a majority of votes cast at a meeting of the Advisory Council at which a quorum is present is the recommendation of the Advisory Council. 5

10 Disclosure of pecuniary interests

(1) A member of the Advisory Council:

- (a) who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Advisory Council, and 10
- (b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, 15

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest to the chairperson of the Advisory Council.

(2) A disclosure by a member at a meeting of the Advisory Council that the member: 20

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person, 25

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under this clause. 30

Marine Parks Bill 1997

Schedule 2 Provisions relating to members and procedure of Advisory Council

- (3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the chairperson otherwise determines:
- (a) be present during any deliberation of the Advisory Council with respect to the matter, or 5
 - (b) take part in any decision of the Advisory Council with respect to the matter.
- (4) A contravention of this clause does not invalidate any decision of the Advisory Council.

11 Functions of members

10

- (1) The members of the Advisory Council are to ensure that the Advisory Council exercises its functions conferred or imposed by section 33.
- (2) The functions of the members do not include the expenditure of funds on behalf of the Advisory Council or representing the relevant Ministers, unless they are expressly authorised to do so by the relevant Ministers. 15

Schedule 3 Savings, transitional and other provisions

(Section 50)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 5
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date. 10
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 15
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 20

2 Regulations relating to aquatic reserves

- (1) If an aquatic reserve under the *Fisheries Management Act 1994* is revoked by a declaration of a marine park under this Act, the regulations under section 197 of that Act relating to the aquatic reserve continue to have effect as if they were regulations under this Act, subject to the following modifications, and may be repealed by a regulation under this Act: 25
- (a) a reference to the relevant aquatic reserve is taken to be a reference to the marine park,
- (b) a reference to the Director of NSW Fisheries is taken to be a reference to the Authority. 30
- (2) A defence under section 36 or 37 of the *Fisheries Management Act 1994* applies to an offence against the regulations that have effect under subclause (1).

Schedule 4 Amendment of other Acts

(Section 51)

4.1 Forestry Restructuring and Nature Conservation Act 1995 No 50

Section 4 Payments from the Funds for certain programs 5

Insert “or the *Marine Parks Act 1997*” after “1974” in section 4 (1) (b).

4.2 Mining Act 1992 No 29

Section 252 Environmental assessment

Insert after section 252 (6): 10

- (7) In the case of land within a marine park under the *Marine Parks Act 1997*, such a consent may not be given except with the concurrence of the relevant Ministers within the meaning of that Act.

4.3 National Parks and Wildlife Act 1974 No 80

Section 139 Payments out of the Fund

Insert after section 139 (2) (l):

(m1) charges, costs and expenses incurred in the
administration of the *Marine Parks Act 1997*,

5



New South Wales

Marine Parks Act 1997 No 64

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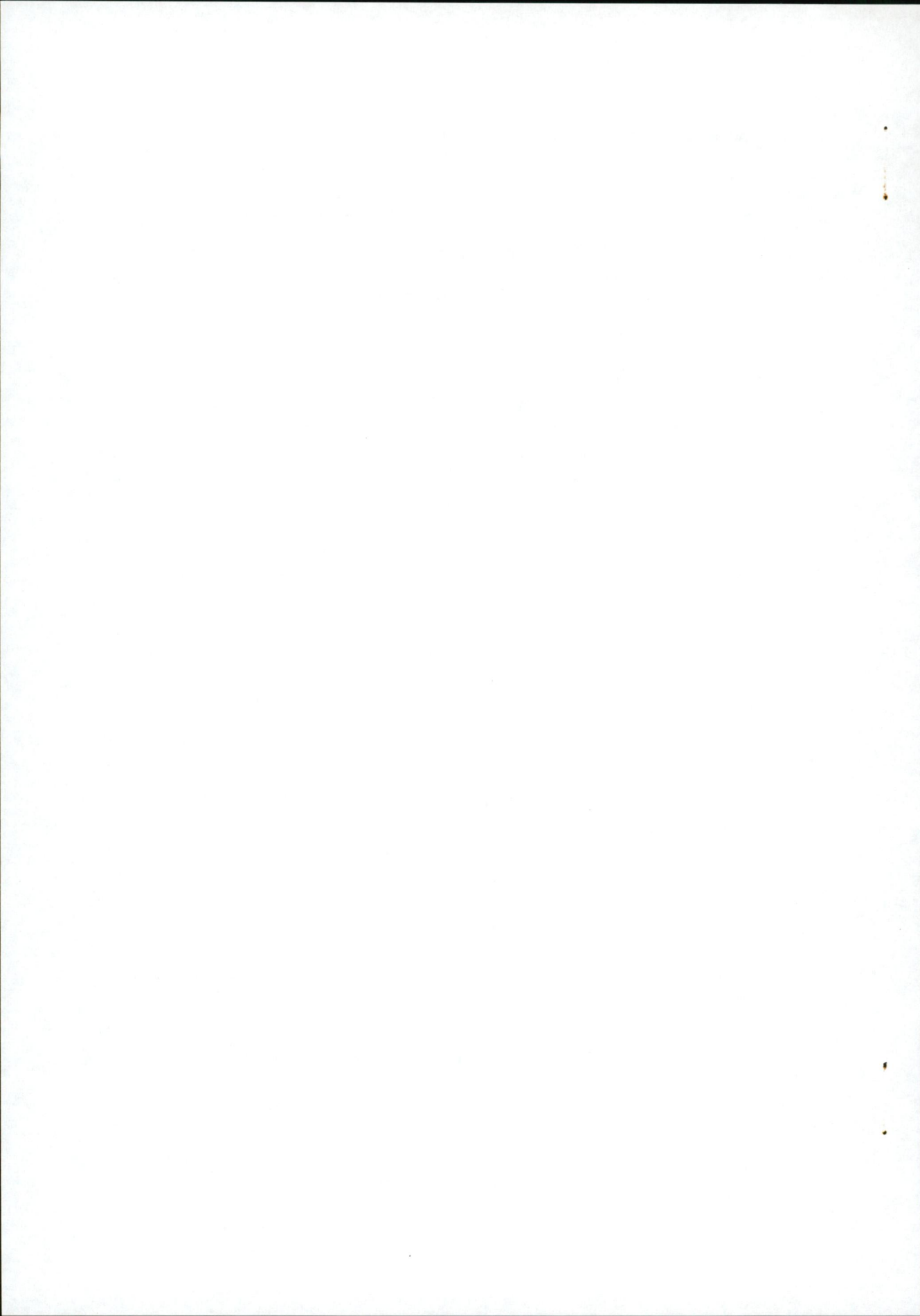
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New South Wales

Marine Parks Act 1997 No 64

Act No 64, 1997

An Act to provide for the declaration of marine parks; and for other purposes. [Assented to 10 July 1997]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Marine Parks Act 1997*.

2 Commencement

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

3 Objects of Act

The objects of this Act are as follows:

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

4 Definitions

In this Act:

advisory committee means an advisory committee established under section 35.

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

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

Authority means the Marine Parks Authority constituted by section 29.

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

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

Crown land means Crown land within the meaning of the *Crown Lands Act 1989*.

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

exercise a function includes perform a duty.

function includes a power, authority or duty.

marine includes estuarine.

marine park means a marine park declared under section 6.

marine park ranger means:

- (a) an officer of the National Parks and Wildlife Service referred to in section 6 of the *National Parks and Wildlife Act 1974* who is authorised by the Director-General of National Parks and Wildlife to be a marine park ranger, or
- (b) a fisheries officer within the meaning of the *Fisheries Management Act 1994* who is authorised by the Director of NSW Fisheries to be a marine park ranger, or
- (c) a police officer.

mineral includes coal, shale or petroleum.

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

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

5 Reference to relevant Ministers

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

Part 2 Declaration of marine parks

6 Declaration of marine parks

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

7 Name of marine park

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

8 Revocation of marine park

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

9 Variation of area of marine park

- (1) The Governor may from time to time, by proclamation, vary the area of a marine park.

- (2) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to a proclamation under this section in the same way as those sections apply to a statutory rule.

10 Effect of declaration on aquatic reserves

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

11 Effect of declaration on land reserved or dedicated for public purposes (other than aquatic reserves)

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

12 Effect of declaration on aquaculture

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

- (3) Subsection (2) does not affect a person's entitlement to have an aquaculture lease renewed for the first time under section 167 (3) of the *Fisheries Management Act 1994*.

13 Dealings in relation to certain land leases within marine park

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

14 Compulsory acquisition of land

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

Part 3 Regulation of activities in marine parks

15 Regulations relating to marine parks generally

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

16 Regulations relating to zoning plans for marine parks

- (1) Without affecting the generality of section 15, the regulations may make provision for or with respect to classifying areas within a marine park for different uses (for example, sanctuary areas, habitat areas and general use areas) by means of zoning plans set out in the regulations.
- (2) The relevant Ministers are to cause public notice to be given of proposed regulations under this section containing a zoning plan for a marine park.
- (3) The notice is:
 - (a) to specify the address of each place at which copies of the proposed regulations may be inspected, and
 - (b) to invite submissions to be made on the proposed regulations within the period specified in the notice (being a period of not less than 3 months after the date of the notice),
 - (c) to specify the address to which such submissions are to be forwarded.
- (4) Copies of the proposed regulations must be displayed at such places frequented by the public as the relevant Ministers consider will bring the proposed regulations to the attention of interested persons.
- (5) Before taking any further action with respect to the proposed regulations, the relevant Ministers are to consider:
 - (a) any submissions made within the period specified for that purpose in the notice, and
 - (b) any comments from the Authority, the Advisory Council and any relevant advisory committee made within such time as the relevant Ministers allow.

- (6) Subsections (2)–(5) apply to any proposed regulations that amend a zoning plan for a marine park, unless:
- (a) the relevant Ministers are of the opinion that the amendment is of a minor nature, and
 - (b) the relevant Ministers have consulted with the advisory committee for the marine park about the proposed amendment.

17 Other regulations for marine parks

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

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

18 Mining in marine parks prohibited

- (1) It is unlawful to prospect or mine for minerals in a marine park, except as expressly authorised by an Act of Parliament.

- (2) The *Mining Act 1992*, the *Petroleum (Onshore) Act 1991* and the *Petroleum (Submerged Lands) Act 1982* do not apply to or in respect of any area within a marine park.
- (3) This section does not apply to or in respect of any licence, permit, authorisation or lease in force under any of those Acts at the commencement of this section. However, no renewal or extension of such a licence, permit, authorisation or lease may be granted after that commencement except as expressly authorised by an Act of Parliament.

19 Development within marine park—application of EPA Act

- (1) In determining a development application under Part 4 of the *Environmental Planning and Assessment Act 1979* for the carrying out of development within a marine park, a consent authority must:
 - (a) take into consideration the objects of this Act and the permissible uses of the area concerned under the regulations, and
 - (b) consult with the Authority before finally determining the application.
- (2) A determining authority must not carry out, or grant an approval to carry out, an activity within a marine park in purported compliance with Part 5 of the *Environmental Planning and Assessment Act 1979* unless the determining authority has:
 - (a) taken into consideration the objects of this Act and the permissible uses of the area concerned under the regulations, and
 - (b) consulted with the Authority before finally determining to carry out the activity or to grant the approval.

20 Development affecting marine park—application of EPA Act

- (1) In determining a development application under Part 4 of the *Environmental Planning and Assessment Act 1979* for the carrying out of development on land that is in the locality of a

marine park, the consent authority must take into consideration the objects of this Act, the permissible uses of the area concerned under the regulations and any advice given to it by the Authority about the impact on the marine park of development in the locality.

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

21 Relationship with Coastal Protection Act 1979

The Minister administering Part 3 of the *Coastal Protection Act 1979* must notify the Authority of the Minister's intention to give any concurrence under that Part to the carrying out of development within any area in a marine park or the use or occupation of any area in a marine park.

22 Relationship of Part with other legislation

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

Part 4 Operational plans

23 Preparation of operational plan for marine park

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

24 Contents and objectives of operational plan for marine park

An operational plan for a marine park is to contain a scheme of the operations that the Authority proposes to undertake or permit in or in relation to the marine park to attain the objects of this Act.

25 Adoption of operational plan for marine park

- (1) On the preparation of an operational plan for a marine park, the Authority is to refer the plan to the Advisory Council and the advisory committee for the marine park for consideration and advice.
- (2) The Authority is to consider any comments that it receives, within such period as the Authority specifies when referring the plan, from the Advisory Council or any relevant advisory committee, and may amend the operational plan to take account of any such comments.
- (3) The Authority is to submit the operational plan to the relevant Ministers, together with any comments from the Advisory Council and the advisory committee for the marine park that the Authority did not include in the operational plan.
- (4) On the submission of the operational plan, the relevant Ministers are to cause public notice to be given of the proposed plan.
- (5) The notice is:
 - (a) to specify the address of each place at which copies of the proposed plan may be inspected, and
 - (b) to invite submissions to be made on the proposed plan within the period specified in the notice (being a period of not less than 3 months after the date of the notice), and
 - (c) to specify the address to which such submissions are to be forwarded.

- (6) The relevant Ministers are to consider:
- (a) any comments made within the period specified for that purpose in the notice referred to in subsection (4), and
 - (b) any comments from the Advisory Council and the advisory committee for the marine park,
- and may amend the plan to take account of any such comments.
- (7) The relevant Ministers may:
- (a) adopt the operational plan without alteration or with such alterations as the Ministers may think fit, or
 - (b) refer the operational plan back to the Authority for further consideration.

26 Alteration or revocation of operational plan for marine park

- (1) The relevant Ministers may:
- (a) alter an operational plan for a marine park, or
 - (b) revoke the plan and substitute a new operational plan.
- (2) If the relevant Ministers propose to alter or to revoke and substitute an operational plan, the Ministers are to instruct the Authority to prepare the alteration or new plan as soon as practicable.
- (3) Except as provided by subsection (4), section 25 applies to the alteration of an operational plan for a marine park in the same way as it applies to the preparation and adoption of a new operational plan for a marine park.
- (4) If the relevant Ministers are of the opinion that a proposed alteration to an operational plan is minor in nature, the relevant Ministers may direct that section 25 does not apply to the alteration.

27 Operations under operational plan

- (1) Any functions of the Authority or any marine park rangers in relation to a marine park are required to be exercised in accordance with the operational plan for the marine park.

- (2) However, the exercise of those functions is not invalid because of a contravention of any such plan.

28 Relationship with other plans of management

If an area within a marine park is subject to a plan of management under the *National Parks and Wildlife Act 1974*, the operational plan for the marine park under this Act prevails over the plan of management under that Act to the extent of any inconsistency.

Part 5 Marine Parks Authority

29 Establishment of Marine Parks Authority

- (1) There is constituted by this Act a body corporate with the corporate name of the Marine Parks Authority.
- (2) The Authority consists of:
 - (a) the Director-General of the Premier's Department who is to be the Chairperson of the Authority, and
 - (b) the Director of NSW Fisheries, and
 - (c) the Director-General of National Parks and Wildlife.
- (3) The Authority is, for the purposes of any Act, a statutory body representing the Crown.
- (4) Schedule 1 has effect with respect to the procedure of the Authority.

30 Functions of the Authority

- (1) The Authority has such functions as are conferred or imposed on it by or under this or any other Act.
- (2) In particular, the Authority has the following functions:
 - (a) to investigate, assess and consider proposals for marine parks or variations of the areas of marine parks,
 - (b) to make recommendations as to the appropriate classification of areas within marine parks,
 - (c) to prepare an operational plan in respect of each marine park,
 - (d) to manage and control activities that may affect marine biological diversity, marine habitats and marine ecological processes in marine parks,
 - (e) to provide for and regulate the ecologically sustainable use (including commercial and recreational fishing) of marine parks,

- (f) to disseminate information about marine parks,
- (g) to encourage public appreciation, understanding and enjoyment of marine parks and, where consistent with the other functions of the Authority, public recreation in marine parks,
- (h) to encourage and permit, when appropriate, scientific research into the ecology of marine systems.

31 Staff of the Authority

The Authority may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of the National Parks and Wildlife Service, NSW Fisheries or any other government department or public or local authority.

Part 6 Marine Parks Advisory Council and advisory committees

32 Establishment of Marine Parks Advisory Council

- (1) There is established by this Act a Marine Parks Advisory Council.
- (2) The Advisory Council consists of the Director of NSW Fisheries, the Director-General of National Parks and Wildlife and the following members appointed by the relevant Ministers:
 - (a) one member to represent the Commonwealth Government,
 - (b) two members to represent the interests of marine conservation, at least one being an expert in marine conservation,
 - (c) one member with expertise in marine science,
 - (d) one member to represent the interests of Aboriginal people,
 - (e) one member to represent the interests of the tourism industry,
 - (f) one member to represent the interests of commercial fishers,
 - (g) one member to represent the interests of recreational fishers,
 - (h) one member to represent the interests of scuba divers.
- (3) The relevant Ministers must publicly call for nominations to the positions referred to in subsection (2) (other than subsection (2) (a)).

33 Functions of Marine Parks Advisory Council

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

- (2) In particular, the Advisory Council is, on the request of the relevant Ministers or the Authority, to advise on any of the following matters:
- (a) proposals for marine parks and variations of the areas of marine parks,
 - (b) the appropriate classification of areas within marine parks,
 - (c) the conservation of marine biological diversity within marine parks,
 - (d) the ecologically sustainable use of marine parks,
 - (e) the public use and enjoyment of marine parks,
 - (f) any other matter relating to the operation of this Act and the regulations.

34 Provisions relating to members and procedure of Advisory Council

Schedule 2 has effect.

35 Marine parks advisory committees

- (1) The Authority must establish an advisory committee for each marine park.
- (2) An advisory committee is to include at least 9 members representing the interests of the National Parks and Wildlife Service, NSW Fisheries, marine conservation, Aboriginal people, the tourism industry, commercial fishers, recreational fishers, scuba divers and local councils.
- (3) The Authority is to nominate a member of an advisory committee to be the chairperson of the advisory committee.
- (4) The principal function of an advisory committee is to advise the Authority on the management of the marine park or marine parks for which it was established.
- (5) The provisions of Schedule 2 apply to an advisory committee in the same way as they apply to the Advisory Council with any necessary modifications, including modifications prescribed by the regulations.

Part 7 Enforcement

36 Application of Fisheries Management Act 1994

- (1) Divisions 1–4 of Part 9 (Enforcement) of the *Fisheries Management Act 1994*:
 - (a) apply to and in respect of a marine park ranger in the same way as those provisions apply to and in respect of a fisheries officer, and
 - (b) apply to and in respect of an offence against this Act or the regulations in the same way as they apply to and in respect of a fisheries offence.
- (2) In so applying those provisions:
 - (a) a reference to a fisheries officer is to be read as a reference to a marine park ranger, and
 - (b) a reference to the Minister is to be read as a reference to the relevant Ministers, and
 - (c) a reference to a fisheries offence is to be read as a reference to an offence against this Act or the regulations, and
 - (d) a reference to the Director includes a reference to the Director-General of National Parks and Wildlife.
- (3) The application of Divisions 1–4 of Part 9 of the *Fisheries Management Act 1994* under this section is subject to such other modifications as are prescribed by the regulations.
- (4) An offence against the provisions so applied is an offence against this Act.
- (5) This section does not limit the application of the *Fisheries Management Act 1994* to marine parks.

37 Application of National Parks and Wildlife Act 1974

- (1) Sections 157, 158 and 159 of the *National Parks and Wildlife Act 1974* apply to and in respect of an offence against this Act or the regulations in the same way as they apply to and in respect of an offence against that Act or the regulations under that Act.

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

38 Penalty notices

- (1) A marine park ranger may serve a penalty notice on a person if it appears to the ranger that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

- (6) The regulations may:
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty for an offence if dealt with under this section, and
 - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

39 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations may be dealt with:
- (a) summarily before a Local Court constituted by a Magistrate sitting alone, or
 - (b) summarily before the Land and Environment Court.
- (2) If proceedings are brought in a Local Court, the maximum penalty that the Local Court may impose for the offence is, despite any other provision of this Act or the regulations, \$10,000.

40 Time within which proceedings may be commenced

Despite the *Justices Act 1902* or any other Act, proceedings for an offence against this Act or the regulations may be commenced not later than 2 years after the date alleged to be the date on which the offence was committed.

41 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

Part 8 Finance

42 Marine Parks Fund

- (1) There is to be established in the Special Deposits Account a Marine Parks Fund into which are to be paid:
 - (a) all fees and charges under this Act, and
 - (b) any money received in connection with the administration of this Act.

- (2) There may be paid out of the Fund all charges, costs and expenses incurred in the administration of this Act, including:
 - (a) the costs and expenses incurred by the relevant Ministers, the Director of NSW Fisheries, the Director-General of National Parks and Wildlife and the Authority in the carrying out of functions under this Act, and
 - (b) such costs and expenses of the Advisory Council or advisory committees as are approved by the relevant Ministers.

Part 9 Miscellaneous

43 Act to bind Crown

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

44 Nominees

- (1) The Director-General of the Premier's Department may nominate an officer of the Premier's Department to act in the Director-General's place at any meeting of the Authority.
- (2) The Director-General of National Parks and Wildlife may nominate an officer of the National Parks and Wildlife Service to act in the Director-General's place at any meeting of the Authority or the Advisory Council.
- (3) The Director of NSW Fisheries may nominate an officer of NSW Fisheries to act in the Director's place at any meeting of the Authority or the Advisory Council.
- (4) A nominee appointed under this section by the Director-General of the Premier's Department has, while acting in the place of the Director-General at a meeting, the functions of the Director-General, and is taken to be the Director-General, for the purposes of that meeting.
- (5) A nominee appointed under this section by the Director-General of National Parks and Wildlife has, while acting in the place of the Director-General at a meeting, the functions of the Director-General, and is taken to be the Director-General, for the purposes of that meeting.
- (6) A nominee appointed under this section by the Director of NSW Fisheries has, while acting in the place of the Director at a meeting, the functions of the Director, and is taken to be the Director, for the purposes of that meeting.

45 Native title rights and interests

This Act does not affect the operation of the *Native Title Act 1993* of the Commonwealth or the *Native Title (New South Wales) Act 1994* in respect of the recognition of native title rights and interests within the meaning of the Commonwealth Act or in any other respect.

46 Resolution of disputes

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

47 Arrangements with Commonwealth

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

48 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units.

49 Review of Act

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

50 Savings, transitional and other provisions

Schedule 3 has effect.

51 Amendment of other Acts

The Acts specified in Schedule 4 are amended as set out in that Schedule.

Schedule 1 Provisions relating to procedure of Authority

(Section 29)

1 Definition

In this Schedule:

member means a member of the Authority.

2 General procedure for calling and holding meetings of Authority

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

3 Quorum

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

4 Presiding member

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

5 Voting

A decision supported by a majority of the votes cast at a meeting of the Authority at which a quorum is present is the decision of the Authority.

6 Transaction of business outside meetings or by telephone

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

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

Schedule 2 Provisions relating to members and procedure of Advisory Council

(Sections 34, 35)

1 Definitions

In this Schedule:

appointed member means a member other than the Director of NSW Fisheries or the Director-General of National Parks and Wildlife.

member means a member of the Advisory Council.

2 Terms of office

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

3 Allowances for appointed members

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

4 Vacancy in office of appointed member

- (1) The office of an appointed member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the relevant Ministers, or
 - (d) is removed from office by the relevant Ministers under this clause, or

- (e) is absent from 3 consecutive meetings of the Advisory Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the relevant Ministers or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Advisory Council for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person.
- (2) The relevant Ministers may remove an appointed member from office at any time.

5 Filling of vacancy in office of appointed member

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

6 Chairperson

Meetings of the Advisory Council are to be chaired, alternately, by the Director of NSW Fisheries and the Director-General of National Parks and Wildlife.

7 General procedure for calling and holding meetings of Advisory Council

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

8 Quorum

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

9 Voting

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

10 Disclosure of pecuniary interests

(1) A member of the Advisory Council:

- (a) who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Advisory Council, and
- (b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest to the chairperson of the Advisory Council.

(2) A disclosure by a member at a meeting of the Advisory Council that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under this clause.

- (3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the chairperson otherwise determines:
 - (a) be present during any deliberation of the Advisory Council with respect to the matter, or
 - (b) take part in any decision of the Advisory Council with respect to the matter.
- (4) A contravention of this clause does not invalidate any decision of the Advisory Council.

11 Functions of members

- (1) The members of the Advisory Council are to ensure that the Advisory Council exercises its functions conferred or imposed by section 33.
- (2) The functions of the members do not include the expenditure of funds on behalf of the Advisory Council or representing the relevant Ministers, unless they are expressly authorised to do so by the relevant Ministers.

Schedule 3 Savings, transitional and other provisions

(Section 50)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

2 Regulations relating to aquatic reserves

- (1) If an aquatic reserve under the *Fisheries Management Act 1994* is revoked by a declaration of a marine park under this Act, the regulations under section 197 of that Act relating to the aquatic reserve continue to have effect as if they were regulations under this Act, subject to the following modifications, and may be repealed by a regulation under this Act:
 - (a) a reference to the relevant aquatic reserve is taken to be a reference to the marine park,
 - (b) a reference to the Director of NSW Fisheries is taken to be a reference to the Authority.
- (2) A defence under section 36 or 37 of the *Fisheries Management Act 1994* applies to an offence against the regulations that have effect under subclause (1).

Schedule 4 Amendment of other Acts

(Section 51)

4.1 Forestry Restructuring and Nature Conservation Act 1995 No 50

Section 4 Payments from the Funds for certain programs

Insert “or the *Marine Parks Act 1997*” after “1974” in section 4 (1)
(b).

4.2 Mining Act 1992 No 29

Section 252 Environmental assessment

Insert after section 252 (6):

- (7) In the case of land within a marine park under the *Marine Parks Act 1997*, such a consent may not be given except with the concurrence of the relevant Ministers within the meaning of that Act.

4.3 National Parks and Wildlife Act 1974 No 80

Section 139 Payments out of the Fund

Insert after section 139 (2) (l):

(m1) charges, costs and expenses incurred in the administration of the *Marine Parks Act 1997*,

[Minister's second reading speech made in—
Legislative Assembly on 28 May 1997
Legislative Council on 25 June 1997]

