

Marine Parks Bill 2007

REPORT

Introduction

South Australia's coastal, estuarine and marine environments are unique and precious resources, containing some of the most biologically diverse waters in the world. The majority of southern Australia's marine plants and animals are not found anywhere else in the world.

These environments are also valuable resources for both State and regional economies, supporting an array of activities from fishing and aquaculture to shipping and mining, while at the same time providing important tourism, recreational and cultural opportunities. Effective management is needed to protect these environments, and the plants and animals that depend on them, from increasing human pressures whilst ensuring opportunities for ecologically sustainable development, use and enjoyment.

To meet this challenge, I am pleased to introduce to this place today the *Marine Parks Bill 2007*. This Bill is a significant milestone in delivering the Government's policy commitments outlined in *The Blueprint for the South Australian Representative System of Marine Protected Areas*, including zoning marine parks for multiple use, encouraging community involvement and developing effective mechanisms to address displaced commercial fishing and aquaculture effort.

Background

This Bill continues the Government's ambitious program to provide for the long-term preservation of South Australia's diverse and significant marine environment. It supports the achievement of Target 3.4 of South Australia's Strategic Plan – "by 2010 create 19 marine parks aimed at maximising ecological outcomes" and fulfils a number of the Government's national and international obligations to the conservation of biodiversity.

Importantly, this new legislation provides a sound framework for the dedication, zoning and management of marine parks:

- with clear objectives for the protection and conservation of biodiversity;
- to ensure marine parks have secure status, which can only be revoked or altered by Parliamentary process;

- to provide for marine parks to be divided into zones that are consistent with the internationally recognised International Union for the Conservation of Nature (IUCN) protected area management categories;
- to provide a multiple-use regime for the management of people and uses; and
- to address any displaced commercial fishing and/or aquaculture effort.

Marine parks are not a panacea to address all marine issues, and this Bill is just one of several tools, as stated in the *Living Coast Strategy*, necessary to effectively manage this environment. In addition this Bill complements existing legislation and other initiatives developed by the Government.

Development and consultation on draft Bill

Development of the Bill has been overseen by representatives of government bodies involved in managing South Australia's coastal waters, including the Department for Environment and Heritage, PIRSA Fisheries, Aquaculture, Planning SA and Minerals and Energy, as well as the Department of Water, Land and Biodiversity Conservation, South Australian Tourism Commission and the Local Government Association. Specialist advice has also been provided by the Marine Advisory Committee chaired by the Mayor of Mount Gambier – Mr Steven Perryman, the Scientific Working Group chaired by Professor Anthony Cheshire and the Stakeholder Reference Group ensuring input from the conservation movement, commercial fishing and aquaculture industries, local government, recreational fishers, indigenous groups and the scientific community. The Government would like to acknowledge the efforts of everyone who has contributed to this process.

Establishing marine parks requires a long-term commitment to public understanding, communication and participation. With this in mind, the Government commissioned independent market research in both metropolitan and regional South Australia to obtain a clear understanding of the broader community's perception of the marine environment. Protecting the marine environment by establishing marine parks is clearly an action the community wants the Government to take. The results of the research indicated that the marine environment is highly valued by residents living in regional coastal locations throughout South Australia, and the vast majority (76%) of respondents believe that it is under threat from human activities, particularly netting, over-fishing, pollution and litter. Overall, there is also strong support for the creation of new marine parks in South Australia, with the overwhelming

majority (88%) of respondents indicating that they were in favour of the creation of marine parks to protect plants and animals.

Given this high level of interest, the Government has engaged extensively with South Australians in this process. Following the release of the draft *Marine Parks Bill 2006* for public comment on 1 September 2006, 16 public meetings were held in 15 locations around metropolitan and regional South Australia, attracting interest from over 670 people and a total of 162 written submissions was received on the draft Bill. The Government acknowledges the time and effort individuals, families and organisations have put into preparing submissions, many of which provided important and detailed feedback on the proposed legislative arrangements for marine parks in South Australia. All submissions, together with all other available information, have been considered in producing this Bill.

Objects

The Bill aims to protect and conserve examples of all marine habitats and the wide diversity of plants and animals that depend on them. This includes marine mammals, hundreds of fish species, thousands of invertebrates, as well as the extensive variety of marine flora. It should be clearly understood from the outset that marine parks are for biodiversity conservation and not fisheries management, a distinct and separate role performed under the *Fisheries Management Act 2007*.

The Bill specifies clear objects to ensure the goals of the Act can be easily understood. The primary objects of the Marine Parks Bill are to protect and conserve marine biological diversity and habitats by declaring and providing for the management of a comprehensive, adequate and representative system of marine parks; and to help maintain the natural functioning of coastal, estuarine and marine ecosystems and their interdependence with one another. Fundamental to this is the ability for marine parks to assist in building resilience and flexibility to adapt to the emerging impacts of climate change.

The Bill also provides for the protection and conservation of natural and cultural heritage; ecologically sustainable development (ESD) and use; and opportunities for public appreciation, education, and understanding of the marine environment when these activities are consistent with the primary object.

The objects emphasise that this is unashamedly conservation legislation, framed within a triple bottom line context to ensure that all marine life, as well as people's lifestyles and livelihoods, are protected for current and future generations.

As mentioned earlier, activities and uses within a marine park will need to be undertaken in an ecologically sustainable manner. The Bill adopts a definition of ecologically sustainable development, designed to ensure consistency with the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and the Intergovernmental Agreement on the Environment and other relevant policies in this area. This definition addresses the issue of maintaining the economic, social and physical well being of our communities and the functioning of our natural and physical resources.

Establishment of marine parks

The Bill provides that the Governor may establish marine parks by proclamation. Locations identified as marine parks will be based on the best scientific understanding, as well as endorsed design principles, to ensure the South Australian Government fulfils its national and international obligations. During consultation on the draft Bill, a wide range of stakeholders indicated a desire to provide input at this initial stage to make marine parks a success. To facilitate this, the Government has included provision for a period of comment on marine park boundaries in the revised Bill.

The Government has also listened to suggestions from stakeholders seeking the simultaneous proclamation of all 19 marine parks to provide certainty to all marine users as to the composition of South Australia's marine park system. This important step will occur soon after the proclamation of the *Marine Parks Act*.

As far as practicable, the proclamation of marine parks will not immediately affect existing activities undertaken in the marine environment. Any necessary restriction of activities will occur through the adoption of management plans (including zoning arrangements), which will be developed through meaningful community engagement and consideration of all relevant issues. However, the Bill does provide the Governor with the ability to proclaim interim protection orders, where necessary, for the orderly and proper management of a proclaimed marine park until a management plan is adopted.

Interim protection orders may be needed to address new or emerging pressures and would be enforced with appropriate penalties to provide the necessary level of protection. Interim protection orders will be considered on a case-by-case basis taking into account a relevant range of environmental, social, cultural and economic variables pertinent to the location. In addition, existing management arrangements under other statutes will continue to be in effect and enforced as necessary. This approach should provide certainty to all existing users of the

marine environment regarding the location of marine parks and access to resources, whilst providing necessary protection for ecosystems, habitats and biodiversity.

To deliver national commitments that marine parks have secure status that may only be revoked by the Parliament, the Bill provides that once a marine park boundary has been established and all related consultation processes completed, the Governor may only abolish or reduce the boundary following a resolution passed by both Houses of Parliament. The Bill will allow a limited degree of flexibility at the beginning of the formal process by providing that the Minister can recommend an alteration to a boundary following the completion of a consultation process after a marine park is proclaimed, provided that this occurs within six months from the date of the original proclamation.

Management plans

South Australia's marine parks will be zoned for multiple-use to protect and conserve marine biodiversity while providing for the ecologically sustainable use of suitable areas. The Government is committed to a transparent marine parks process, based on sound scientific advice and thorough community and stakeholder engagement to ensure, as far as possible, all cultural, social, economic and environmental issues are adequately considered. This approach has been embraced to ensure that South Australia establishes a world-class system of marine parks, while fostering community ownership and minimising impacts on existing marine activities and uses.

The fundamental tool to achieve this is management plans, the statutory instruments that describe all zones and special purpose areas within a marine park. Plans may also set out other actions the Marine Parks Minister proposes to take, such as day-to-day management of natural and cultural heritage, monitoring, signage, or special conservation needs of plants, animals or habitats in the marine park. Management plans will not override international laws of the sea and any activity in emergency situations to preserve life or property will not be affected.

In order to deliver the 19 marine parks by 2010, it will be necessary to develop management plans concurrently, commencing as soon as practicable following the proclamation of the marine park boundaries, with a view to completing them within three years. This process will include further formal opportunities for community and stakeholder input. Firstly, a notice must be issued advising the intention to develop a draft management plan and inviting members of the community to provide any economic, cultural, social or environmental

information that they wish to have considered during its development. A draft management plan will then be prepared for public comment.

When drafting these provisions in the Bill, the Government sought to establish the broadest consultation process possible—enabling all interested South Australians to participate in shaping our marine parks.

The Government has now decided to expand on this undertaking and amended the Bill during debate in the Upper House. Leading representatives of a range of sectors, including conservation, local government, commercial and recreational fishers, aquaculture and tourism, will now also be contacted to provide direct comment and input to draft management plans.

It is important to note that this will occur in addition to the process previously outlined in the Bill and not instead of it. In essence this is broadening the Government's commitment to consultation on marine parks even further.

This amendment complements the amendment moved by the Liberal Party in the Upper House to establish the Marine Parks Council. These amendments will ensure that the Minister receives expertise based advice from the Council and representative based advice through the expanded mandatory consultation requirements.

It is important to note that the expanded mandatory consultation requirements include sectors not represented on the Marine Parks Council—local government, mining and petroleum industries, tourism and the general business sector.

A range of advisory committees and short-term regional consultative committees will also be established to ensure members from relevant industry groups, local governments, NRM Boards, local communities and individuals with an interest in the marine environment are actively engaged during the development of marine parks in their local communities.

In response to public feedback on the draft Bill, the minimum period of public comment on draft management plans has been increased from 28 days to six weeks. This should provide sufficient time for local communities to make meaningful comment on the proposals and for the Government to convene community meetings to discuss the proposals.

One of the other key areas of discussion has been the preparation of impact statements, outlining the environmental, social and economic implications of marine parks.

It has always been the Government's intention to release an environmental, social and economic impact statement to accompany draft management plans to ensure that all members

of the community have complete information regarding the potential implications of a marine park.

Stakeholders have approached the Government and sought a guarantee that impact statements will always be prepared. To provide this certainty, the Government amended the Bill in the Upper House to provide a two stage process. First, a statement of the environmental, economic and social values of an area established as a marine park will be released prior to commencing the development of a draft management plan, coinciding with the issuing of the notice of intent.

The value statement will clearly communicate the biodiversity, habitats and ecosystems selected for inclusion in the marine park and state the known social and economic uses of the area as well. The value statement will be informed by the research of Government officers and by information provided by communities and stakeholders during public consultation on marine park boundaries.

Following the development of a draft management plan, in consultation with local communities and industries, the Government will release a full economic, social and environmental impact statement of the proposed zoning arrangements for the marine parks.

Meaningful information on the likely impacts can not be known until after the development of the draft management plan and zoning arrangements. The type of zones and their location will directly relate to the size and nature of any potential impacts.

Following this process, the Minister may adopt a revised management plan and refer it to the Governor to declare that it is an authorised management plan. A notice will appear in the Gazette advising the date on which the management plan will come into operation. Again, in response to feedback on the draft Bill, a copy of each initial management plan will then be laid before both Houses of Parliament. All management plans must be reviewed at least once every 10 years, although more regular reviews may be required.

To expand the level of accountability for marine parks even further, the Government has also determined that it is appropriate to require any future changes to management plans governing activity in the parks to be referred to the Environment, Resources and Development Committee of Parliament for review. This is to allow Parliamentary scrutiny of subsequent changes after the initial plan has been developed through an extensive public consultation process.

Activities and uses

The essential companion to management plans will be the development of regulations that specify activities and uses that are permitted, prohibited or otherwise regulated within each of the marine park zones. These regulations will apply to all marine parks established in South Australia to ensure consistent management arrangements. This is important from both an educational and enforcement perspective to ensure that the community and all users of the marine environment understand that restrictions within zones in one marine park are the same as those in other marine parks around the State. This will provide a consistent and adaptable approach to managing a broad spectrum of activities and uses within South Australia's marine parks.

The management and enforcement of activities in marine parks that are subject to other legislation (such as aquaculture, fishing, boating) will remain under their respective Acts, however, these activities will also need to comply with the new marine park zoning arrangements.

A proposed framework for activities and uses within each marine park zone was circulated for comment during the public consultation processes for the Encounter Marine Park Draft Zoning Plan and the draft Marine Parks Bill 2006. The regulation of activities within marine parks will not be finalised until after the Marine Parks Act is in place. The Government will continue to liaise with stakeholders and communities to inform the development of these regulations.

Minimising impacts on industries and regional economies

Thorough planning and pragmatic zoning, incorporating community and industry input, should ensure that South Australia's marine parks have the least possible impact on existing users of the marine environment. Some regional stakeholders have expressed concern that the introduction of marine parks will have a detrimental effect on their community. Research into the impacts of marine parks, both interstate and internationally, suggests that while marine parks may change the traditional balance of activities, areas that have adopted multiple-use marine parks—as proposed in South Australia—often realise a greater range of opportunities or improvements in some opportunities for eco-tourism, diving, adventure sports and other such pursuits. As mentioned earlier, impact statements will be prepared to accompany each management plan outlining the likely positive and negative impacts arising from the establishment of the marine park.

Recreational fishing is an important activity in South Australia. It has been estimated that about 320 000 people fish at least once a year in our waters. With South Australia adopting multiple use marine parks, the ability of everyone in the community to have reasonable access to fish for personal use will be maintained.

Aquaculture is an important and growing industry in this State and provides significant benefits to South Australia. The needs of this lucrative industry have also been catered for with commitments to accommodate, as far as possible, existing aquaculture operations. This has resulted in an accord with the Minister for Agriculture, Food and Fisheries on the relationship and likely interactions between proposed marine parks and aquaculture developments in South Australian waters. This will enable DEH and PIRSA to work together to address key priorities from South Australia's Strategic Plan, specifically to treble exports by 2014 (T1.12) and to create 19 marine parks by 2010 (T3.4), such that each is given optimal effect without detriment to the other.

The accord identifies the general areas of the State's waters where:

- there will be little or no interaction between future marine parks and aquaculture development;
- there may be some interaction but where mutually acceptable outcomes can be reached through pragmatic planning processes; and
- further discussion will be required to resolve potential conflicts.

The accord also recognises that there are instances where existing aquaculture leases fall outside of Aquaculture Focus Locations and existing aquaculture zones. We have committed that, as far as practical, marine parks will be zoned in a manner that accommodates existing aquaculture developments, proposed developments that have the appropriate licences / authorisations in place and existing *Aquaculture Management (Zone) Policies*.

The Government acknowledges that there may be situations where unavoidable conflict could occur between the requirements of a marine park and either the commercial fishing or aquaculture industries. In this regard, the Government of South Australia has honoured its commitment to provide for an effective legislative mechanism to address any commercial fishing or aquaculture effort displaced by a marine park.

The Bill provides a head of power for managing displaced effort and these industries have been invited to shape and influence both the process and the formula to manage this sensitive issue.

Further discussions and collaborative work will continue with key industry representatives to develop a fair and equitable process and displacement payment scheme. The fundamental tenets of managing displaced effort are that the Government will:

- work with industry to review zoning to determine if locations can be identified to deliver the desired conservation outcomes without displacing existing operations;
- work with industry to determine if relocation is viable (in certain circumstances); and
- as a last resort option, buy-out any displaced effort (using a market-based approach).

An independent review process, with further appeal rights, is also provided for affected parties dissatisfied with the outcome of the displaced effort mechanisms.

The Bill allows for the recognition of Aboriginal traditional fishing and cultural access for any native title group, which has reached a formal agreement with the Government through an Indigenous Land Use Agreement or native title determination under the Commonwealth *Native Title Act 1993*. The Aboriginal Legal Rights Movement in South Australia, commercial fishing industry groups and local governments have endorsed this approach.

In this regard, a whole of government approach has been adopted to ensure a sound conservation outcome whilst supporting industries that rely on the marine environment for their livelihoods and also providing social and cultural opportunities for South Australian families, individuals and visitors.

Powers of Minister

A range of powers are provided to the responsible Minister for the effective administration of marine parks. They include but are not limited to:

- examining and keeping under review the need for areas to be marine parks;
- developing and implementing management plans;
- ensuring necessary restrictions and prohibitions are in place to protect biodiversity;
- consulting with relevant persons, bodies and authorities;
- promoting public education and programs to protect, maintain or improve marine parks;
- enforcing the general duty of care; and

- as far as reasonably practicable and appropriate, integrating the administration of the Marine Parks Act with other relevant legislation.

During consultation on the draft Bill, the ability for the Minister to establish a process to seek and assess community nominations for areas to be considered as marine parks received a mixed response. Sectors that rely on the marine environment for their livelihoods perceived this function as a threat, while other sectors of the community strongly supported the concept, but sought clarification of the process. The Government's focus is currently on establishing the 19 marine parks to meet commitments within South Australia's Strategic Plan and soliciting community nominations is unlikely to occur until after the 19 marine parks are established. With this in mind, the Bill has been amended to enable a more detailed process for the consideration of community nominations, in accordance with the objects of the Act. In addition, the Marine Parks Council of South Australia will provide independent advice to the Minister on areas nominated by the community to be a marine park following the amendment by Hon M Parnell in the Upper House. Following proclamation of the *Marine Parks Act*, further consultation will occur with stakeholders who both support and have concerns regarding this matter.

Permits

The Bill provides the Minister with the capacity to issue permits for activities that require specific management within a marine park such as competitions, scientific research, commercial photography, filming and sound recording. These provisions are similar to those currently under the *National Parks and Wildlife Act 1972* and should ensure management consistency within South Australia's protected area estate.

In line with Government commitments to minimise red tape, there is no intention of duplicating any authorisation, permit or licence issued under any other Act. There has been speculation that both commercial and recreational fishers will require permits to fish within marine parks. It should be clear that this is not the Government's intention and these activities will continue to be governed by the *Fisheries Management Act 2007*.

Authorised Officers

The Government believes that for marine parks to be effective they should be appropriately managed and resourced – we do not want to create a system of 'paper parks'. Accordingly, the Bill provides for the appointment of authorised officers to inform and educate the community as well as to undertake necessary enforcement and compliance activities. These officers are to

have similar powers to fisheries officers under the *Fisheries Management Act 2007* and wardens under the *National Parks and Wildlife Act 1972* to ensure sufficient operational capacity and flexibility to manage our protected areas and marine resources.

Following discussions with the Local Government Association and various local councils it has become evident that this sector is concerned about the State Government delegating powers to Local Government without expressed agreement.

Marine parks, like their terrestrial counterparts, are a community asset and all funding for their establishment and management will be met by the Government—this is not a cost shifting or cost recovery exercise.

To address Local Government's concerns, the Government amended **clause 23—Appointment of authorised officers**, in the Upper House to make it explicit that these officers must be in the employment of the State. However, some flexibility was incorporated to enable officers of a local council to be appointed as an authorised officer at the request of the council.

General duty of care

The Bill also sets out a general duty of care in relation to marine parks that requires a person to take all reasonable measures to prevent or minimise any harm to a marine park through his or her actions or activities. A person acting in circumstances prescribed by the regulations will be acting in accordance with the general duty of care.

Offences/Civil remedies/Appeals

As with the enforcement of most legislation, there is a range of tools available to ensure compliance. These include education (eg authorised officers advising users who accidentally drift into a restricted area), expiation notices and full prosecution for significant, blatant or repeat breaches of the Act.

The penalties for offences have been set as summary offences, some of which have a maximum penalty of \$100 000 or 2 years imprisonment. It is anticipated that these maximum penalties will deter significant offences, serial offenders and reflect the potential costs of repairing or recompensing damage to the marine environment. The Bill also provides for a number of court orders that may be used in addition to traditional types of penalties. The provisions are intended to provide guidance to the Courts, highlight the importance of protecting our marine environments and promote consistency in sentencing for serious crimes.

In particular, the Court is able to exercise one or more of the following powers that require the person to:

- refrain, either temporarily or permanently, from the act, or course of action, that constitutes the contravention of the Act;
- make good any harm to a marine park, and if appropriate, to take action to prevent or mitigate further harm;
- pay any reasonable costs and expenses incurred by the Minister to prevent or make good any harm to a marine park;
- pay an amount in the nature of exemplary damages; and
- take action to publicise the contravention of the Act and/or the harm flowing from the contravention.

Another feature of the legislation is the introduction of protection and reparation orders, which may be used to ensure compliance with the general duty of care and marine park management plans.

The Bill also enables relevant parties (including the Minister, an authorised officer or any person whose interests are affected) to apply to the Court to commence proceedings for civil action. In addition, any other person may apply with the leave of the Court, however, the Court must be satisfied that such an application would not be an abuse of process and is in the public interest. The expectation of frivolous or antagonistic proceedings that may result from this provision caused some concern to parties that use the marine environment for profit. The Government believes the included provisions provide a good balance between allowing the community the right to protect its natural heritage without allowing unnecessary delays and abuse of Court processes. The provisions present no threat to those properly using the park in an authorised manner, and indeed may be of assistance to protect those with bona fide user rights from illegal competition.

A right of appeal to the Environment, Resources and Development (ERD) Court has been included to provide an independent resolution of assessment of matters including:

- conflicts in enforcing the general duty of care;
- the refusal of a permit;
- the revocation, or varying a condition, of a permit; and

- the issue or variation of protection or reparation orders.

Related amendments

These amendments will require related operational Acts to have regard or seek to further the objects of marine parks when making decisions about their activities that impact on a marine park. The Ministers responsible for the administration of these Acts will be required to undertake appropriate degrees of consultation with the Marine Parks Minister when administering these relevant operations. The Acts proposed for amendment are:

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

Conclusion

This Bill is a product of significant consultation. This legislation provides for marine conservation combined with ecologically sustainable use of marine parks by industry and members of the community both.

It is appropriate to acknowledge the solid foundations built by the last two Ministers, the significant negotiations that have also taken place with the Greens, Family First, Australian Democrats, Liberals, the Conservation Council of SA, The Wilderness Society, the South Australian Fishing Industry Council, the Seafood Council (SA) Ltd and the South Australian

Recreational Fishing Advisory Council Inc. The Government looks forward to continuing bipartisan support in the Parliament during the debate and passage of this Bill.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

Clauses 1 and 2 are formal.

3—Interpretation

This clause defines terms used in the measure. Key terms used are—

- (a) ***coastal waters of the State*** means any part of the sea that is from time to time included in the coastal waters of the State by virtue of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth;
- (b) ***harm*** includes—
 - (i) a risk of harm, and future harm; and
 - (ii) anything declared by regulation to be harm to a marine park; and
 harm need not be permanent but must be more than transient or tenuous in nature;
- (c) ***prohibiting or restricting an activity*** within a marine park, or a zone or other area of a marine park, includes a reference to prohibiting or restricting access (including access by aircraft) to the marine park or zone or area.

4—Meaning of *zone*

Clause 4 provides that a ***zone*** is an area within a marine park that has boundaries defined by the management plan for the marine park and is identified by the management plan as a particular type of zone depending on the degree of protection required within the area. It provides that the regulations will make provision for general managed use zones, habitat protection zones, sanctuary zones and restricted access zones and apply various prohibitions or restrictions to the different types of zones.

5—Meaning of *special purpose area*

Clause 5 provides that a ***special purpose area*** is an area within a marine park in which specified activities, that would otherwise be prohibited or restricted as a consequence of the zoning of the area, will be permitted under the terms of the management plan.

6—Interaction with other Acts

Clause 6 provides that the prohibitions or restrictions applying within a marine park under the measure will, to the extent prescribed by the regulations, have effect despite the provisions of any other Act.

7—Act binds Crown

Clause 7 states that the measure binds the Crown in right of this State and also, so far as the legislative power of the State extends, the Crown in all its other capacities, but not so as to impose any criminal liability on the Crown.

Part 2—Objects of Act

8—Objects

Clause 8 provides that the objects of the measure are—

- to protect and conserve marine biological diversity and marine habitats by declaring and providing for the management of a comprehensive, adequate and representative system of marine parks; and
- to assist in—
 - (i) the maintenance of ecological processes in the marine environment; and
 - (ii) the adaptation to the impacts of climate change in the marine environment; and
 - (iii) protecting and conserving features of natural or cultural heritage significance; and
 - (iv) allowing ecologically sustainable development and use of marine environments; and
 - (v) providing opportunities for public appreciation, education, understanding and enjoyment of marine environments.

9—Administration of Act to achieve objects

Clause 9 provides that the Minister, the ERD Court and other persons or bodies involved in the administration of the measure must act consistently with, and seek to further, the objects of the measure.

Part 3—Marine Parks

Division 1—Establishment of marine parks

10—Establishment of marine parks

Clause 10 outlines the process to be undertaken to establish a marine park. It provides that the Governor establishes an area as a marine park by proclamation, made on the recommendation of the Minister. In formulating a recommendation, the Minister must seek, and have regard to, the advice of the Marine Parks Council. The proclamation must define the boundaries of the marine park and may contain *interim protection orders* that prohibit or restrict activities within the marine park prior to the adoption

by the Minister of a management plan for the marine park. The clause provides a maximum penalty of \$100 000 or imprisonment for 2 years for contravention of an interim protection order.

After the Governor has established a marine park under this clause the Minister must, in the manner prescribed by the regulations, give public notice of the making of the relevant proclamation and, in so doing specify a place or places where copies of the proclamation may be inspected or purchased and invite submissions from interested persons within a period (of at least 6 weeks) specified by the Minister on the boundaries of the marine park.

The Governor may, by subsequent proclamation—

- abolish a marine park; or
- on the recommendation of the Minister, alter the boundaries of a marine park; or
- alter the name of a marine park; or
- on the recommendation of the Minister, vary or revoke an interim protection order.

Division 2—Management of marine parks

11—Interpretation

This clause provides that a reference to a *draft management plan* includes a reference to a draft amendment to, or a draft revocation of, a management plan and a reference to a *management plan* includes a reference to an amendment to, or a revocation of, a management plan. It also provides that a reference to an *initial management plan* means the management plan first declared by the Governor to be an authorised management plan for the marine park after the establishment of the park.

12—Management of marine parks

Clause 12 states that the Minister must manage a marine park in accordance with a management plan for the park.

13—General nature and content of management plans

Clause 13 provides that a management plan for a marine park—

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

14—Procedure for making or amending management plans

Clause 14 outlines the process to be followed for the making of a management plan. Amongst other things, it provides that the Minister must commence the process for the making of a management plan as soon as practicable after the establishment of a marine park.

15—Parliamentary scrutiny

Clause 15 provides that within 28 days of the Governor declaring a management plan to be an authorised management plan, the Minister must refer the plan to the Environment, Resources and Development Committee of the Parliament. The Committee must—

- resolve that it does not object to the plan; or
- resolve to suggest amendments to the plan; or
- resolve to object to the plan.

If the Committee resolve to object to a plan, copies of the plan must be laid before both Houses of Parliament and if either House passes a resolution disallowing a plan, the plan ceases to have effect.

This clause does not apply to an initial management plan for a marine park.

16—Availability and evidence of management plans

Clause 16 provides that copies of each management plan must be available for inspection and must be published on a website.

Division 3—Regulation of activities within marine parks

17—Zones

Clause 17 provides that subject to this measure, a person must not contravene a provision of the regulations prohibiting or restricting activities within a zone of a marine park. It provides a maximum penalty of \$100 000 or imprisonment for 2 years.

Clause 17 further provides that if the circumstances of an alleged offence are constituted by a person undertaking recreational fishing by use of a hand line or rod and line, a prosecution cannot be commenced against the person unless the person had previously been given a warning in the prescribed manner and form by an authorised officer and, in allegedly committing the offence, acted in contravention of that warning.

18—Temporary prohibition or restriction of activities

Clause 18 provides that the Minister may prohibit or restrict specified activities within a marine park, or a zone or other area of a marine park, for a maximum period of 90 days if the Minister considers it necessary in circumstances of urgency—

- to protect a species of plant or animal; or
- to protect a feature of natural or cultural heritage significance; or
- to protect public safety.

A prohibition or restriction under this clause may be amended, extended or revoked but the maximum period for which a prohibition or restriction may operate under this clause is 180 days.

The clause provides that a person must not contravene a prohibition or restriction under this clause and provides a maximum penalty of \$100 000 or imprisonment for 2 years.

Division 4—Permits

19—Permits for activities

Clause 19 provides that the Minister may grant a permit to a person to engage in an activity within a marine park, or a zone or other area of a marine park, that would otherwise be prohibited or restricted under Division 3.

20—Contravention of condition of permit

This clause provides that if the holder of a permit, or a person acting in the employment or with the authority of the holder of a permit, contravenes a condition of the permit, the holder of the permit is guilty of an offence. The maximum penalty is \$100 000 or imprisonment for 2 years.

Division 5—Affected statutory authorisations

21—Affected statutory authorisations

Clause 21 provides that if the rights conferred by a statutory authorisation under another Act are affected by the creation of a zone or the imposition of a temporary prohibition or restriction of activities within a marine park, the Minister must pay fair and reasonable compensation to the holder of the statutory authorisation, or, if the Minister considers it appropriate to do so, compulsorily acquire, and pay fair and reasonable compensation for, the statutory authorisation, or any interest (or part of any interest) under a statutory authorisation.

Part 4—Administration

Division 1—Minister

22—Functions and powers of Minister

This clause provides for the Minister to have the following functions:

- to examine and keep under review the need for areas to be constituted as marine parks;
- to seek and assess community nominations for marine parks after taking into account the objects of this measure;
- to prepare and keep under review marine park management plans;
- to ensure necessary protections are in place through the prohibition or restriction of activities within marine parks under the measure;
- to issue permits for activities that may be allowed within marine parks under the measure;

- to consult with relevant persons, bodies or authorities, including indigenous peoples with an association with a marine park, about the measures that should be taken to further the objects of the measure;
- as far as reasonably practicable and appropriate, to act to integrate the administration of the measure with the administration of other legislation that may affect a marine park;
- to institute, supervise or promote programs to protect, maintain or improve marine parks;
- to conduct or promote public education in relation to the protection, improvement or enhancement of marine parks;
- to keep the state of marine parks under review;
- to enforce the general duty of care;
- such other functions as are assigned to the Minister by or under the measure or any other Act.

23—Delegation

Clause 23 provides that the Minister may delegate to a person or body a function or power of the Minister under the measure.

Division 2—Marine Parks Council of South Australia

24—Establishment of Council

Clause 24 establishes the Marine Parks Council of South Australia. It provides that the Council is to consist of 10 members appointed by the Governor on the nomination of the Minister, and the Chief Executive. Of the 10 members—

- 1 must be a person who has knowledge of, or experience in, the field of commercial fishing;
- 1 must be a person who has knowledge of, or experience in, the field of aquaculture;
- 1 must be a person who has knowledge of, or experience in, the field of recreational fishing;
- 3 must be persons who have knowledge of, or experience in, the field of marine conservation;
- 2 must be persons who have qualifications or experience in a field of science that is relevant to the marine environment;
- 1 must be a person who has extensive involvement in community affairs;
- 1 must be a person who has extensive knowledge of indigenous culture, especially in connection with the marine environment.

25—Presiding member and deputy presiding member

This clause provides that the Minister must appoint 1 of the members of the Council (the *presiding member*) to preside at meetings of the Council and must also appoint a deputy presiding member.

26—Terms and conditions of membership

Clause 26 provides the terms and conditions of membership of the Council. Amongst other things, it provides that an appointed member of the Council will be appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.

27—Vacancies of defects in appointment of members

This clause provides that an act or proceeding of the Council is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

28—Remuneration

This clause provides that an appointed member of the Council is entitled to remuneration, allowances and expenses determined by the Minister.

29—Functions of Council

Clause 29 provides that the Council has the following functions:

- to provide advice to the Minister on the establishment of marine parks, including advice on any community nominations for marine parks, and advice on the areas to be specified as marine parks;
- to provide advice to the Minister in relation to the introduction, variation or revocation of interim protection orders;
- to provide advice to the Minister in relation to a proposal to alter the boundaries of a marine park;
- to provide advice to the Minister in relation to a proposal to establish or alter a zone within a marine park;
- to provide advice to the Minister in relation to the management of marine parks, the formulation and operation of management plans under the measure, and the extent to which the objects of the measure are being achieved through the implementation of management plans under the measure;
- to provide advice to the Minister on ways to promote community participation in the management of marine parks and the conservation of relevant marine environments;
- to carry out such other functions as may be assigned to the Council by or under the measure or by the Minister.

30—Council's procedures

Clause 30 sets out the procedures of the Council.

31—Conflict of interest

This clause provides that a member of the Council who has a direct or indirect pecuniary or personal interest in a matter decided or under consideration by the Council must disclose the nature of the interest and not take part in any deliberations or decisions of the Council on the matter. It provides a maximum penalty of \$4 000.

Division 3—Authorised officers

32—Appointment of authorised officers

This clause provides for the following persons to be authorised officers:

- fisheries officers under the *Fisheries Management Act 2007*;
- wardens under the *National Parks and Wildlife Act 1972*;
- police officers;
- persons of a class prescribed by regulation or persons appointed by the Minister, being person who must, in either case, be employed in the public service of the State.

This clause further provides that if an area of a marine park includes land within the area of a council, the Minister may appoint persons, nominated by the council, to be authorised officers under the measure.

33—Identification of authorised officers

Clause 33 provides that a person appointed as an authorised officer must be issued with an identity card.

34—Powers of authorised officers

Clause 34 provides that an authorised officer may, as may reasonably be required in connection with the administration, operation or enforcement of the measure—

- enter any place; or
- inspect any place, works, plant or equipment; or
- enter and inspect any vessel or vehicle, and for that purpose require a vessel or vehicle to stop, or to be presented for inspection at a place and time specified by the authorised officer; or
- give directions with respect to the stopping or movement of a vessel, vehicle, plant, equipment or other thing; or
- require a person apparently in charge of a vessel or vehicle to facilitate entry and inspection of the vessel or vehicle; or
- seize and retain anything that the authorised officer reasonably suspects has been used in, or may constitute evidence of, a contravention of the measure; or
- place any buoys, markers or other items or equipment in order to assist in environmental testing or monitoring; or
- require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a contravention of the measure to state the person's full name and usual place of residence and to produce evidence of the person's identity; or
- require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required

- for the administration, operation or enforcement of the measure to answer questions in relation to those matters; or
- with the authority of a warrant issued by a magistrate, require a person to produce specified documents or documents of a specified kind, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process; or
- examine, copy or take extracts from a document or information so produced or require a person to provide a copy of such a document or information; or
- take photographs, films, audio, video or other recordings; or
- examine or test a vessel, vehicle, plant, equipment, fitting or other thing, or cause or require it to be so examined or tested, or seize it or require its production for such examination or testing; or
- require a person holding a statutory authorisation or required to hold a statutory authorisation to produce the statutory authorisation for inspection; or
- give directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration, operation or enforcement of the measure; or
- exercise other prescribed powers.

35—Hindering etc persons engaged in administration of Act

Clause 35 provides that an offence is committed by a person who—

- without reasonable excuse hinders or obstructs an authorised officer or other person engaged in the administration of the measure; or
- fails to answer a question put by an authorised officer to the best of his or her knowledge, information or belief; or
- produces a document or record that he or she knows, or ought to know, is false or misleading in a material particular; or
- fails without reasonable excuse to comply with a requirement or direction of an authorised officer under the measure; or
- uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
- falsely represents, by words or conduct, that he or she is an authorised officer.

A maximum penalty of \$10 000 is prescribed.

36—Protection from self-incrimination

Clause 36 provides that a person is not obliged to answer a question or to produce a document or record as required under this Part if to do so might tend to incriminate the person or make the person liable to a penalty.

Part 5—General duty of care

37—General duty of care

Clause 37 provides that a person must take all reasonable measures to prevent or minimise harm to a marine park through his or her actions or activities.

Part 6—Protection and other orders

Division 1—Orders

38—Protection orders

Clause 38 provides that the Minister may issue a protection order for the purpose of securing compliance with the measure. The clause states that a person to whom a protection order is issued must comply with the order and provides a maximum penalty of \$10 000.

39—Action on non-compliance with protection order

Clause 39 provides that if the requirements of a protection order are not complied with, the Minister may take any action required by the order.

40—Reparation orders

Clause 40 provides that If the Minister is satisfied that a person has caused harm to a marine park by contravention of the measure, the Minister may issue a reparation order requiring the person to take specified action within a specified period to make good any resulting harm to the marine park, or to make a payment or payments into an approved account for the reasonable costs incurred, or to be incurred, in taking action to make good any resulting harm to the marine park, or both.

The clause provides that a person to whom a reparation order is issued must comply with the order and states a maximum penalty of \$10 000.

41—Action on non-compliance with a reparation order

Clause 41 provides that if the requirements of a reparation order are not complied with, the Minister may take any action required by the order.

42—Reparation authorisations

This clause provides that if the Minister is satisfied that a person has caused harm to a marine park by a contravention of the measure, the Minister may (whether or not a reparation order has been issued to the person) issue a reparation authorisation under which authorised officers or other persons authorised by the Minister for the purpose may take specified action on the Minister's behalf to make good any resulting harm to the marine park.

43—Related matters

Clause 43 provides that the Minister should, so far as is reasonably practicable, consult with any public authority that may also have power to act with respect to the particular matter before the Minister issues an order or authorisation under this Division.

Division 2—Registration of orders and effect of charges

44—Registration

Clause 44 provides that if the Minister issues an order or authorisation under Division 1, and it is in relation to an activity carried out on land, or requires a person to take action on or in relation to land, the Minister may apply to the Register-General for the registration of the order or authorisation in relation to that land.

45—Effect of charge

Clause 45 provides that a charge imposed on land under Division 1 has priority over—

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

Part 7—Appeals to ERD Court

46—Appeals to ERD Court

Clause 46 states that the following appeals may be made to the ERD Court:

- a person who is refused a permit may appeal to the Court against the decision of the Minister to refuse the permit;
- a person who has been granted a permit may appeal to the Court against a decision of the Minister revoking the permit or imposing or varying a condition of the permit;
- a person to whom a protection order or reparation order has been issued may appeal to the ERD Court against the order or a variation of the order.

Part 8—Civil remedies

47—Civil remedies

Clause 47 provides that applications may be made to the ERD Court for the following orders:

- if a person has engaged, is engaging or is proposing to engage in conduct in contravention of the measure—an order restraining the person from engaging in the conduct and, if the Court considers it appropriate to do so, requiring the person to take specified action;
- if a person has refused or failed, is refusing or failing or is proposing to refuse or fail to take action required by the measure—an order requiring the person to take that action;
- if a person has caused harm to a marine park by a contravention of the measure—an order requiring the person to take specified action to make good any resulting harm to the marine park and, if appropriate, to take specified action to prevent or mitigate further harm;

- if the Minister has incurred costs in taking action to prevent or make good harm to a marine park caused by a contravention of the measure—an order against the person who committed the contravention for payment of the reasonable costs and expenses incurred in taking that action;
- if the Court considers it appropriate to do so, an order against a person who has contravened the measure for payment (for the credit of the Consolidated Account) of an amount in the nature of exemplary damages determined by the Court;
- if the Court considers it appropriate to do so, an order against a person who has contravened the measure to take specified action to publicise—
 - (i) the contravention of the measure; and
 - (ii) the harm flowing from the contravention; and
 - (iii) the other requirements of the order made against the person.

Part 9—Provisions relating to official insignia

48—Interpretation

Clause 48 defines *official insignia* to mean—

- a design declared by the Minister to be a logo for the purposes of this Part; or
- the name of a marine park proclaimed under the measure, whether appearing or used in full or in an abbreviated form; or
- a combination of a logo and a name.

49—Declaration of logo

Clause 49 provides that the Minister may, by notice in the Gazette, declare a design to be a logo.

50—Protection of official insignia

Clause 50 provides that the Crown has a proprietary interest in all official insignia and that a person must not, without the consent of the Minister, in the course of a trade or business—

- sell goods marked with official insignia; or
- use official insignia for the purpose of promoting the sale of goods or services or the provision of any benefits.

The clause provides a maximum penalty of \$10 000.

The clause also provides that a person must not, without the consent of the Minister, assume a name or description that consists of, or includes, official insignia, and provides a maximum penalty of \$10 000.

51—Seizure and forfeiture of goods

Clause 51 provides that if goods apparently intended for a commercial purpose are marked with official insignia, and an authorised officer suspects on reasonable grounds that the use of the insignia has not been authorised by the Minister, the authorised officer may seize those goods.

Part 10—Miscellaneous

52—Native title

Clause 52 provides that any prohibitions or restrictions applying within a marine park have effect subject to native title and native title rights and interests.

53—Immunity from personal liability

Clause 53 provides that no personal liability attaches to a person engaged in the administration of the measure for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power or function under the measure.

54—False or misleading information

Clause 54 provides that a person must not make a statement that is false or misleading in any information provided under the measure, with a maximum penalty—

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

55—Continuing offence

Clause 55 provides that a person convicted of an offence against a provision of the measure in respect of a continuing act or omission—

- is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
- is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

56—Offences by bodies corporate

Clause 56 provides that if a body corporate commits an offence against the measure, each member of the governing body, and the manager of the body corporate, are guilty of an offence and liable to the same penalty as is prescribed for the principal offence where the offender is a natural person.

57—Additional orders on conviction

Clause 57 provides that if a person is convicted of an offence against the measure, the court may, in addition to any penalty it imposes, make one or more of the following orders:

- an order requiring the person to take any specified action (including an order to take action to make good harm to a marine park or to rectify any other consequences of a contravention of the measure, or to ensure that a further contravention does not occur);

- an order that the person pay to the Crown an amount determined by the court to be equal to the costs of taking action to make good harm to a marine park or rectifying any other consequences of a contravention of the measure;
- an order that the person pay to the Crown an amount determined by the court to be equal to a fair assessment or estimate of the financial benefit that the person, or an associate of the person, has gained, or can reasonably be expected to gain, as a result of the commission of an offence against the measure.

58—General defence

Clause 58 provides that it is a defence to a charge of an offence against the measure if the defendant proves that the alleged offence was not committed intentionally and did not result from a failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

59—Criminal jurisdiction of ERD Court

Clause 59 provides that offences constituted by the measure lie against the criminal jurisdiction of the ERD Court.

60—Confidentiality

Clause 60 provides that a person engaged or formerly engaged in the administration of the measure must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—

- as required or authorised by or under the measure or any other Act or law; or
- with the consent of the person to whom the information relates; or
- in connection with the administration of the measure; or
- to an agency or instrumentality of this State, the Commonwealth or another State or Territory of the Commonwealth for the purposes of the proper performance of its functions.

61—Service

Clause 61 provides for the service of documents for the purposes of the measure.

62—Evidentiary provisions

Clause 62 provides the evidentiary provisions required by the measure.

63—Regulations

Clause 63 provides that the Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, the measure.

Schedule 1—Related amendments

Schedule 1 makes related amendments to various Acts as required as a consequence of the measure.