



Queensland

Marine Parks Act 2004

Act No. 31 of 2004



Queensland

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Contents

		Page
Part 1	Preliminary	
1	Short title	10
2	Commencement	10
3	Definitions	10
4	Notes in text	10
5	Purpose of Act	10
6	Act binds all persons	11
7	Territorial application of Act	11
Part 2	Marine parks	
Division 1	Establishment	
8	Declaration	12
Division 2	Revocation	
9	Revocation of park	13
10	Publication of revocation notice	13
11	Revocation of park included in or amalgamated with another park	14
12	Revocation of park comprising a protected area under the Nature Conservation Act 1992	14
Division 3	Reclamation of tidal land, and revocation	
13	Simplified outline of div 3	15
14	Notice of proposed revocation of reclaimed part of park	15
15	Permission for carrying out proposed reclamation	16
16	EIS required	17
17	Public consultation about EIS and other information	19
18	Certificate of satisfactory completion	19
19	Revocation of reclaimed part of park	19
Division 4	Other provisions about marine parks	
20	What park comprises	21

Part 3	Zoning and management plans	
Division 1	Zoning plans	
Subdivision 1	Prescription	
21	Zoning plan	22
22	Preparation and notice of draft plan	22
23	Preparation of final plan	23
24	Content of zoning plan	23
Subdivision 2	Amendment	
25	Amendment of zoning plan	24
26	Preparation and notice of draft amendment	25
27	Preparation of final amendment	26
Subdivision 3	Other provisions	
28	Tabling of statement with zoning plan or amendment	26
Division 2	Management plans	
Subdivision 1	Approval	
29	Approval of management plan	27
30	Preparation of draft plan	27
31	Public notice of draft plan	27
32	Preparation of final plan	29
33	When management plan has effect	29
Subdivision 2	Amendment and review	
34	Approval of amendment of management plan	29
35	Preparation and notice of draft amendment	30
36	Public notice of draft amendment	30
37	Preparation of final amendment	32
38	When amendment has effect	32
39	Review of management plan	32
Subdivision 3	Other provisions	
40	Public access to current management plan	32
41	Chief executive may enter into cooperative arrangement for management plan	33
42	Moratorium on grant of new permissions	33
Part 4	Offences	
Division 1	Entry to or use of marine park	
43	Entry or use for a prohibited purpose	34
44	Entry or use without an authority	35
45	Entry or use requiring notice	35

Division 2	Other offence provisions	
46	False or misleading information given by applicant	35
47	False or misleading documents given by applicant	36
48	Noncompliance with temporary restricted area declaration	36
49	Noncompliance with conditions of an authority	36
50	Unlawful serious environmental harm	37
51	Unlawful use of particular words	38
Part 5	Monitoring and enforcement	
Division 1	Inspectors	
52	Appointment and qualifications	38
53	Appointment conditions and limit on powers	39
54	Issue of identity card	39
55	Production or display of identity card	40
56	When inspector ceases to hold office.	40
57	Resignation	40
58	Return of identity card	40
Division 2	Powers of inspectors	
Subdivision 1	Entry to places	
59	Power to enter places.	41
Subdivision 2	Procedure for entry	
60	Entry with consent	42
61	Application for warrant	43
62	Issue of warrant	43
63	Application by electronic communication and duplicate warrant	44
64	Defect in relation to a warrant.	46
65	Warrants—procedure before entry.	46
Subdivision 3	Powers after entry	
66	General powers after entering places	47
67	Power to require reasonable help or information	47
Subdivision 4	Other powers	
68	Power to require name and address	48
69	Power to require information about contravention	49
70	Power to stop persons	49
71	Power to give direction to leave area	50
72	Power to stop and search vessels, vehicles and aircraft	51
73	Power to require driver or person in control to give reasonable help etc.	53

Subdivision 5	Power to seize evidence	
74	Seizing evidence at place entered under s 59	53
75	Seizing evidence on or in vessel, vehicle or aircraft entered or boarded under s 72	54
76	Powers in support of seizure	54
77	Securing seized things	55
78	Tampering with seized things	56
79	Receipt for seized things	56
80	Inspector may dispose of natural resources taken unlawfully . . .	56
81	Forfeiture of seized things	57
82	Dealing with forfeited things	57
83	Return of seized things	58
84	Access to seized things	58
Division 3	General enforcement matters	
85	Definition for div 3.	58
86	Inspector's obligation not to cause unnecessary damage	59
87	Notice of damage	59
88	Compensation	60
89	False or misleading information given to inspector.	60
90	False or misleading documents given to inspector.	60
91	Obstructing an inspector	61
92	Impersonating an inspector	61
Division 4	Compliance notices	
93	Compliance notice	61
Part 6	Other provisions for protecting the environment and users of marine parks	
Division 1	Preliminary	
94	Definitions for pt 6.	63
Division 2	Temporary restricted area declaration	
95	Temporary restricted area declaration	64
96	Expiry of declaration.	65
97	Declaration is not subordinate legislation.	65
98	Temporary restricted area declaration prevails over regulation, zoning plan or authority	65
Division 3	Directions for protecting environment and users	
99	Inspector's power to give directions	65

Division 4	Removing abandoned, stranded, sunk or wrecked property	
Subdivision 1	Removal of property other than in urgent circumstances	
100	Inspector's power to remove property	67
101	Removal notice	68
102	Seizure, removal and disposal without giving removal notice . . .	69
Subdivision 2	Removal of property in urgent circumstances	
103	Inspector's power to remove property	69
104	Removal notice	71
Subdivision 3	Dealing with property after removal	
105	Action inspector may take if property not claimed	72
106	Dealing with proceeds of sale	72
107	Release of property	72
108	Recovery of costs of removal etc.	73
Division 5	Restoration of environment etc.	
109	Restoration of environment etc.	73
Part 7	Proceedings for enforcement orders	
Division 1	Preliminary	
110	Definitions for pt 7.	75
Division 2	Enforcement orders	
111	Proceeding for enforcement orders	75
112	Making interim enforcement order	76
113	Making enforcement order	76
114	Effect of orders	77
115	Court's powers about orders	78
Division 3	General procedural provision	
116	Proceeding brought in representative capacity	79
Part 8	Appeals and review	
Division 1	Preliminary	
117	Appeal against particular decisions must be by way of internal review or ADR process	79
Division 2	Internal review	
118	Applying for an internal review	80
119	Review decision	80
120	Stay of operation of original decision	81
Division 3	Appeals to Magistrates Court	
121	How to start appeal	82
122	Appellant to give notice of appeal	82

123	Stay of operation of decision	83
124	Powers of court on appeal	83
Part 9	Legal proceedings	
Division 1	Evidence	
125	Application of div 1	83
126	Appointments and authority	84
127	Signatures	84
128	Certificate about evidence of location of aircraft or vessel	84
129	Evidentiary matters.	85
Division 2	Matters about offence proceedings and indictable and summary offences	
130	Types of offences	86
131	Proceedings for indictable offence	87
132	Limitation on who may summarily hear indictable offence	87
133	Limitation on time for starting summary proceeding	88
134	Allegations of false or misleading information or documents	89
135	Responsibility for acts or omissions of representatives	89
136	Executive officers responsible for ensuring corporation complies with Act	90
137	Holder of authority responsible for ensuring Act complied with	90
138	Responsibility for offences committed with use of vessel, vehicle or aircraft	91
139	Court's powers on conviction for an offence.	92
Division 3	Judicial review of administrative decisions	
140	Extended standing for judicial review	93
Part 10	Miscellaneous	
Division 1	Codes of practice	
141	Approval or making of code	95
142	When code has effect.	95
143	Access to code	96
Division 2	Other miscellaneous provisions	
144	Public authority's obligation about threatening incidents for marine parks	96
145	Chief executive's power to decide fee for producing a copy of a document	97
146	Delegation of Minister's powers	97
147	Protecting prescribed persons from liability	98
148	Annual report	98

149	Approved forms	98
150	Regulation-making power.	99
151	Relationship between regulation and zoning plan	99
Part 11	Transitional provisions	
152	References to Marine Parks Act 1982	100
153	Pending legal proceedings	100
154	Existing marine parks	100
155	Existing zoning plans	100
156	Existing management plans	101
157	Existing notices about designated areas	101
158	Existing limitation on application of regulation and zoning plan made under repealed Act	101
159	Existing temporary restricted areas	102
160	Existing permissions.	102
161	Existing applications for permissions	102
162	Existing orders etc.	103
163	Existing inspectors	103
Part 12	Validation and declaration provisions	
164	Validation of existing zoning plans and permissions authorising reclamation of tidal land in a marine park.	103
165	Declaration about authorised reclamation of tidal land in a marine park	104
166	Effect of validation and declaration on proceedings	104
Part 13	Amendment of Marine Parks Act 1982	
167	Act amended in pt 13	105
168	Insertion of new s 10A	105
	10A Territorial application of Act	105
Part 14	Repeal	
169	Repeal	105
Part 15	Consequential amendments of other Acts	
Division 1	Amendment of Coastal Protection and Management Act 1995	
170	Act amended in div 1	106
171	Amendment of s 75 (Criteria for deciding applications)	106
172	Amendment of s 93 (Approving or refusing to approve plans)	106
Division 2	Amendment of Fisheries Act 1994	
173	Act amended in div 2	106
174	Amendment of schedule.	106

Schedule	Dictionary	107
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Queensland

Marine Parks Act 2004

Act No. 31 of 2004

An Act to provide for marine parks and the conservation of the marine environment, and for other purposes

[Assented to 12 October 2004]

The Parliament of Queensland enacts—**Part 1 Preliminary****1 Short title**

This Act may be cited as the *Marine Parks Act 2004*.

2 Commencement

- (1) Parts 12 and 13 commence on assent.
- (2) The remaining provisions of this Act commence on a day to be fixed by proclamation.

3 Definitions

The dictionary in the schedule defines particular words used in this Act.

4 Notes in text

A note in the text of this Act is part of the Act.

5 Purpose of Act

- (1) The main purpose of this Act is to provide for conservation of the marine environment.
- (2) The purpose is to be achieved by a comprehensive and integrated strategy that involves, among other things, each of the following—
 - (a) the declaration of marine parks;
 - (b) the establishment of—
 - (i) zones, designated areas and highly protected areas within marine parks; and
 - (ii) zoning plans and management plans;

- (c) the cooperative involvement of public authorities and other interested groups and persons, including members of Aboriginal and Torres Strait Islander communities;
 - (d) the cooperative implementation of Australia's international responsibilities, and intergovernmental agreements and instruments;
 - (e) a coordinated and integrated approach with other environment conservation legislation;
 - (f) recognition of the cultural, economic, environmental and social relationships between marine parks and other areas, whether of water or land;
 - (g) the provision of opportunities for public appreciation, understanding and enjoyment of the marine environment;
 - (h) application of the precautionary principle in decision-making processes;
 - (i) monitoring and enforcing compliance with this Act.
- (3) Also, the Commonwealth and the State have agreed that, in conserving marine parks, the State is to maintain, as far as practicable, legislation in line with the Commonwealth Act.

6 Act binds all persons

- (1) This Act binds all persons, including the State, and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the Commonwealth, the State or another State liable to be prosecuted for an offence.

7 Territorial application of Act

- (1) This Act applies both within and outside Queensland.
- (2) This Act applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.
- (3) If all or part of a marine park is within a marine park established under the Commonwealth Act, this Act is

intended to operate only to the extent that it is consistent with the operation of the Commonwealth Act.

Part 2 Marine parks

Division 1 Establishment

8 Declaration

- (1) A regulation may declare—
 - (a) an area, whether or not it includes all or part of an existing marine park, to be a marine park; or
 - (b) 2 or more existing marine parks, whether or not they are contiguous, to be a single marine park.
- (2) Areas that may be declared under subsection (1)(a) are all or any of the following—
 - (a) an area of Queensland waters;¹
 - (b) an area of waters subject to tidal influence;
 - (c) an area of waters or land, whether or not subject to tidal influence, contiguous with and having a cultural, economic, environmental or social relationship with the waters mentioned in paragraph (a) or (b);
 - (d) an area of land within the waters mentioned in paragraph (a) or (b);
 - (e) an area of land from time to time covered by the waters mentioned in paragraph (a) or (b);
 - (f) without limiting paragraph (c), an area of waters beyond the outer limits of Queensland waters connected with Queensland.
- (3) A regulation under subsection (1) must—

¹ See the *Acts Interpretation Act 1954*, section 36, definition *Queensland waters*.

- (a) define the boundaries of the park's declared area by a map or an appropriate description; and
 - (b) give a name to the park.
- (4) Without limiting subsection (2)(f), areas of water mentioned in the subsection that are connected with Queensland include—
- (a) any area regulated under a law of Queensland other than this Act; and
 - (b) any area containing anything owned by the State or constructed or placed in waters by or under an agreement with or the authority of the State.

Example—

an artificial reef

Division 2 **Revocation**

9 Revocation of park

- (1) A regulation may revoke the declaration of all or part of a marine park.
- (2) However, subject to sections 11, 12 and 19, the regulation may be made only if the Legislative Assembly has, on a motion of which at least 28 days notice has been given, passed a resolution requesting the revocation.

10 Publication of revocation notice

- (1) Within 10 days after the notice of motion mentioned in section 9(2) is given, the chief executive must publish notice of the proposed revocation (the ***revocation notice***) in—
 - (a) a newspaper circulating in the locality of the marine park; and
 - (b) a newspaper circulating throughout the State.
- (2) The revocation notice must state—
 - (a) the marine park's name; and

- (b) whether all or part of the park is to be revoked; and
- (c) if only part of the park is proposed to be revoked—a description, by map or otherwise, of the part of the park proposed to be revoked.

11 Revocation of park included in or amalgamated with another park

- (1) This section applies if a regulation made under section 8 declares—
 - (a) an area that includes all or part of an existing marine park (the *existing area*) to be a marine park; or
 - (b) 2 or more existing marine parks (each also the *existing area*) to be a single marine park.
- (2) A regulation may revoke the declaration of the existing area as all or part of the existing marine park without a resolution of the Legislative Assembly mentioned in section 9(2).

Examples—

- 1. Existing marine park A includes areas 1 and 2. A regulation mentioned in subsection (1)(a) declares an area, including area 2, to be marine park B. The declaration of area 2 as part of marine park A may be revoked under this subsection.
- 2. A regulation mentioned in subsection (1)(b) amalgamates marine parks A and B to form marine park C. The declaration of marine parks A and B may be revoked under this subsection.
- 3. A regulation mentioned in subsection (1)(b) amalgamates marine parks A and B to form an increased marine park A. The declaration of existing marine parks A and B may be revoked under this subsection.

12 Revocation of park comprising a protected area under the Nature Conservation Act 1992

- (1) This section applies if—
 - (a) a part of a marine park is dedicated as a protected area under the *Nature Conservation Act 1992*; and
 - (b) the dedication of the protected area provides a higher level of protection of the park's marine environment than is provided for under this Act.

- (2) A regulation revoking the declaration of the part of the park comprising the protected area may be made without a resolution of the Legislative Assembly mentioned in section 9(2).

Division 3 Reclamation of tidal land, and revocation

13 Simplified outline of div 3

Generally, this division provides for the procedure for revoking, in particular circumstances, the declaration of a reclaimed part of a marine park without the need for a resolution of the Legislative Assembly mentioned in section 9(2).

14 Notice of proposed revocation of reclaimed part of park

- (1) The Governor in Council may, by gazette notice, state an intention to make a regulation revoking the declaration of a reclaimed part of a stated marine park if the chief executive—
- (a) issues a permission for the reclamation under section 15; and
 - (b) gives the permission holder a certificate of satisfactory completion for the reclamation.
- (2) The notice must state—
- (a) the name, or other identification particulars, of the park the subject of the proposed revocation; and
 - (b) a description, by map or otherwise, of the proposed boundaries of the reclaimed part of the park; and
 - (c) the notice's expiry date.
- (3) The notice remains in force until—
- (a) the end of its expiry date; or
 - (b) if a regulation revokes the declaration of the reclaimed part of the park before the expiry date—the commencement of the regulation.

- (4) The notice is not subordinate legislation.
- (5) However, the *Statutory Instruments Act 1992*, sections 49 to 51 apply to the notice as if it were subordinate legislation.

Note—

These provisions deal with the tabling in, and disallowance by, the Legislative Assembly of subordinate legislation.

15 Permission for carrying out proposed reclamation

- (1) This section applies if—
 - (a) either—
 - (i) a zoning plan allows the chief executive to issue a permission for reclaiming particular tidal land in a marine park; or
 - (ii) tidal land not included in a zone is proposed to be reclaimed; and
 - (b) the land is not in a highly protected area; and
 - (c) the declaration of the reclaimed part of the park is intended to be revoked on completion of the reclamation.
- (2) The chief executive may issue a permission for the reclamation if—
 - (a) a notice under section 14 for the reclamation is in force; and
 - (b) if section 16 applies to the proposed reclamation—the applicant for the permission has complied with the section and any requirement for additional information made by the chief executive under the section; and
 - (c) the chief executive is satisfied the permission should be issued having considered—
 - (i) each EIS and any additional information given to the chief executive under section 16; and
 - (ii) any written submissions made about the EIS and information; and

- (iii) other matters the chief executive is required, under a regulation or zoning plan, to consider in issuing the permission; and
 - (iv) any other matter the chief executive considers relevant.
- (3) To remove any doubt, it is declared that the chief executive may impose conditions on the permission, or amend, suspend or cancel the permission, as allowed under a regulation or zoning plan.
- (4) Despite subsection (1), this section does not apply if the reclamation is necessary—
 - (a) to deal with an emergency involving a serious threat to a marine park's environment or use and non-use values; or
 - (b) to protect property from erosion; or
 - (c) to restore property after erosion; or
 - (d) to carry out small-scale works by or for a public authority, for a public purpose, and the works—
 - (i) are not prohibited under a regulation or zoning plan; and
 - (ii) involve only minimal disturbance to the park's natural resources, or minor alienation of parts of the park from enjoyment by the public.

Example of small-scale works—

the construction of a boat ramp

16 EIS required

- (1) The applicant for a section 15 permission must give the chief executive an EIS about the proposed reclamation that includes a consideration of—
 - (a) the proposed use of the reclaimed part of the marine park; and
 - (b) the potential impacts of the proposed reclamation on—
 - (i) the park's environment and use and non-use values; and

- (ii) the environment of areas of waters or land contiguous with or adjacent to the park.
- (2) The EIS must also include the information that would, but for section 19(5), be required under the *Statutory Instruments Act 1992*, section 44² for a regulatory impact statement about the proposed regulation revoking the declaration of the reclaimed part of the park.
- (3) Unless the EIS was made under another Act or a law of the Commonwealth or another State, it must have been prepared under the guidelines, and address the terms of reference, approved by the chief executive.
- (4) The chief executive may require the applicant to give the chief executive additional information about a matter—
 - (a) mentioned in subsection (1); or
 - (b) for which information is required, under subsection (2), to be included in an EIS.
- (5) The EIS and any additional information given under subsection (4) must be or have been made available for public consultation as required under section 17.
- (6) The applicant must pay the costs of preparing the EIS and additional information and making it available for public consultation.
- (7) This section does not apply if the proposed reclamation is for, or expected to result from, carrying out small-scale works.

Example of small-scale works—
the construction of a boat ramp
- (8) In this section—

EIS includes an EIS required under—

 - (a) another Act; or
 - (b) a law of the Commonwealth or another State.

2 *Statutory Instruments Act 1992*, section 44 (Content of regulatory impact statement)

17 Public consultation about EIS and other information

- (1) The applicant for a section 15 permission must publish, in a newspaper likely to be read by persons particularly affected by the proposed reclamation, a notice about the EIS and any additional information given to the chief executive under section 16(4).
- (2) The notice must state each of the following—
 - (a) where a copy of the EIS and information are available for inspection;
 - (b) where a copy of the EIS and information may be obtained at a stated reasonable cost;
 - (c) that submissions may be made to the chief executive about the EIS and information;
 - (d) the reasonable period, set by the chief executive, during which a submission may be made.
- (3) For subsection (2)(b), the stated reasonable cost must not be more than the actual cost of producing the copy.

18 Certificate of satisfactory completion

If the chief executive is satisfied a reclamation the subject of a section 15 permission has been completed as required under the permission, the chief executive must give the permission holder a certificate of satisfactory completion for the reclamation.

19 Revocation of reclaimed part of park

- (1) This section applies if tidal land in a marine park—
 - (a) is not in a highly protected area and is reclaimed after the commencement of this section under a permission;
or
 - (b) is reclaimed as a result of—
 - (i) a reclamation mentioned in section 15(4) carried out without contravening this Act; or
 - (ii) unauthorised works carried out before or after the commencement.

- (2) Subject to subsections (3) and (4), a regulation revoking the declaration of the resulting reclaimed part of the park may be made without a resolution of the Legislative Assembly mentioned in section 9(2).
- (3) If the reclamation was carried out under a permission, subsection (2) applies only if—
 - (a) for a reclamation that is not abandoned—the chief executive has given the permission holder a certificate of satisfactory completion for the reclamation; or
 - (b) for an abandoned reclamation—the Minister reasonably considers it is impracticable to restore or rehabilitate the reclaimed part to the condition it was in before the reclamation.
- (4) If the reclamation results from unauthorised works, subsection (2) applies only if the Minister reasonably considers it is impracticable to restore or rehabilitate the reclaimed part to the condition it was in before the reclamation.
- (5) A regulatory impact statement under the *Statutory Instruments Act 1992* need not be prepared for a regulation made under this section.
- (6) In this section—

permission means—

 - (a) a section 15 permission; or
 - (b) a permission taken, under section 160,³ to be issued under this Act.

unauthorised works means works not authorised under this Act or the repealed Act.

3 See section 160 (Existing permissions).

Division 4 Other provisions about marine parks

20 What park comprises

- (1) On and after the commencement of this section, a marine park declared before or after the commencement comprises—
 - (a) the land and waters in the park's declared area, including any land or waters resulting from reclamation works—
 - (i) carried out after the park is declared; and
 - (ii) for a park declared before the commencement—not completed before the commencement of section 165,⁴ regardless of whether the works were started before or after the commencement of that section; and
 - (b) the park's associated airspace and subsoil and other natural and cultural resources.

- (2) In this section—

associated airspace, for a marine park, means the airspace to the height of 915 m above the park.

associated subsoil, for a marine park, means the subsoil to a depth of 1 000 m below the surface of the park.

⁴ Section 165 (Declaration about authorised reclamation of tidal land in a marine park)

Part 3 Zoning and management plans

Division 1 Zoning plans

Subdivision 1 Prescription

21 Zoning plan

A regulation may prescribe a zoning plan for a marine park if the plan has been prepared under sections 22 and 23.

22 Preparation and notice of draft plan

- (1) The Minister must prepare a draft of the zoning plan complying with section 24 and give public notice about the draft plan.
- (2) The notice must state—
 - (a) the name of the marine park the draft plan concerns; and
 - (b) that a copy of the draft plan and the provisions of any document applied, adopted or incorporated by the plan are available for inspection, without charge by the chief executive—
 - (i) during normal business hours at each department office; and
 - (ii) on the department's web site on the Internet;⁵ and
 - (c) an invitation to members of the public and other persons to make written submissions to the Minister, within a stated reasonable period, about the draft plan.
- (3) The stated period must be at least 28 days after the public notice is given.
- (4) Subsection (2)(c) does not apply if—
 - (a) the draft plan is substantially uniform or complementary with—

⁵ The department's web site on the Internet is <www.epa.qld.gov.au>.

- (i) another Act; or
 - (ii) a law of the Commonwealth or another State; or
 - (b) the following applies—
 - (i) the draft plan adopts an Australian or international protocol, standard, code, or intergovernmental agreement or instrument; and
 - (ii) an assessment of the benefits and costs associated with the plan has already been made; and
 - (iii) the assessment was made for, or is relevant to, Queensland; or
 - (c) the Minister considers there has already been adequate other public consultation about the matters the subject of the draft plan.
- (5) The consultation mentioned in subsection (4)(c) must have—
- (a) involved publication of the matters the subject of the draft plan; and
 - (b) been for a period of at least 28 days after the publication within which members of the public could comment on the matters.
- (6) On payment of the fee, if any, decided by the chief executive, a person may obtain a copy of the draft plan from the chief executive.

23 Preparation of final plan

The Minister must prepare the final zoning plan—

- (a) after considering each submission made to the Minister as required by the public notice given under section 22; and
- (b) having regard to the purposes of this Act.

24 Content of zoning plan

- (1) The draft and final zoning plan must—
- (a) state the following for each zone or designated area within the marine park—

- (i) its name;
 - (ii) the objects to be achieved for the zone or designated area;
 - (iii) the purpose for which it may be entered or used; and
 - (b) if the park comprises 2 or more zones or designated areas—define the external boundaries of each zone or area by a map or an appropriate description.
- (2) The plan may provide for—
- (a) the reclamation of tidal land; and
 - (b) a maximum penalty of not more than 165 penalty units for a contravention of the plan.
- (3) Subsection (2) does not limit the matters for which the plan may provide.

Subdivision 2 Amendment

25 Amendment of zoning plan

- (1) A regulation may amend a zoning plan if, subject to subsections (2) and (3), the amendment has been prepared under sections 26 and 27.
- (2) Sections 26 and 27 do not apply if the amendment is—
- (a) a minor amendment to—
 - (i) correct an error in the plan; or
 - (ii) make a change, other than a change of substance, in the plan; or
 - (b) of a type that the zoning plan states may be made under this subsection.
- (3) Also, the sections do not apply if—
- (a) for a zoning plan that is substantially uniform or complementary with another Act or a law of the Commonwealth or another State—the amendment is

needed to ensure the plan remains substantially uniform or complementary; or

- (b) each of the following applies—
 - (i) the amendment adopts an Australian or international protocol, standard, code, or intergovernmental agreement or instrument;
 - (ii) an assessment of the benefits and costs associated with the amendment has already been made;
 - (iii) the assessment was made for, or is relevant to, Queensland; or
 - (c) the Minister considers there has already been adequate other public consultation about the matters the subject of the amendment.
- (4) The consultation mentioned in subsection (3)(c) must have—
- (a) involved publication of the matters the subject of the amendment; and
 - (b) been for a period of at least 28 days after the publication within which members of the public could comment on the matters.

26 Preparation and notice of draft amendment

- (1) The Minister must prepare a draft of the amendment and give public notice about the draft amendment.
- (2) The notice must—
 - (a) identify the zoning plan proposed to be amended; and
 - (b) state—
 - (i) that a copy of the draft amendment and the provisions of any document applied, adopted or incorporated by the amendment are available for inspection, without charge by the chief executive—
 - (A) during normal business hours at each department office; and
 - (B) on the department's web site on the Internet; and

- (ii) an invitation to members of the public and other persons to make written submissions to the Minister, within a stated reasonable period, about the draft amendment.
- (3) The stated period must be at least 28 days after the public notice is given.
- (4) On payment of the fee, if any, decided by the chief executive, a person may obtain a copy of the draft amendment from the chief executive.

27 Preparation of final amendment

The Minister must prepare the final amendment—

- (a) after considering each submission made to the Minister as required by the public notice given under section 26; and
- (b) having regard to the purposes of this Act.

Subdivision 3 Other provisions

28 Tabling of statement with zoning plan or amendment

- (1) This section applies if, as a result of the making or amendment of a zoning plan, the classification or boundaries of an existing zone are changed in a way that decreases the level of protection for the marine environment in the zone.
- (2) When the regulation prescribing or amending the zoning plan is tabled in the Legislative Assembly as required under the *Statutory Instruments Act 1992*, section 49, the Minister must also table a statement—
 - (a) identifying the zone, and location of the area, for which the level of protection is decreased; and
 - (b) giving the reasons for the decrease.

Division 2 Management plans

Subdivision 1 Approval

29 Approval of management plan

- (1) The Governor in Council may, by gazette notice, approve a management plan for a marine park, if the plan has been prepared under sections 30 to 32.
- (2) The gazette notice is not subordinate legislation.
- (3) However, the *Statutory Instruments Act 1992*, sections 49 to 51 apply to the notice as if it were subordinate legislation.

Note—

These provisions deal with the tabling in, and disallowance by, the Legislative Assembly of subordinate legislation.

- (4) When the notice is tabled as required under the *Statutory Instruments Act 1992*, section 49, a copy of the management plan and any document applied, adopted or incorporated by the plan must also be tabled.

30 Preparation of draft plan

- (1) The Minister must prepare a draft of the management plan.
- (2) The draft plan may apply, adopt, or incorporate (with or without modification) the provisions of another document, whether of the same or a different kind.
- (3) A provision of another document applied, adopted or incorporated is the provision as in force from time to time, unless the draft plan expressly provides otherwise.

31 Public notice of draft plan

- (1) The Minister must give public notice about the draft plan.
- (2) The notice must state—
 - (a) the name of the marine park the draft plan concerns; and

- (b) that a copy of the draft plan and the provisions of any document applied, adopted or incorporated by the plan are available for inspection, without charge by the chief executive—
 - (i) during normal business hours at each department office; and
 - (ii) on the department's web site on the Internet;⁶ and
 - (c) an invitation to members of the public and other persons to make written submissions to the Minister, within a stated reasonable period, about the draft plan.
- (3) The stated period must be at least 28 days after the public notice is given.
- (4) Subsection (2)(c) does not apply if—
- (a) the draft plan is substantially uniform or complementary with—
 - (i) another Act; or
 - (ii) a law of the Commonwealth or another State; or
 - (b) the following applies—
 - (i) the draft plan adopts an Australian or international protocol, standard, code, or intergovernmental agreement or instrument; and
 - (ii) an assessment of the benefits and costs associated with the plan has already been made; and
 - (iii) the assessment was made for, or is relevant to, Queensland; or
 - (c) the Minister considers there has already been adequate other public consultation about the matters the subject of the plan.
- (5) The consultation mentioned in subsection (4)(c) must have—
- (a) involved publication of the matters the subject of the draft plan; and

6 The department's web site on the Internet is <www.epa.qld.gov.au>.

- (b) been for a period of at least 28 days after the publication within which members of the public could comment on the matters.
- (6) On payment of the fee, if any, decided by the chief executive, a person may obtain a copy of the draft plan from the chief executive.

32 Preparation of final plan

The Minister must prepare the final management plan—

- (a) after considering each submission made to the Minister as required by the public notice given under section 31; and
- (b) having regard to the purposes of this Act.

33 When management plan has effect

The management plan has effect on and from the later of the following days—

- (a) the day the gazette notice approving the plan, as required under section 29, is published in the gazette;
- (b) the commencement day stated in the plan.

Subdivision 2 Amendment and review

34 Approval of amendment of management plan

- (1) The Governor in Council may, by gazette notice, approve an amendment of a management plan if the amendment has been prepared under sections 35 to 37.
- (2) The gazette notice is not subordinate legislation.
- (3) However, the *Statutory Instruments Act 1992*, sections 49 to 51 apply to the notice as if it were subordinate legislation.

Note—

These provisions deal with the tabling in, and disallowance by, the Legislative Assembly of subordinate legislation.

- (4) When the notice is tabled as required under the *Statutory Instruments Act 1992*, section 49, a copy of the amendment and any document applied, adopted or incorporated by the amendment must also be tabled.

35 Preparation and notice of draft amendment

- (1) The Minister must prepare a draft of the amendment.
- (2) The draft amendment may apply, adopt, or incorporate (with or without modification) the provisions of another document, whether of the same or a different kind.
- (3) A provision of another document applied, adopted or incorporated is the provision as in force from time to time, unless the draft amendment expressly provides otherwise.

36 Public notice of draft amendment

- (1) The Minister must give public notice about the draft amendment.
- (2) The notice must—
 - (a) identify the management plan proposed to be amended; and
 - (b) state—
 - (i) that a copy of the draft amendment and the provisions of any document applied, adopted or incorporated by the amendment are available for inspection, without charge by the chief executive—
 - (A) during normal business hours at each department office; and
 - (B) on the department's web site on the Internet; and
 - (ii) an invitation to members of the public and other persons to make written submissions to the Minister, within a stated reasonable period, about the draft amendment.
- (3) The stated period must be at least 28 days after the public notice is given.

- (4) On payment of the fee, if any, decided by the chief executive, a person may obtain a copy of the draft amendment from the chief executive.
- (5) This section does not apply if the amendment is—
 - (a) a minor amendment to—
 - (i) correct an error in the plan; or
 - (ii) make a change, other than a change of substance, in the plan; or
 - (b) of a type that the management plan states may be made under this subsection.
- (6) Also, this section does not apply if—
 - (a) for a management plan that is substantially uniform or complementary with another Act or a law of the Commonwealth or another State—the amendment is needed to ensure the plan remains substantially uniform or complementary; or
 - (b) each of the following applies—
 - (i) the amendment adopts an Australian or international protocol, standard, code, or intergovernmental agreement or instrument;
 - (ii) an assessment of the benefits and costs associated with the amendment has already been made;
 - (iii) the assessment was made for, or is relevant to, Queensland; or
 - (c) the Minister considers there has already been adequate other public consultation about the matters the subject of the amendment.
- (7) The consultation mentioned in subsection (6)(c) must have—
 - (a) involved publication of the matters the subject of the amendment; and
 - (b) been for a period of at least 28 days after the publication within which members of the public could comment on the matters.

37 Preparation of final amendment

The Minister must prepare the final amendment—

- (a) after considering each submission made to the Minister as required by the public notice given under section 36; and
- (b) having regard to the purposes of this Act.

38 When amendment has effect

The amendment has effect on and from the later of the following days—

- (a) the day the gazette notice approving the amendment, as required under section 34, is published in the gazette;
- (b) the commencement day stated in the amendment.

39 Review of management plan

The Minister must review each management plan within 10 years after its commencement to ensure its continued effectiveness.

Subdivision 3 Other provisions**40 Public access to current management plan**

- (1) The chief executive must keep a copy of each current management plan available for inspection, without charge, by members of the public—
 - (a) on the department's website on the Internet; and
 - (b) during office hours on business days at—
 - (i) the department's head office; and
 - (ii) each regional office of the department.
- (2) On payment of the fee, if any, decided by the chief executive, a person may obtain a copy of the current management plan from the chief executive.

41 Chief executive may enter into cooperative arrangement for management plan

The chief executive may enter into an agreement or other arrangement with any of the following persons about the preparation, amendment, review or implementation of a management plan for a marine park—

- (a) a person, or group of persons, having a special interest in the park, including native title to, or some other special identification with, the park or its natural or cultural resources;
- (b) a person representing a person or group mentioned in paragraph (a).

42 Moratorium on grant of new permissions

- (1) The Minister may publish a notice (a *moratorium notice*) stating that a management plan likely to affect the entry to or use of a stated marine park for a stated purpose is being prepared or amended.
- (2) The moratorium notice must be published in—
 - (a) the gazette; and
 - (b) a newspaper circulating throughout the State.
- (3) If a moratorium notice is published, an application for an authority issued under this Act for the stated purpose can not be granted during the moratorium period, regardless of whether the application was received before or after the period starts.
- (4) In this section—

moratorium period means the period—

 - (a) starting on the day the moratorium notice is published; and
 - (b) ending on the earlier of the following—

- (i) the day the management plan or amendment has effect;⁷
- (ii) 1 year after the day the moratorium notice is published.

Part 4 Offences

Division 1 Entry to or use of marine park

43 Entry or use for a prohibited purpose

- (1) A person must not wilfully enter or use a marine park for a prohibited purpose.

Maximum penalty—

- (a) for a prohibited purpose involving the taking of natural or cultural resources—3 000 penalty units; or
 - (b) for another prohibited purpose—295 penalty units.
- (2) A person must not enter or use a marine park for a prohibited purpose.

Maximum penalty—90 penalty units.

- (3) This section does not apply to an act—
 - (a) done by an authorised person in the performance of a function or exercise of a power under this Act; or
 - (b) done by someone else authorised under this Act to do the act.
- (4) In this section—

prohibited purpose means a purpose prescribed under a regulation or zoning plan as a prohibited purpose for this section.

⁷ See sections 33 (When management plan has effect) and 38 (When amendment has effect)

44 Entry or use without an authority

- (1) If this Act requires a person to obtain an authority to enter or use a marine park for a particular purpose, a person must not wilfully enter or use the park for the purpose without the authority.

Maximum penalty—

- (a) for a purpose involving the taking of natural or cultural resources—3 000 penalty units; or
 - (b) for another purpose—295 penalty units.
- (2) Subsection (1) does not apply to an act—
- (a) done by an authorised person in the performance of a function or exercise of a power under this Act; or
 - (b) done by someone else authorised under this Act to do the act.

45 Entry or use requiring notice

- (1) A person required under this Act to give the chief executive a notice before entering or using a marine park for a particular purpose must not wilfully enter or use the park for the purpose without giving the notice.

Maximum penalty—295 penalty units.

- (2) If the chief executive makes the entry or use subject to conditions, the person must comply with the conditions.

Maximum penalty—295 penalty units.

Division 2 Other offence provisions**46 False or misleading information given by applicant**

A person, in making an application for an authority issued under this Act, must not state anything that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

47 False or misleading documents given by applicant

- (1) A person, in making an application for an authority issued under this Act, must not give the chief executive a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person who, when giving the document—
- (a) informs the chief executive, to the best of the person's ability, how it is false or misleading; and
 - (b) gives the correct information to the chief executive if the person has, or can reasonably obtain, the correct information.

48 Noncompliance with temporary restricted area declaration

- (1) A person must comply with a temporary restricted area declaration.

Maximum penalty—3 000 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply to an act done or omission made by an authorised person in the performance of a function or exercise of a power under this Act.

49 Noncompliance with conditions of an authority

The holder of an authority issued under this Act must comply with the conditions of the authority.

Maximum penalty—

- (a) for a condition about the taking of natural or cultural resources—3 000 penalty units; or
- (b) for another condition—295 penalty units.

50 Unlawful serious environmental harm

- (1) A person must not wilfully do an act or make an omission that directly or indirectly causes or is likely to cause serious environmental harm to a marine park.

Maximum penalty—3 000 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply to an act done or omission made—

- (a) by an authorised person in the performance of a function or exercise of a power under this Act; or
- (b) by someone else authorised under this Act to do the act or make the omission.

- (3) Also, subsection (1) does not apply if the act or omission is incidental to and normally associated with an activity carried out lawfully by the person—

- (a) outside the marine park; or

Example—

a lawful discharge from a land-based aquaculture facility

- (b) inside the park, if—

- (i) there is no zoning plan for the park; or
- (ii) the park is not subject to a regulation applying specifically to the park and dealing with the conservation of its environment.

- (4) In this section—

serious environmental harm, to a marine park, means—

- (a) actual or potential harm to the park's environment or use and non-use values that is irreversible, of a high impact or widespread; or
- (b) for a marine park area that is a highly protected area, an area of high conservation value or special significance—actual or potential harm to the area's environment or use and non-use values.

51 Unlawful use of particular words

- (1) A person must not use words about an area that is not a marine park—
- (a) in a way that is likely to cause a person to whom the words are directed to reasonably believe the area is a marine park or part of a marine park; and
 - (b) with the intention of gaining a benefit for the person or someone else or of causing a detriment to someone else.

Maximum penalty—50 penalty units.

- (2) A person must not use words about a zone or other area in a marine park—
- (a) in a way that is likely to cause a person to whom the words are directed to reasonably believe the zone or area is of a classification different to its classification under this Act; and
 - (b) with the intention of gaining a benefit for the person or someone else or of causing a detriment to someone else.

Maximum penalty—50 penalty units.

Part 5 Monitoring and enforcement**Division 1 Inspectors****52 Appointment and qualifications**

- (1) The chief executive may appoint any of the following individuals as an inspector—
- (a) a public service employee;
 - (b) an APS employee under the *Public Service Act 1999* (Cwlth);
 - (c) an employee of a local government;
 - (d) a police officer;

- (e) with the individual's consent, another individual.

Note—

A proposed appointment of a police officer must have the approval of the commissioner of the police service under the *Police Powers and Responsibilities Act 2000*, section 11 (Appointment of police officers as public officials for other Acts).

- (2) However, the chief executive may appoint an individual as an inspector only if the chief executive is satisfied the individual is qualified for appointment because the individual has the necessary expertise or experience.

53 Appointment conditions and limit on powers

- (1) An inspector holds office on any conditions stated in—
 - (a) the inspector's instrument of appointment; or
 - (b) a signed notice given to the inspector; or
 - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector's powers under this Act.
- (3) In this section—

signed notice means a notice signed by the chief executive.

54 Issue of identity card

- (1) The chief executive must issue an identity card to each inspector.
- (2) The identity card must—
 - (a) contain a recent photo of the inspector; and
 - (b) contain a copy of the inspector's signature; and
 - (c) identify the individual as an inspector under this Act; and
 - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to an individual for this Act and other purposes.

55 Production or display of identity card

- (1) In exercising a power under this Act in relation to a person, an inspector, other than a police officer in uniform, must—
 - (a) produce the inspector's identity card for the person's inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 59(1)(b) or (2).

56 When inspector ceases to hold office

- (1) An inspector ceases to hold office if any of the following happens—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the inspector ceases to hold office;
 - (c) the inspector's resignation under section 57 takes effect.
- (2) Subsection (1) does not limit the ways an inspector may stop holding office.
- (3) In this section—

condition of office means a condition on which the inspector holds office.

57 Resignation

An inspector may resign by signed notice given to the chief executive.

58 Return of identity card

An individual who ceases to be an inspector must return the individual's identity card to the chief executive within 21 days

after ceasing to be an inspector, unless the individual has a reasonable excuse.

Maximum penalty—50 penalty units.

Division 2 Powers of inspectors

Subdivision 1 Entry to places

59 Power to enter places

- (1) Subject to section 72(2),⁸ an inspector may enter a place if—
 - (a) its occupier consents to the entry; or
 - (b) it is a public place and the entry is made when it is open to the public; or
 - (c) the entry is authorised by a warrant; or
 - (d) it is an authority holder's place of business stated in the authority and is—
 - (i) open for carrying on the business; or
 - (ii) otherwise open for entry; or
 - (iii) required to be open for inspection under the authority.
- (2) For the purpose of asking the occupier of a place for consent to enter, an inspector may, without the occupier's consent or a warrant—
 - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
 - (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- (3) For subsection (1)(d), a place of business does not include a part of the place where an individual resides.

8 Section 72 (Power to stop and search vessels, vehicles and aircraft)

Subdivision 2 Procedure for entry

60 Entry with consent

- (1) This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 59(1)(a).
- (2) Before asking for the consent, the inspector must tell the occupier—
 - (a) the purpose of the entry; and
 - (b) that the occupier is not required to consent.
- (3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.
- (4) The acknowledgment must state—
 - (a) the occupier has been told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
 - (b) the purpose of the entry; and
 - (c) the occupier gives the inspector consent to enter the place and exercise powers under this part; and
 - (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgment, the inspector must immediately give a copy to the occupier.
- (6) If—
 - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
 - (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

61 Application for warrant

- (1) An inspector may apply to a magistrate for a warrant for a place.
- (2) The inspector must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the written application to be given by statutory declaration.

62 Issue of warrant

- (1) The magistrate may issue a warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act; and
 - (b) the evidence is at the place, or, within the next 7 days, will be at the place.
- (2) The warrant must state—
 - (a) the place to which the warrant applies; and
 - (b) that a stated inspector may, with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry to the place; and
 - (ii) exercise the inspector's powers under this part; and
 - (c) the offence for which the warrant is issued; and
 - (d) the evidence that may be seized under the warrant; and
 - (e) the hours of the day or night when the place may be entered; and
 - (f) the magistrate's name; and

- (g) the date and time of the warrant's issue; and
- (h) the date, within 14 days after the warrant's issue, the warrant ends.

63 Application by electronic communication and duplicate warrant

- (1) An application under section 61 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the inspector considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the inspector's remote location.
- (2) The application—
 - (a) may not be made before the inspector prepares the written application under section 61(2); but
 - (b) may be made before the written application is sworn.
- (3) The magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
 - (a) it was necessary to make the application under subsection (1); and
 - (b) the way the application was made under subsection (1) was appropriate.
- (4) After the magistrate issues the original warrant—
 - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the inspector, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the inspector; or
 - (b) otherwise—
 - (i) the magistrate must tell the inspector the date and time the warrant is issued and the other terms of the warrant; and
 - (ii) the inspector must complete a form of warrant, including by writing on it—

- (A) the magistrate's name; and
 - (B) the date and time the magistrate issued the warrant; and
 - (C) the other terms of the warrant.
- (5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the ***duplicate warrant***) is a duplicate of, and as effectual as, the original warrant.
- (6) The inspector must, at the first reasonable opportunity, send to the magistrate—
 - (a) the written application complying with section 61(2) and (3); and
 - (b) if the inspector completed a form of warrant under subsection (4)(b)—the completed form of warrant.
- (7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6)—
 - (a) attach the documents to the original warrant; and
 - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (8) Despite subsection (5), if—
 - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
 - (b) the original warrant is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (9) This section does limit section 61.
- (10) In this section—

relevant magistrates court, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

64 Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in the warrant or in compliance with section 61, 62 or 63 unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—
warrant includes a duplicate warrant mentioned in section 63(5).

65 Warrants—procedure before entry

- (1) This section applies if an inspector named in a warrant issued under this part for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the inspector must do or make a reasonable attempt to do each of the following things—
 - (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the inspector's identity card, or having the identity card displayed, as mentioned in section 55(1);⁹
 - (b) give the person a copy of the warrant;
 - (c) tell the person the inspector is permitted by the warrant to enter the place;
 - (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.
- (3) However, the inspector need not comply with subsection (2) if the inspector believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.
- (4) In this section—
warrant includes a duplicate warrant mentioned in section 63(5).

9 Section 55 (Production or display of identity card)

Subdivision 3 Powers after entry

66 General powers after entering places

- (1) This section applies to an inspector who enters a place under section 59.
- (2) However, if an inspector enters a place to ask the occupier's consent to enter premises, this section applies to the inspector only if the consent is given or the entry is otherwise authorised.
- (3) For monitoring and enforcing compliance with this Act, the inspector may do all or any of the following—
 - (a) search any part of the place;
 - (b) inspect, measure, test, photograph or film any part of the place or anything at the place;
 - (c) mark or seal a container or other thing at the place;
 - (d) open a container if the inspector considers it is necessary for exercising a power;
 - (e) take a sample of or from anything at the place;
 - (f) take an extract from, or copy, a document at the place;
 - (g) take into or onto the place any person, equipment and materials the inspector reasonably requires for exercising a power under this division.

67 Power to require reasonable help or information

- (1) An inspector may require the occupier of the place, or a person at the place, to give the inspector—
 - (a) reasonable help to exercise a power under section 66(3); or
 - (b) information, in a stated reasonable way, to help the inspector ascertain whether this Act is being complied with.

Example of reasonable way—

by production of a licence, certificate or log book entry

- (2) When making a requirement under subsection (1), the inspector must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.
- (3) A person required to give reasonable help under subsection (1)(a), or give information under subsection (1)(b), must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—15 penalty units.

- (4) If the person is an individual, it is a reasonable excuse for the individual not to comply with the requirement if complying with the requirement might tend to incriminate the individual.

Subdivision 4 Other powers

68 Power to require name and address

- (1) An inspector may require a person to state the person's name and residential or business address if the inspector—
 - (a) finds the person committing an offence against this Act; or
 - (b) finds the person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has just committed an offence against this Act.
- (2) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name or address unless the person has a reasonable excuse.
- (3) The inspector may also require the person to give evidence of the correctness of the stated name or required address if the inspector suspects the stated name or address is false.
- (4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—15 penalty units.

- (5) A person does not commit an offence against subsection (4) if—
 - (a) the requirement was given because the inspector suspected the person had committed an offence against this Act; and
 - (b) the person is not proved to have committed the offence.

69 Power to require information about contravention

- (1) This section applies if an inspector reasonably believes—
 - (a) this Act has been contravened; and
 - (b) a person may be able to give information about the contravention.
- (2) The inspector may require the person to give information to the person's knowledge about the contravention within a stated reasonable time and in a stated reasonable way.

Example of reasonable way—

by production of a licence, certificate or log book entry

- (3) When making a requirement under subsection (2), the inspector must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.
- (4) A person of whom a requirement is made under subsection (2) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—15 penalty units.

- (5) If the person is an individual, it is a reasonable excuse for the individual not to comply with the requirement if complying with the requirement might tend to incriminate the individual.

70 Power to stop persons

- (1) An inspector may require a person to stop, and not to move on until permitted by the inspector, if the inspector—
 - (a) finds the person committing an offence against this Act; or

- (b) finds the person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has just committed an offence against this Act.
- (2) When making the requirement, the inspector must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.
- (3) The inspector may require the person not to move on only for as long as is reasonably necessary for the inspector to exercise the inspector's powers under this Act in relation to the person.
- (4) A person must comply with a requirement under subsection (1), unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—100 penalty units.

71 Power to give direction to leave area

- (1) An inspector may direct a person to immediately leave a marine park or a part of it if—
 - (a) the inspector finds the person committing, or attempting to commit, an offence against this Act; or
 - (b) finds the person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has committed or attempted to commit an offence against this Act.
- (2) The direction may require the person to remove the person's property from the park or part of it.
- (3) When giving the direction, the inspector must tell the person the reason for giving it.
- (4) If it is reasonably practicable, the direction must be given in writing.
- (5) The person must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty for subsection (5)—15 penalty units.

- (6) If the person, without reasonable excuse, fails to comply with the direction, an inspector may take the steps that appear to

the inspector to be reasonable and necessary to secure compliance with the direction, including, for example—

- (a) using reasonable force; and
- (b) removing the person's property to a place inside or outside the park.

72 Power to stop and search vessels, vehicles and aircraft

- (1) This section applies—
 - (a) to enable an inspector to board or enter a vessel, vehicle or aircraft to find out whether this Act is being complied with; or
 - (b) if an inspector has reasonable grounds for suspecting—
 - (i) a vessel, vehicle or aircraft is being, or has been, used in the commission of an offence against this Act; or
 - (ii) the vessel, vehicle or aircraft, or anything in or on it, may provide evidence of the commission of an offence against this Act.
- (2) The inspector may, with necessary and reasonable help and force and without the consent of the owner or person in control of the vessel, vehicle or aircraft or a warrant—
 - (a) board or enter the vessel, vehicle or aircraft; and
 - (b) exercise the powers set out in section 66(3).¹⁰
- (3) However, before boarding or entering an unattended vessel, vehicle or aircraft under this section, the inspector must take reasonable steps to advise its owner, or the person in control of it, of the intention to board or enter.
- (4) After boarding or entering an unattended vessel, vehicle or aircraft under this section, the inspector must attach or leave, in a conspicuous place in the vessel, vehicle or aircraft a notice stating—
 - (a) when the vessel, vehicle or aircraft was boarded or entered; and

10 Section 66 (General powers after entering places)

- (b) why it was boarded or entered; and
 - (c) what powers mentioned in section 66(3) were exercised; and
 - (d) what the exercise of the powers involved.
- (5) The inspector must not enter a part of a vessel, vehicle or aircraft used only as a living area, or exercise a power set out in section 66(3) in relation to that part, unless the inspector is accompanied by the person in control of the vessel, vehicle or aircraft.
- (6) Subsection (5) does not apply if the person in control is unavailable or unwilling to accompany the inspector or the inspector is unable for another reason to comply with the subsection.
- (7) If—
 - (a) the vessel or vehicle is moving or about to move; or
 - (b) the aircraft is moving, or about to move, on the ground;the inspector may signal the driver or the person in control of the vessel, vehicle or aircraft, to stop or not to move it.
- (8) The inspector may require the person to stop and not to move the vessel, vehicle or aircraft only for as long as is reasonably necessary for the inspector to exercise the inspector's powers under this Act in relation to the vessel, vehicle or aircraft.
- (9) A person must not disobey a signal given under subsection (7), unless the person has a reasonable excuse.

Maximum penalty for subsection (9)—100 penalty units.
- (10) It is a reasonable excuse for the person to fail to stop or to move the vessel, vehicle or aircraft if—
 - (a) to immediately obey the signal would have endangered the person or someone else; and
 - (b) the person obeys the signal as soon as it is practicable to obey the signal.

73 Power to require driver or person in control to give reasonable help etc.

- (1) An inspector may require the driver or person in control of a vessel, vehicle or aircraft—
 - (a) to give the inspector reasonable help to enable the vessel, vehicle or aircraft to be boarded or entered under section 72(2); or
 - (b) to bring the vessel, vehicle or aircraft to a specified place and remain in control of it at the place for a reasonable time to enable the inspector to exercise the inspector's powers in relation to it.
- (2) A person must not contravene a requirement under subsection (1), unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

Subdivision 5 Power to seize evidence**74 Seizing evidence at place entered under s 59**

- (1) An inspector who enters a place with the consent of the occupier under section 59(1)(a)¹¹ may seize a thing at the place if—
 - (a) the inspector believes the thing is evidence of an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.
- (2) An inspector who enters a public place under section 59(1)(b) may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against this Act.
- (3) An inspector who enters a place under a warrant under section 59(1)(c) may seize the evidence for which the warrant was issued.

11 Section 59 (Power to enter places)

- (4) An inspector who enters a place of business under section 59(1)(d), may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against this Act.
- (5) The inspector may also seize anything else at the place if the inspector believes—
 - (a) the thing is evidence of an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

75 Seizing evidence on or in vessel, vehicle or aircraft entered or boarded under s 72

An inspector who enters or boards a vessel, vehicle or aircraft under section 72(2) may seize a thing on or in the vessel, vehicle or aircraft if the inspector reasonably believes the thing is evidence of an offence against this Act.

76 Powers in support of seizure

- (1) To enable a thing to be seized, an inspector may, by written notice given to the person in control of the thing, require the person—
 - (a) to take it to a specified reasonable place by a specified reasonable time; and
 - (b) if necessary, to remain in control of it at the place for a reasonable time.
- (2) If, for any reason, it is not practicable to make the requirement by a written notice, the requirement may be made orally and confirmed by written notice as soon as practicable.
- (3) A person must comply with a requirement under this section, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (4) Nothing in this section prevents an inspector making a further requirement under this section of the same person or someone else in relation to the same thing, if it is necessary and reasonable to make the further requirement.

77 Securing seized things

- (1) Having seized a thing, an inspector may—
- (a) move the thing from the place where it was seized (the *place of seizure*); or
 - (b) leave the thing at the place of seizure but—
 - (i) take reasonable action to restrict access, or prevent or mitigate damage, to it; or
- Examples of restricting access—*
- 1. marking, sealing, tagging or otherwise identifying the thing to show access to it is restricted
 - 2. sealing the entrance to a room where the thing is situated and marking the entrance to show access to the thing is restricted
- (ii) direct the person the inspector reasonably believes is in control of the thing to take reasonable action to restrict access, or prevent or mitigate damage, to it; or
- (c) for equipment—make it inoperable, or direct the person the inspector reasonably believes is in control of the thing to make it inoperable.

Example of making equipment inoperable—

dismantling equipment or removing a component of equipment without which the equipment is not capable of being used

- (2) However, if the thing is on a vessel and is necessary for the vessel's safe operation, the inspector may move or restrict access to the thing under subsection (1) for no longer than is reasonably necessary for obtaining evidence of the offence for which the thing was seized.
- (3) A person to whom a direction is given under subsection (1)(b)(ii) or (c) must comply with the direction.

Maximum penalty—50 penalty units.

78 Tampering with seized things

- (1) If an inspector restricts access to a seized thing, a person must not tamper or attempt to tamper with it, or something restricting access to it, without an inspector's approval.

Maximum penalty—100 penalty units.

- (2) If an inspector or a person acting at the inspector's direction makes seized equipment inoperable, a person must not tamper or attempt to tamper with the equipment, without an inspector's approval.

Maximum penalty—100 penalty units.

79 Receipt for seized things

- (1) After an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value when seized.

80 Inspector may dispose of natural resources taken unlawfully

- (1) This section applies if a natural resource is seized under this Act and an inspector reasonably believes the resource has been taken unlawfully.
- (2) Despite any other provision of this Act, the inspector may deal with or dispose of the resource in the way the inspector considers appropriate if the inspector is satisfied that it is necessary to do so—
 - (a) in the interests of the welfare of the resource; or
 - (b) to conserve the resource or environment.

- (3) Subsection (2) applies even though a proceeding has not been taken for, or a person convicted of, the offence.

81 Forfeiture of seized things

- (1) A thing that has been seized under this subdivision and not disposed of under section 80 is forfeited to the State if the inspector who seized the thing—
- (a) can not find its owner after making reasonable inquiries; or
 - (b) can not return it to its owner after making reasonable efforts.
- (2) In applying subsection (1)—
- (a) subsection (1)(a) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner; and
 - (b) subsection (1)(b) does not require the inspector to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

Example for subsection (2)(b)—

The owner of the thing has migrated to another country.

- (3) Regard must be had to a thing's nature, condition and value when seized in deciding—
- (a) whether it is reasonable to make inquiries or efforts; and
 - (b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.
- (4) In this section—
- owner**, of property, includes the person in possession or control of it.

82 Dealing with forfeited things

- (1) On the forfeiture of a thing to the State, it becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.

- (2) Without limiting subsection (1), the chief executive may destroy or otherwise dispose of the thing.

83 Return of seized things

- (1) If a seized thing is not disposed of under section 80 or forfeited under section 81, the inspector must return it to the person from whom it was seized—
- (a) at the end of 6 months after its seizure; or
 - (b) if proceedings involving the thing are started within the 6 months, at the end of the proceedings and any appeal from the proceedings.
- (2) Despite subsection (1), unless a thing that has been seized as evidence is disposed of or forfeited as mentioned in the subsection, the inspector must immediately return it to the person from whom it was seized if the inspector stops being satisfied its continued retention as evidence is necessary.

84 Access to seized things

- (1) Until a seized thing is disposed of, forfeited or returned, an inspector must allow the person from whom it was seized to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

Division 3 General enforcement matters

85 Definition for div 3

In this division—

inspector, for a power exercised under section 100, 102, 103 or 109,¹² includes the chief executive.

¹² Section 100 (Inspector's power to remove property), 102 (Seizure, removal and disposal without giving removal notice), 103 (Inspector's power to remove property) or 109 (Restoration of environment etc.)

86 Inspector's obligation not to cause unnecessary damage

An inspector must take all reasonable steps to ensure the inspector causes as little inconvenience as practicable and does not cause any unnecessary damage to property in exercising a power under division 2 or section 100, 102, 103 or 109.

87 Notice of damage

- (1) This section applies if—
 - (a) an inspector damages property when exercising or purporting to exercise a power; or
 - (b) a person (the *other person*) acting under the direction of an inspector damages property.
- (2) The inspector must immediately give notice of particulars of the damage to the person who appears to the inspector to be the owner of the property.
- (3) If the inspector believes the damage was caused by a latent defect in the property or circumstances beyond the inspector or other person's control, the inspector may state the belief in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to damage the inspector reasonably believes is trivial.
- (6) In subsection (2)—

owner, of property, includes—

 - (a) the person in possession or control of it; and
 - (b) for abandoned, stranded, sunk or wrecked property—includes the person in control of the property when it was abandoned, stranded, sunk or wrecked.

88 Compensation

- (1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under—
 - (a) division 2, subdivision 1, 3 or 4;¹³ or
 - (b) section 100, 102, 103 or 109.
- (2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under the provision.
- (3) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.
- (4) A court may order compensation to be paid only if it is satisfied it is fair to make the order in the circumstances of the particular case.

89 False or misleading information given to inspector

A person must not state anything to an inspector the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

90 False or misleading documents given to inspector

- (1) A person must not give an inspector a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.
- (2) Subsection (1) does not apply to a person if the person, when giving the document—
 - (a) tells the inspector, to the best of the person's ability, how it is false or misleading; and

13 Division 2 (Powers of inspectors), subdivision 1 (Entry to places), 3 (Powers after entry), 4 (Other powers) or 5 (Power to seize evidence)

- (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

91 Obstructing an inspector

- (1) A person must not obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an inspector and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—

- (a) it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and
- (b) the inspector considers the person's conduct is an obstruction.

- (3) In this section—

obstruct includes hinder and attempt to obstruct or hinder.

92 Impersonating an inspector

A person must not pretend to be an inspector.

Maximum penalty—50 penalty units.

Division 4 Compliance notices

93 Compliance notice

- (1) This section applies if the chief executive or an inspector (each the *notifier*) reasonably believes—

- (a) a person—
 - (i) is contravening a provision of this Act;¹⁴ or

¹⁴ See *Acts Interpretation Act 1954*, section 7 (Act includes statutory instruments under Act etc.).

- (ii) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated; and
 - (b) a matter relating to the contravention is reasonably capable of being rectified; and
 - (c) it is appropriate to give the person an opportunity to rectify the matter.
- (2) The notifier may give the person a notice (a **compliance notice**) requiring the person to remedy the contravention.
- (3) The compliance notice must state that the person may appeal under part 8 against the decision to give the notice.
- (4) Subsection (5) applies if the giving of the compliance notice is for a matter for which a show cause notice about an authority has been given to the person under this or another Act or a law of the Commonwealth or another State.
- (5) The compliance notice may only be given if, after considering any submission made by the person as required by the show cause notice, the notifier still believes it is appropriate to give the compliance notice.
- (6) The compliance notice must state each of the following—
- (a) that it is given under this provision;
 - (b) that the notifier reasonably believes the person—
 - (i) is contravening a provision of this Act; or
 - (ii) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated;
 - (c) the provision the notifier believes is being, or has been, contravened (the **relevant provision**);
 - (d) briefly, how it is believed the relevant provision is being, or has been, contravened;
 - (e) that the person must remedy the contravention within a stated reasonable time;
 - (f) that it is an offence to fail to comply with the compliance notice unless the person has a reasonable excuse.

- (7) The compliance notice may also state the steps the notifier reasonably believes are necessary to remedy the contravention, or avoid further contravention, of the relevant provision.
- (8) The person must comply with the compliance notice, unless the person has a reasonable excuse.

Maximum penalty—

- (a) if it is an offence to contravene the relevant provision—the maximum penalty for contravening that provision; or
 - (b) otherwise—5 penalty units.
- (9) If it is an offence to contravene the relevant provision, the person can not be prosecuted for that offence unless the person fails to comply with the compliance notice and does not have a reasonable excuse for the noncompliance.
 - (10) In this section—
show cause notice, about an authority, means a notice given to the holder of the authority and inviting the holder to make submissions about why the authority should not be amended, suspended or cancelled.

Part 6 Other provisions for protecting the environment and users of marine parks

Division 1 Preliminary

94 Definitions for pt 6

In this part—

inspector includes the chief executive.

person responsible, for abandoned, stranded, sunk or wrecked property, includes the person in control of the property when it was abandoned, stranded, sunk or wrecked.

property does not include land.

Division 2 Temporary restricted area declaration

95 Temporary restricted area declaration

- (1) The chief executive may declare an area within a marine park to be a temporary restricted area if the chief executive considers urgent action is needed to deal with—
 - (a) a serious risk to the park's environment or use and non-use values; or
 - (b) a risk of injury or illness to a person.
- (2) The declaration must state—
 - (a) that it is a temporary restricted area declaration; and
 - (b) an outline of the nature of the emergency; and
 - (c) a description, by map or otherwise, of the boundaries of the temporary restricted area.
- (3) The declaration may provide for the regulation of things the chief executive reasonably considers are necessary to meet the risk for which the declaration is made.
- (4) The chief executive—
 - (a) must publish the declaration in the gazette; and
 - (b) may publish the declaration in other ways the chief executive considers appropriate having regard to the nature of the emergency.

Examples of ways of publishing the declaration—

signs, radio announcements

- (5) The declaration has effect when it is published in the gazette.

- (6) The chief executive must repeal the declaration as soon as possible after the chief executive considers the emergency no longer exists.

96 Expiry of declaration

Unless it is earlier repealed, the temporary restricted area declaration expires on the earlier of the following—

- (a) the expiry day stated in the declaration;
- (b) the end of 6 months after it is gazetted.

97 Declaration is not subordinate legislation

- (1) The temporary restricted area declaration is not subordinate legislation.
- (2) However, the *Statutory Instruments Act 1992*, sections 49 to 51 apply to the declaration as if it were subordinate legislation.

Note—

These provisions deal with the tabling in, and disallowance by, the Legislative Assembly of subordinate legislation.

98 Temporary restricted area declaration prevails over regulation, zoning plan or authority

If there is an inconsistency between the temporary restricted area declaration and a regulation, zoning plan or authority issued under this or another Act, the declaration prevails to the extent of the inconsistency.

Division 3 Directions for protecting environment and users

99 Inspector's power to give directions

- (1) This section applies if an inspector reasonably believes urgent action is needed to deal with an emergency involving a marine park and—

- (a) a serious risk to the park's environment or use and non-use values; or
 - (b) a risk of injury or illness to a person; or
 - (c) the safety of a person's property.
- (2) If it is reasonably necessary for dealing with the emergency, the inspector may give a person a direction regulating or prohibiting the person's entry to or use of the park.
- (3) Without limiting subsection (2), the inspector may give a person in control of a vessel, vehicle or aircraft in the park a direction—
 - (a) regulating or prohibiting the driving, riding, parking, mooring or use of the vessel, vehicle or aircraft in the park; or
 - (b) requiring the person to remove the vessel, vehicle or aircraft from the park within a stated reasonable period.
- (4) Also, without limiting subsection (2), the inspector may give a person responsible for abandoned, stranded, sunk or wrecked property in the park a direction requiring the person, within a stated reasonable period, to take stated reasonable action for all or any of the following—
 - (a) securing the property's safety or removing or salvaging the property;
 - (b) repairing or remedying any condition caused directly or indirectly by the abandonment, stranding, sinking or wrecking;
 - (c) preventing or minimising any impacts likely to arise, directly or indirectly, from the abandonment, stranding, sinking or wrecking.
- (5) Subsections (2) to (4) apply whether or not the direction is inconsistent with an authority held by the person.
- (6) A direction may be given orally, in writing or in another way that sufficiently shows the inspector's intention.

Example—

by use of a sign or signal

- (7) The person to whom the direction is given must comply with it, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- (8) It is not a reasonable excuse that the person holds an authority that is inconsistent with the direction.
- (9) In this section—
reasonable period, in urgent circumstances, includes immediately.

Division 4 Removing abandoned, stranded, sunk or wrecked property

Subdivision 1 Removal of property other than in urgent circumstances

100 Inspector's power to remove property

- (1) This section applies if an inspector reasonably believes property in a marine park is abandoned, stranded, sunk or wrecked and needs to be removed, but not urgently, to—
 - (a) prevent or remedy any harm to, or loss or destruction of, the park's environment or use and non-use values; or
 - (b) secure the safety of a person or a person's property in the park; or
 - (c) minimise disturbance to persons in the park.
- (2) Subject to subsection (4) and section 101, the inspector may seize and remove the property to a place decided by the inspector.
- (3) Subsection (2) applies whether or not the seizure and removal is inconsistent with an authority held by a person.
- (4) If the person responsible for the property—
 - (a) has been given a compliance notice, or direction under section 99(4), about the property; or
 - (b) has had an enforcement order about the property made against the person;

the inspector may seize and remove the property only if the person fails to comply with the compliance notice, direction or enforcement order and does not have a reasonable excuse for the noncompliance.

Note—

For inspectors' obligations in exercising powers under this section, and a person's right to compensation for damage caused in the exercise of a power, see sections 86 to 88.

101 Removal notice

- (1) Before seizing and removing the property, and subject to section 102, the inspector must give a notice in the approved form (a **removal notice**) to the person responsible for the property.
- (2) If the person is not known or can not be found after making reasonable inquiries, the notice must be given by—
 - (a) if practicable, attaching it to the property intended to be seized; and
 - (b) publishing it in a newspaper circulating in the locality where the property is.
- (3) The notice must include each of the following particulars—
 - (a) that the notice is given under this section;
 - (b) the date the notice is given;
 - (c) a description of the property;
 - (d) where and when the property was found;
 - (e) a day, not less than 28 days after the date of the notice, after which, if no one claims the property, the inspector may—
 - (i) seize and remove the property to the place stated in the notice; and
 - (ii) dispose of it under section 105;
 - (f) a statement to the effect of section 105.
- (4) Subsection (2) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner.

- (5) Regard must be had to a thing's nature, condition and value in deciding—
- (a) whether it is reasonable to make inquiries; and
 - (b) if making inquiries, what inquiries, including the period over which they are made, are reasonable.

102 Seizure, removal and disposal without giving removal notice

- (1) If it is impracticable or would be unreasonable to give a removal notice given the property's nature, condition and value, the inspector may, without giving the notice—
- (a) seize and remove the property under section 100(2); and
 - (b) having regard to the value and condition of the property—
 - (i) sell the property by public auction; or
 - (ii) destroy or otherwise dispose of it.

Example—

general rubbish or lost property, including for example, clothing, fishing nets and crab pots

- (2) Compensation is not payable for a sale or disposal under subsection (1).

Note—

For inspectors' obligations in exercising powers under this section, and a person's right to compensation for damage caused in the exercise of a power, see sections 86 to 88.

Subdivision 2 Removal of property in urgent circumstances

103 Inspector's power to remove property

- (1) This section applies if an inspector reasonably believes property in a marine park is abandoned, stranded, sunk or wrecked and needs to be removed urgently to—
- (a) prevent or remedy any harm to, or loss or destruction of, the park's environment or use and non-use values; or

- (b) secure the safety of a person or a person's property in the park; or
 - (c) minimise disturbance to persons in the park.
- (2) Subject to subsections (4) and (5), the inspector may seize and remove the property to a place decided by the inspector.
- (3) Subsection (2) applies whether or not the seizure and removal is inconsistent with an authority held by a person.
- (4) Subsection (5) applies if the person responsible for the property—
 - (a) has been given a compliance notice, or direction under section 99(4), about the property; or
 - (b) has had an enforcement order about the property made against the person.
- (5) The inspector may seize and remove the property only if—
 - (a) the person fails to comply with the compliance notice, direction or enforcement order and does not have a reasonable excuse for the noncompliance; or
 - (b) for property required to be removed by a particular day or within a particular period as required under the compliance notice, direction or enforcement order—the inspector reasonably believes—
 - (i) the property needs to be removed immediately, or sooner than as required by the compliance notice, direction or enforcement order; and
 - (ii) the person responsible for the property is unwilling or unable to remove the property sooner than as required by the compliance notice, direction or enforcement order.
- (6) If the inspector seizes and removes the property under subsection (5)(b), the person responsible for the property can not be prosecuted for failing to remove the property by the day or within the period as required under the compliance notice, direction or enforcement order.

Note—

For inspectors' obligations in exercising powers under this section, and a person's right to compensation for damage caused in the exercise of a power, see sections 86 to 88.

104 Removal notice

- (1) As soon as practicable after seizing and removing the property, the inspector must give a notice in the approved form (a **removal notice**) to the person responsible for the property.
- (2) If the person is not known or can not be found after making reasonable inquiries, the notice may be given by publishing it in a newspaper circulating throughout the State.
- (3) The notice must include each of the following particulars—
 - (a) that the notice is given under this section;
 - (b) the date the notice is given;
 - (c) a description of the property;
 - (d) where and when the property was found;
 - (e) where the property was moved to, and when it was moved;
 - (f) a day, not less than 28 days after the date of the notice, after which, if no one claims the property, the inspector may dispose of it under section 105;
 - (g) a statement to the effect of section 105.
- (4) Subsection (2) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the person.
- (5) Regard must be had to a thing's nature, condition and value when seized in deciding—
 - (a) whether it is reasonable to make inquiries; and
 - (b) if making inquiries, what inquiries, including the period over which they are made, are reasonable.

Subdivision 3 Dealing with property after removal

105 Action inspector may take if property not claimed

- (1) If no one claims the property the subject of a removal notice by the day stated in the notice, the inspector who gave the notice may—
 - (a) having regard to the property's value and condition—
 - (i) sell it by public auction; or
 - (ii) destroy or otherwise dispose of it; and
 - (b) take any action reasonably necessary to restore the environment from which it was removed.
- (2) Compensation is not payable for a sale or disposal under subsection (1)(a).

106 Dealing with proceeds of sale

The proceeds from a sale of property under section 102(1)(b) or 105(1)(a) must be applied as follows—

- (a) firstly, in payment of the expenses of the sale;
- (b) secondly, in payment of the costs of—
 - (i) seizing, removing and storing the property; and
 - (ii) preparing and giving the removal notice;
- (c) thirdly in payment of any costs of the State in taking action under section 105(1)(b);
- (d) fourthly, in payment of the balance to the owner of the property, or if the owner can not be found, to the consolidated fund.

107 Release of property

If a person claims the property the subject of a removal notice, the inspector may release it to the person only if the person—

- (a) satisfies the inspector the person has a right to the property; and

- (b) pays the inspector's reasonable costs of—
 - (i) seizing, removing and holding the property; and
 - (ii) preparing and giving the removal notice; and
 - (iii) if notice is given of the sale of the property—giving the notice; and
 - (iv) preventing or minimising impacts arising, directly or indirectly, from the abandonment, stranding, sinking or wrecking of the property.

108 Recovery of costs of removal etc.

The costs reasonably incurred by an inspector in taking all or any of the following action under this division because of a person's contravention of a provision of this Act are a debt payable by the person to the State—

- (a) seizing, removing and storing the person's property;
- (b) preparing and giving a removal notice concerning the property;
- (c) action reasonably necessary—
 - (i) to restore the environment from which the person's property was removed; or
 - (ii) to prevent or minimise impacts arising, directly or indirectly, from the abandonment, stranding, sinking or wrecking of the person's property.

Division 5 Restoration of environment etc.

109 Restoration of environment etc.

- (1) This section applies if an inspector reasonably believes—
 - (a) a person has failed to comply with a compliance notice, direction given under section 99 or enforcement order; or
 - (b) urgent action is needed to deal with an emergency involving a marine park and a serious risk to—

- (i) the park's environment or use and non-use values;
or
 - (ii) the safety of a person or a person's property.
- (2) The inspector may take the action (other than seizing and removing abandoned, stranded, sunk or wrecked property) the inspector considers appropriate to do all or any of the following—
 - (a) repair or remedy any condition caused by the noncompliance or emergency;
 - (b) mitigate any damage caused by the noncompliance or emergency;
 - (c) prevent any damage the inspector reasonably considers is likely to arise from the noncompliance or emergency.

Examples of action the inspector may take—

- 1. investigate or monitor any condition, or any action taken to repair, remedy, mitigate or prevent damage, caused by the noncompliance or emergency
- 2. rehabilitate or restore a marine park to its condition before the noncompliance or emergency
- 3. treat, remove, destroy, house or otherwise protect animals or plants affected or likely to be affected by the noncompliance or emergency
- 4. carry out works

Note—

See sections 100 and 103 for inspectors' powers to remove abandoned, stranded, sunk or wrecked property.

- (3) Subsection (2) applies whether or not the action is inconsistent with an authority held by a person.
- (4) The costs reasonably incurred in taking the action because of a person's noncompliance with a compliance notice, direction given under section 99 or enforcement order are a debt payable by the person to the State.

Note—

For inspectors' obligations in exercising powers under this section, and a person's right to compensation for damage caused in the exercise of a power, see sections 86 to 88.

Part 7 Proceedings for enforcement orders

Division 1 Preliminary

110 Definitions for pt 7

In this part—

court means the Planning and Environment Court.

person includes a body of persons, whether incorporated or unincorporated.

Division 2 Enforcement orders

111 Proceeding for enforcement orders

- (1) The chief executive or an inspector may bring a proceeding in the court—
 - (a) for an order to remedy or restrain the commission of an offence against this Act (an *enforcement order*); or
 - (b) if the person has brought a proceeding under this section for an enforcement order and the court has not decided the proceeding—for an order under section 112 (an *interim enforcement order*); or
 - (c) for an order to cancel or change an enforcement order or interim enforcement order.
- (2) Another person may bring a proceeding in the court—
 - (a) for an order to remedy or restrain the commission of an offence against section 43 or 50¹⁵ (an *enforcement order*); or
 - (b) if the person has brought a proceeding under this section for an enforcement order and the court has not decided

15 Section 43 (Entry or use for a prohibited purpose) or 50 (Unlawful serious environmental harm)

the proceeding—for an order under section 112 (an *interim enforcement order*); or

- (c) for an order to cancel or change an enforcement order or interim enforcement order.
- (3) A person may, under subsection (2), bring a proceeding for an enforcement order whether or not any right of the person has been, or may be, infringed by, or because of, the commission of the offence.
- (4) If the chief executive is not a party to a proceeding for an order mentioned in subsection (2), the person bringing the proceeding must, within 7 days after starting the proceeding, give the chief executive written notice of the proceeding.

Maximum penalty—15 penalty units.

- (5) The Minister or the chief executive may choose to be a party to a proceeding mentioned in this section by filing in the court a notice of election in the form approved by the chief executive.

112 Making interim enforcement order

- (1) The court may make an order pending a decision of a proceeding for an enforcement order if the court is satisfied it would be appropriate to make the order.
- (2) The court may make the order subject to conditions.
- (3) However, the court may not require as a condition of the order that the applicant for the order give an undertaking about damages.

113 Making enforcement order

- (1) The court may make an enforcement order if the court is satisfied the offence—
 - (a) is being or has been committed; or
 - (b) will be committed unless the enforcement order is made.
- (2) If the court is satisfied the offence is being or has been committed, the court may make an enforcement order whether

or not there has been a prosecution for the offence under this Act.

114 Effect of orders

- (1) An enforcement order or an interim enforcement order may direct a party to the proceeding for the order—
 - (a) to stop an activity that is, or would be, an offence if not stopped; or
 - (b) not to start an activity that is an offence if started; or
 - (c) to do anything required to stop committing an offence; or
 - (d) to do anything to prevent or minimise impacts arising or likely to arise, directly or indirectly, from the commission of an offence; or
 - (e) to do anything to comply with this Act.
- (2) Without limiting the court's powers, an enforcement order or an interim enforcement order may require—
 - (a) the repair, demolition or removal of a building; or
 - (b) the rehabilitation or restoration of an area adversely affected by the commission of an offence (*an affected area*); or
 - (c) if an affected area is not capable of being rehabilitated or restored—the rehabilitation or restoration of a stated area of equivalent size to the affected area.
- (3) An enforcement order or an interim enforcement order—
 - (a) may be in terms the court considers appropriate to secure compliance with this Act; and
 - (b) must state the time by which the order is to be complied with.
- (4) A person must not contravene an enforcement order or an interim enforcement order.

Maximum penalty—3 000 penalty units or 2 years imprisonment.

(5) In this section—

offence means—

- (a) for an enforcement order sought by the chief executive or an inspector—an offence against this Act; or
- (b) for an enforcement order sought by someone else—an offence against section 43 or 50.

115 Court's powers about orders

(1) The court's power to make an enforcement order or interim enforcement order to stop, or not to start, an activity may be exercised—

- (a) whether or not it appears to the court that the person against whom the order is made intends to engage, or to continue to engage, in the activity; and
- (b) whether or not the person against whom the order is made has previously engaged in an activity of the kind; and
- (c) whether or not there is a serious threat to a marine park's environment or use and non-use values or injury to another person if the person against whom the order is made engages, or continues to engage, in the activity.

(2) The court's power to make an enforcement order or interim enforcement order to do anything may be exercised—

- (a) whether or not it appears to the court that the person against whom the order is made intends to fail, or to continue to fail, to do the thing; and
- (b) whether or not the person against whom the order is made has previously failed to do a thing of the kind; and
- (c) whether or not there is a serious threat to a marine park's environment or use and non-use values or injury to another person if the person against whom the order is made fails, or continues to fail, to do the thing.

(3) The court may make an order to cancel or change an enforcement order or interim enforcement order.

- (4) The court's power under this section is in addition to its other powers.

Division 3 General procedural provision

116 Proceeding brought in representative capacity

- (1) A proceeding under this part may be brought by a person on behalf of another entity with the entity's consent.
- (2) If the entity on whose behalf the proceeding is brought is an unincorporated body, the body's committee or other controlling or governing entity must give the consent.
- (3) The entity on whose behalf the proceeding is brought may contribute to, or pay, the legal costs incurred by the person bringing the proceeding.

Part 8 Appeals and review

Division 1 Preliminary

117 Appeal against particular decisions must be by way of internal review or ADR process

- (1) A person who is given a compliance notice or removal notice may appeal against the decision to give the notice (the *original decision*) by way of—
 - (a) an application for internal review under division 2; or
 - (b) an alternative dispute resolution process provided for under a regulation.
- (2) Without limiting subsection (1)(b), a regulation may provide for the use of mediators and case appraisers approved under—
 - (a) the *District Court of Queensland Act 1967*, part 7;¹⁶ or

16 *District Courts Act 1967*, part 7 (ADR processes)

- (b) the *Uniform Civil Procedure Rules 1999*, chapter 9, part 4.¹⁷

Division 2 Internal review

118 Applying for an internal review

- (1) An application for internal review must be in the approved form and—
 - (a) made to the chief executive within 28 days after the day the person is given the compliance notice or removal notice; and
 - (b) supported by enough information to enable the chief executive to decide the application.
- (2) The chief executive may extend the time for applying for the internal review.
- (3) The application does not stay the original decision.
- (4) The application must not be dealt with by—
 - (a) the person who made the original decision; or
 - (b) a person in a less senior office than the person who made the original decision.
- (5) Subsection (4)—
 - (a) applies despite the *Acts Interpretation Act 1954*, section 27A;¹⁸ and
 - (b) does not apply to an original decision made by the chief executive.

119 Review decision

- (1) If the chief executive is satisfied the applicant has complied with section 118, the chief executive must, within 28 days after receiving the application—

¹⁷ *Uniform Civil Procedure Rules 1999*, chapter 9 (Ending proceedings early), part 4 (Alternative dispute resolution processes)

¹⁸ *Acts Interpretation Act 1954*, section 27A (Delegation of powers)

- (a) review the original decision; and
- (b) make a decision (the **review decision**) to—
 - (i) confirm the original decision; or
 - (ii) amend the original decision; or
 - (iii) substitute another decision for the original decision.
- (2) Within 14 days after making the review decision, the chief executive must give the applicant notice (the **review notice**) of the review decision.
- (3) The review notice must also state—
 - (a) the reasons for the review decision; and
 - (b) that the applicant may, within 28 days after the day the applicant is given the notice, appeal against the review decision to a Magistrates Court; and
 - (c) how to appeal.
- (4) If the chief executive does not comply with subsection (1) or (2), the chief executive is taken to have made a decision confirming the original decision.
- (5) For the purpose of an appeal to a Magistrates Court—
 - (a) if the review decision confirms the original decision, the original decision is taken to be the review decision; or
 - (b) if the review decision amends the original decision, the original decision as amended is taken to be the review decision.

120 Stay of operation of original decision

- (1) If an application is made for an internal review of an original decision, the applicant may immediately apply for a stay of the original decision to a Magistrates Court.
- (2) The court may stay the original decision to secure the effectiveness of the review and any later appeal to the court.
- (3) The stay—
 - (a) may be given on conditions the court considers appropriate; and

- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.
- (4) The period of the stay must not extend past the time when the chief executive makes a review decision about the original decision and any later period the court allows the applicant to enable the applicant to appeal against the review decision.
- (5) The application affects the original decision, or carrying out of the decision, only if the decision is stayed.

Division 3 Appeals to Magistrates Court

121 How to start appeal

- (1) An appeal is started by—
 - (a) filing written notice of the appeal with the clerk of the court of the Magistrates Court in which the appeal is started; and
 - (b) complying with the rules of court applicable to the appeal.
- (2) The notice of appeal must—
 - (a) be filed within 30 days after the appellant receives notice of the review decision or the decision is taken, under section 119(4) to have been made; and
 - (b) state fully the grounds of the appeal and the facts relied on.
- (3) The court may at any time extend the time for filing the notice of appeal.

122 Appellant to give notice of appeal

Within 7 days after filing a notice of appeal, the appellant must serve notice of the appeal on the chief executive.

123 Stay of operation of decision

- (1) The court may grant a stay of the operation of the decision to secure the effectiveness of the appeal.
- (2) The stay—
 - (a) may be given on conditions the court considers appropriate; and
 - (b) operates for the period fixed by the court; and
 - (c) may be revoked or amended by the court.
- (3) The period of the stay must not extend past the time when the court decides the appeal.
- (4) The appeal affects the review decision, or carrying out of the decision, only if the decision is stayed.

124 Powers of court on appeal

In deciding the appeal, the court may—

- (a) confirm the review decision; or
- (b) set aside the review decision; or
- (c) set aside the review decision and replace it with a decision the court considers appropriate; or
- (d) change the review decision in the way the court considers appropriate; or
- (e) send the matter back to the chief executive and give the directions the court considers appropriate.

Part 9 Legal proceedings**Division 1 Evidence****125 Application of div 1**

This division applies to a proceeding under this Act.

126 Appointments and authority

It is not necessary to prove the appointment of any of the following persons or their authority to do anything under this Act—

- (a) the Minister;
- (b) the chief executive;
- (c) an inspector.

127 Signatures

A signature purporting to be the signature of the Minister, the chief executive or an inspector is evidence of the signature it purports to be.

128 Certificate about evidence of location of aircraft or vessel

- (1) A certificate signed by the chief executive or an inspector may state that—
 - (a) the person used equipment prescribed under a regulation to retrieve data sent from the monitoring system equipment for a stated aircraft or vessel; and
 - (b) the data recorded the monitoring system equipment's position to be at a stated place at a stated time on a stated day.
- (2) The certificate is evidence that the aircraft or vessel was at the place at the time on the day.

Example—

An inspector signs a certificate stating that, on 21 January 2004, the inspector, using ABC equipment, being equipment prescribed under a regulation, retrieved data sent from the monitoring system equipment for XYZ boat that recorded the monitoring system equipment's position to be—

- (a) at latitude 24°33'07" south and longitude 152°57'25" east at 9.30 a.m. on 1 January 2002; and
- (b) at latitude 24°28'00" south and longitude 152°55'32" east at 12.45 p.m. on 5 January 2002.

The inspector's certificate is evidence the XYZ boat was at the places stated in paragraphs (a) and (b) at the times and on the days stated.

(3) For subsection (1), a single certificate may be issued for data sent at more than 1 time on a day or on more than 1 day.

(4) In this section—

monitoring system equipment means—

(a) for an aircraft—equipment—

(i) used as part of a system that monitors the position and operation of the aircraft; and

(ii) required under this or another Act or a law of the Commonwealth or another State to be carried on the aircraft; or

(b) for a vessel—equipment—

(i) used as part of a system that monitors the position and operation of the vessel; and

(ii) required under this or another Act or a law of the Commonwealth or another State to be carried on the vessel.

129 Evidentiary matters

A certificate purporting to be signed by the chief executive or an inspector and stating any of the following matters is evidence of the matter—

(a) a stated document is 1 of the following things made, given, issued or kept under this Act—

(i) an appointment, approval or decision;

(ii) a direction, notice or requirement;

(iii) an authority;

(iv) a record or other document;

(b) a stated document is of a stated type mentioned in paragraph (a) and made, given, issued or kept under environment conservation legislation other than this Act;

(c) a stated document is a copy of a thing mentioned in paragraph (a) or (b);

- (d) on a stated day, or during a stated period, a stated person was or was not the holder of a stated authority;
- (e) a stated authority—
 - (i) was or was not issued for a stated term; or
 - (ii) was or was not in force on a stated day or during a stated period; or
 - (iii) was or was not subject to a stated condition;
- (f) on a stated day, or during a stated period, a stated authority was suspended for a stated period or cancelled;
- (g) on a stated day, or during a stated period, an appointment as an inspector was, or was not, in force for a stated person;
- (h) on a stated day, a stated person was given a stated direction, notice or requirement under this Act;
- (i) stated costs were incurred by the chief executive in taking stated action mentioned in section 108¹⁹ or under section 109²⁰ and are payable by a stated person;
- (j) a stated amount is payable under this Act by a stated person and has not been paid.

Division 2 Matters about offence proceedings and indictable and summary offences

130 Types of offences

- (1) Subject to subsection (2), an offence against this Act is a summary offence.
- (2) An offence against this Act for which the maximum penalty of imprisonment is 2 years is an indictable offence that is a misdemeanour.

19 Section 108 (Recovery of costs of removal etc.)

20 Section 109 (Restoration of environment etc.)

131 Proceedings for indictable offence

- (1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—
 - (a) by way of summary proceeding under the *Justices Act 1886*; or
 - (b) on indictment.
- (2) A magistrate must not hear an indictable offence summarily if—
 - (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
 - (b) the magistrate believes the charge should be prosecuted on indictment.
- (3) If subsection (2) applies—
 - (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
 - (b) a plea of the person charged at the start of the proceeding must be disregarded; and
 - (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
 - (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).²¹
- (4) The maximum penalty that may be summarily imposed for an indictable offence is 165 penalty units or 1 year's imprisonment.

132 Limitation on who may summarily hear indictable offence

- (1) A proceeding must be before a magistrate if it is a proceeding—

²¹ *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

- (a) for the summary conviction of a person on a charge for an indictable offence; or
 - (b) for an examination of witnesses for a charge for an indictable offence.
- (2) However, if the proceeding is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

133 Limitation on time for starting summary proceeding

- (1) A proceeding for a summary offence against this Act by way of summary proceeding under the *Justices Act 1886* must start—
- (a) within 1 year after the commission of the offence; or
 - (b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.
- (2) If a Magistrates Court considers it just and equitable in the circumstances, the court may, at any time, extend a time set under subsection (1).
- (3) Without limiting subsection (2), the matters the court may have regard to in deciding what is just and equitable include the following—
- (a) the availability of evidence of the offence;
 - (b) the conduct of the defendant since the alleged offence;
 - (c) the prejudice the proposed extension of time is likely to cause the defendant;
 - (d) the adverse impact on a marine park's environment or use and non-use values the alleged offence has caused, or is likely to cause, whether directly or indirectly.
- (4) Subsection (2)—
- (a) applies to an offence regardless of whether it was committed before or after the commencement of the subsection; and

- (b) does not apply to an offence if the time for starting a proceeding for the offence had expired before the commencement of the subsection.

134 Allegations of false or misleading information or documents

It is enough for a complaint for an offence against this Act involving false or misleading information, or a false or misleading document, to state the statement made, or document given, was ‘false or misleading’ to the person’s knowledge, without specifying which.

135 Responsibility for acts or omissions of representatives

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person’s state of mind about a particular act or omission, it is enough to show—
 - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and
 - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—

representative means—

 - (a) for a corporation—an executive officer, employee or agent of the corporation; or
 - (b) for an individual—an employee or agent of the individual.

state of mind of a person includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

136 Executive officers responsible for ensuring corporation complies with Act

- (1) The executive officers of a corporation must ensure the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the maximum penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove—
 - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
 - (b) the officer was not in a position to influence the conduct of the corporation in relation to the purpose.

137 Holder of authority responsible for ensuring Act complied with

- (1) The holder of an authority must ensure that everyone acting under the authority complies with this Act.
- (2) If another person acting under the authority commits an offence against a provision of this Act, the holder of the authority also commits an offence, namely, the offence of failing to ensure the other person complied with the provision.

Maximum penalty—the maximum penalty prescribed for contravention of the provision.

- (3) Evidence that the other person has been convicted of an offence against the provision while acting under the authority is evidence that the holder of the authority committed the offence of failing to ensure the other person complied with the provision.
- (4) However, it is a defence for the holder of the authority to prove—
 - (a) the offence was committed without the holder's knowledge; and
 - (c) the holder exercised reasonable diligence to ensure the other person complied with the provision.

138 Responsibility for offences committed with use of vessel, vehicle or aircraft

- (1) Each responsible person for a vessel, vehicle or aircraft commits an offence if—
 - (a) someone else uses the vessel, vehicle or aircraft in committing an offence against this Act; and
 - (b) the responsible person—
 - (i) knew, or had reasonable grounds to suspect, that the vessel, vehicle or aircraft would be used in committing the offence; and
 - (ii) did not take reasonable steps to prevent its use in committing the offence.

Maximum penalty—the maximum penalty for committing the offence mentioned in paragraph (a).

- (2) In this section—

responsible person, for a vessel, vehicle or aircraft used in committing an offence, means—

- (a) an owner of the vessel, vehicle or aircraft at the time the offence was committed; or
- (b) a person in control of the vessel, vehicle or aircraft at the time the offence was committed; or

- (c) a person (the **operator**) who, at the time the offence was committed, was a party to an agreement with a person mentioned in paragraph (a) or (b) under which the operator, or the operator and the other party to the agreement, were authorised to decide the activities for the vessel, vehicle or aircraft's use.

139 Court's powers on conviction for an offence

- (1) The court may, in a proceeding for an offence against this Act, and in addition to any penalty imposed, order that the offender do 1 or more of the following—
 - (a) take stated action—
 - (i) to prevent or minimise harm to the marine environment or a marine park's use and non-use values resulting from the offence; or
 - (ii) to rehabilitate, restore or otherwise conserve the marine environment or a marine park's use and non-use values because of the offence; or
 - (iii) to restore or replace property damaged as a result of the offence; or
 - (iv) to remove property, the subject of the offence or used to commit the offence, from a marine park;
 - (b) pay an amount to the State to cover the State's costs reasonably incurred in taking action mentioned in section 108²² or under section 109;²³
 - (c) pay an amount to the State to cover the State's costs and expenses in taking future action—
 - (i) to prevent or minimise harm to the marine environment or a marine park's use and non-use values resulting from the offence; or
 - (ii) to rehabilitate, restore or otherwise conserve the marine environment or a marine park's use and non-use values because of the offence;

22 Section 108 (Recovery of costs of removal etc.)

23 Section 109 (Restoration of environment etc.)

- (d) pay compensation to the State for any harm to, or loss or destruction of, a marine park's environment or use and non-use values;
- (e) pay compensation to an affected person for the injury, loss or damage suffered, or costs or expenses incurred, by the person as a result of the offence;
- (f) pay the department's reasonable costs of investigating the offence.

Example of reasonable costs for paragraph (f)—

taking a sample, or conducting an inspection, test, measurement or analysis, of something

- (2) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.
- (3) In this section—

affected person means a person who, because of the offence, has—

- (a) suffered any of the following—
 - (i) personal injury;
 - (ii) loss of income;
 - (iii) loss of, or damage to, property; or
- (b) incurred costs or expenses in preventing or minimising, or attempting to prevent or minimise, loss or damage mentioned in paragraph (a).

offender means a person who is convicted of an offence, whether or not a conviction is recorded.

Division 3 Judicial review of administrative decisions

140 Extended standing for judicial review

- (1) This section applies, for the *Judicial Review Act 1991*, to any of the following—
 - (a) a decision made under this Act;
 - (b) a failure to make a decision under this Act;

- (c) conduct engaged in for the purpose of making a decision under this Act.
- (2) An individual is taken to be a person aggrieved by the decision, failure or conduct if—
 - (a) the individual is—
 - (i) an Australian citizen; or
 - (ii) ordinarily resident in Australia; and
 - (b) at any time in the 2 years immediately before the decision, failure or conduct, the individual engaged in a series of activities in Australia for the protection or conservation of, or research into, the environment.
- (3) A corporation or association, whether or not incorporated, and a person acting for an unincorporated association, is taken to be a person aggrieved by the decision, failure or conduct if—
 - (a) the corporation or association is incorporated, or was otherwise established, in Australia; and
 - (b) at any time in the 2 years immediately before the decision, failure or conduct, the corporation or association engaged in a series of activities in Australia for the protection or conservation of, or research into, the environment; and
 - (c) at the time of the decision, failure or conduct, the objects or purposes of the corporation or association include protection or conservation of, or research into, the environment.
- (4) A term used in this section that is defined in the *Judicial Review Act 1991* has the meaning given to it by that Act.

Part 10

Miscellaneous

Division 1

Codes of practice

141 Approval or making of code

- (1) The chief executive may, by gazette notice, approve or make a code of practice providing standard conditions for authorities authorising the entry to or use of a marine park.
- (2) The notice must state that—
 - (a) the code has been approved or made; and
 - (b) copies of the code are available—
 - (i) during normal business hours at stated places the chief executive considers appropriate; and
 - (ii) on the department's web site on the Internet.
- (3) A code of practice is not subordinate legislation.
- (4) However, the *Statutory Instruments Act 1992*, sections 49 to 51 apply to the notice as if it were subordinate legislation.

Note—

These provisions deal with the tabling in, and disallowance by, the Legislative Assembly of subordinate legislation.

- (5) When the code is tabled as required under the *Statutory Instruments Act 1992*, section 49, a copy of any document applied, adopted or incorporated by the plan must also be tabled.

142 When code has effect

A code of practice has effect on and from the later of the following days—

- (a) the day the gazette notice about the code, as required under section 141, is published in the gazette; or
- (b) the commencement day stated in the notice.

143 Access to code

- (1) The chief executive must keep a copy of each code of practice, and each document applied, adopted or incorporated by the code, available for inspection, without charge—
 - (a) during normal business hours at—
 - (i) the department's head office²⁴ and each regional office of the department; and
 - (ii) the other places stated in the notice given under section 141; and
 - (b) on the department's web site on the Internet.²⁵
- (2) On payment of the fee, if any, decided by the chief executive, a person may obtain a copy of the code from the chief executive.

Division 2 Other miscellaneous provisions**144 Public authority's obligation about threatening incidents for marine parks**

- (1) Subject to subsection (4), subsection (2) applies if a public authority becomes aware of, or proposes carrying out an emergency response to, an incident having the potential to cause a serious risk to—
 - (a) the park's environment or use and non-use values; or
 - (b) a person or thing in the park.
- (2) The authority must—
 - (a) notify the chief executive about the nature of the incident or proposed emergency response; and
 - (b) ask the chief executive for advice about responding to the incident; and
 - (c) state enough information about the incident or proposed response to enable the chief executive to give the advice.

24 The department's head office is at 160 Ann Street, Brisbane.

25 The department's web site on the Internet is <www.epa.qld.gov.au>.

- (3) The chief executive must give the advice to the public authority as soon as practicable after receiving the notice.
- (4) Subsection (2) does not apply if the chief executive has advised the public authority that the chief executive is satisfied with the authority's contingency plan or other documented arrangement for dealing with an incident of the type mentioned in subsection (1).
- (5) If the chief executive gives advice to a public authority under subsection (3) before the authority needs to respond to an incident mentioned in subsection (1), the authority must consider the advice in responding to the incident.
- (6) In this section—

public authority means—

 - (a) an entity declared under the *Public Service Act 1996* to be a department of government; or
 - (b) a local government or other entity established by an Act.

145 Chief executive's power to decide fee for producing a copy of a document

The fee decided by the chief executive under section 22(6), 26(4), 31(6), 36(4), 40(2) or 143(2) for producing a copy of a document must be not more than the chief executive's reasonable cost of producing the copy.

Note—

The fee mentioned in these provisions is the fee payable for obtaining from the chief executive a copy of a draft zoning or management plan or amendment of the plan, a current management plan or a code of practice.

146 Delegation of Minister's powers

- (1) The Minister may delegate the Minister's powers under this Act, other than section 42,²⁶ to an appropriately qualified public service officer.

26 Section 42 (Moratorium on grant of new permissions)

- (2) In this section—

appropriately qualified, for a person to whom a power may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

Example of standing—

a person's classification level in the public service

147 Protecting prescribed persons from liability

- (1) A prescribed person is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to a person, the liability attaches instead to the State.
- (3) In this section—

prescribed person means—

- (a) the Minister; or
- (b) the chief executive; or
- (c) an officer or employee of the department; or
- (d) an inspector; or
- (e) a person acting under the direction or authority of an inspector.

148 Annual report

- (1) The chief executive must, within 4 months after the end of each financial year, give to the Minister a report on the administration of this Act during the year.
- (2) The Minister must lay a copy of the report before the Legislative Assembly within 14 sitting days after receiving it.

149 Approved forms

The chief executive may approve forms for this Act.

150 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may be made about any of the following—
 - (a) the classification and naming of areas within a marine park;
 - (b) the entry to, or use of, a marine park;
 - (c) implementing, and enforcing compliance with, management plans or codes of practice;
 - (d) the authorities required under this Act;
 - (e) the review of, and appeals against—
 - (i) decisions made about the issue of, conditions imposed on, and amendment, suspension and cancellation of permissions; or
 - (ii) other decisions made under a regulation or zoning plan;
 - (f) the records, returns and other documents required to be kept by the holder of an authority;
 - (g) the fees, other than a fee mentioned in section 145, payable under this Act.
- (3) A regulation may prescribe a penalty of not more than 165 penalty units for contravention of a regulation.

151 Relationship between regulation and zoning plan

- (1) If a regulation is inconsistent with a zoning plan, the zoning plan prevails to the extent of the inconsistency.
- (2) However, a regulation is not inconsistent with a zoning plan merely because the regulation—
 - (a) further regulates or prohibits an activity authorised under the plan; or
 - (b) otherwise increases the level of protection for the marine environment provided by the plan.

- (3) This section does not apply to a regulation made under part 2 declaring, or revoking the declaration of, a marine park.

Part 11 Transitional provisions

152 References to Marine Parks Act 1982

A reference in an Act or other document to the repealed Act is, if the context permits, taken to be a reference to this Act.

153 Pending legal proceedings

A legal proceeding by or against the State under the repealed Act that is not finished before the commencement of this section may be continued and finished as if this Act had not been enacted.

154 Existing marine parks

- (1) A marine park set apart and declared under the repealed Act and in existence immediately before the commencement of this section continues in existence.
- (2) The park is taken to be declared, and may be revoked, under this Act.

155 Existing zoning plans

- (1) A zoning plan for a marine park in force under the repealed Act immediately before the commencement of this section continues in force, subject to the *Statutory Instruments Act 1992*, part 7.
- (2) The plan is taken to be prescribed under section 21.²⁷
- (3) The plan—

27 Section 21 (Zoning plan)

- (a) is to be read with the changes necessary to make it consistent with, and adapt its operation to, this Act; and
- (b) may be amended or repealed under this Act.

156 Existing management plans

- (1) A management plan for a marine park in force under the repealed Act immediately before the commencement of this section continues in force.
- (2) The plan is taken to be approved under section 29.²⁸
- (3) The plan—
 - (a) is to be read with the changes necessary to make it consistent with, and adapt its operation to, this Act; and
 - (b) may be amended or repealed under this Act.

157 Existing notices about designated areas

- (1) This section applies to a public notice—
 - (a) given under the repealed *Marine Parks Regulation 1990*, section 7;²⁹ and
 - (b) in force immediately before the commencement of this section; and
 - (c) that gives effect to a zoning plan in respect of a designated area made under the repealed Act.
- (2) The notice continues in force for this Act and may be amended or repealed by a regulation or zoning plan under this Act.

158 Existing limitation on application of regulation and zoning plan made under repealed Act

The effect of section 31³⁰ of the repealed Act continues as if this Act had not been enacted.

28 Section 29 (Approval of management plan)

29 *Marine Parks Regulation 1990*, section 7 (Designated areas)

30 Repealed Act, section 31 (Limitation on application of regulation and zoning plan)

159 Existing temporary restricted areas

- (1) Subsection (2) applies to the declaration of a temporary restricted area in force under the repealed Act immediately before the commencement of this section.
- (2) The declaration—
 - (a) continues in force, subject to section 96;³¹ and
 - (b) is taken to have been made under part 6, division 2;³² and
 - (c) is to be read with the changes necessary to make it consistent with, and adapt its operation to, this Act.

160 Existing permissions

- (1) A permission in force under the repealed Act immediately before the commencement of this section—
 - (a) continues in force, subject to this Act; and
 - (b) is taken to be a permission issued under this Act, other than under section 15.³³
- (2) However, subsection (1) does not apply to a permission authorising the reclamation of tidal land in a marine park if—
 - (a) the permission expired before the commencement and was continued in force under the *Marine Parks Regulation 1990*, section 13;³⁴ and
 - (b) the reclamation works were not started before the commencement.

161 Existing applications for permissions

- (1) An application for a permission under the repealed Act that is not decided before the commencement of this section is taken to have been made under this Act.

31 Section 96 (Expiry of declaration)

32 Part 6 (Other provisions for protecting the environment and users of marine parks), division 2 (Temporary restricted area declaration)

33 Section 15 (Permission for carrying out proposed reclamation)

34 *Marine Parks Regulation 1990*, section 13 (Continuation of permission)

- (2) However, subsection (1) does not apply to an application for a permission mentioned in section 15.

162 Existing orders etc.

An order, direction, requirement, notice or decision of the chief executive or an inspector under the repealed Act is, if its effect is not exhausted at the commencement of this section, taken to have been given or made by the person under this Act.

163 Existing inspectors

A person who held an appointment as an inspector under the repealed Act immediately before the commencement of this section is taken to be appointed as an inspector under this Act.

Part 12 Validation and declaration provisions

164 Validation of existing zoning plans and permissions authorising reclamation of tidal land in a marine park

- (1) A zoning plan made or purportedly made under the *Marine Parks Act 1982* and providing for the reclamation of tidal land in a marine park under a permission issued under that Act (the ***zoning plan***) is taken to be, and to always have been, validly made.
- (2) A permission issued or purportedly issued under the zoning plan before the commencement of this section and authorising the reclamation of tidal land in the park is taken to be, and to always have been, validly given.
- (3) A reference in subsection (1) or (2) to a zoning plan or permission is a reference to a zoning plan made, or a permission issued, by the chief executive within the meaning of the *Marine Parks Act 1982*.

165 Declaration about authorised reclamation of tidal land in a marine park

- (1) To remove any doubt, it is declared that non-tidal land and waters resulting from the authorised reclamation of tidal land in a marine park completed before the commencement of this section are not, and never were, part of the park.
- (2) However, for the purpose of enforcing a condition of a permission for the reclamation, the non-tidal land and waters mentioned in subsection (1) are taken to be, and to always have been, part of the park.
- (3) It is also declared that non-tidal land and waters resulting from the authorised reclamation of tidal land in a marine park completed after the commencement of this section are part of the park.
- (4) The declaration of non-tidal land and waters as part of a marine park under subsection (3) may be revoked—
 - (a) before the commencement of section 169—under the *Marine Parks Act 1982*, section 22 as if the non-tidal land and waters were tidal land and waters set apart and declared to be the park under that Act, section 16; or
 - (b) on or after the commencement of section 169—under part 2, division 2.
- (5) In this section—

authorised reclamation, of tidal land, means reclamation of the land in compliance with a permission issued under the *Marine Parks Act 1982*.

166 Effect of validation and declaration on proceedings

- (1) Sections 164 and 165 do not affect—
 - (a) a proceeding relating to the park that was heard, in whole or part, in a court or tribunal before the commencement of this section; and
 - (b) the completion, after the commencement, of any step in the proceeding taken before the commencement; or
 - (c) the taking and completion, after the commencement, of any step in the proceeding.

(2) In this section—

judgment includes any rule, decree or order.

step includes—

- (a) the entry or other perfecting of a judgment; and
- (b) anything done or to be done in consequence of an appeal to a court or tribunal;

whether before or after the final judgment.

Part 13 Amendment of Marine Parks Act 1982

167 Act amended in pt 13

This part amends the *Marine Parks Act 1982*.

168 Insertion of new s 10A

After section 10—

insert—

‘10A Territorial application of Act

- ‘(1) This Act applies both within and outside Queensland.
- ‘(2) This Act applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.’.

Part 14 Repeal

169 Repeal

The *Marine Parks Act 1982* is repealed.

Part 15 Consequential amendments of other Acts

Division 1 Amendment of Coastal Protection and Management Act 1995

170 Act amended in div 1

This division amends the *Coastal Protection and Management Act 1995*.

171 Amendment of s 75 (Criteria for deciding applications)

Section 75(1)(d)(ii), ‘*Marine Parks Act 1982*’—
omit, insert—
‘*Marine Parks Act 2004*’.

172 Amendment of s 93 (Approving or refusing to approve plans)

Section 93(1)(c)(ii), ‘*Marine Parks Act 1982*’—
omit, insert—
‘*Marine Parks Act 2004*’.

Division 2 Amendment of Fisheries Act 1994

173 Act amended in div 2

This division amends the *Fisheries Act 1994*.

174 Amendment of schedule

Schedule, definition *fisheries legislation*, paragraph (c), ‘*Marine Parks Act 1982*’—
omit, insert—
‘*Marine Parks Act 2004*’.

Schedule Dictionary

section 3

aircraft does not include a hovercraft.

approved form, means a form approved under section 149.

authorised person means any of the following persons—

- (a) the Minister;
- (b) the chief executive;
- (c) an inspector;
- (d) a public service officer or other employee of the department acting under the chief executive's authority.

authority means—

- (a) a permission, licence or other authority issued under this Act; or
- (b) a corresponding authority.

biodiversity means the natural diversity of living organisms, together with the environmental conditions and processes necessary for their survival, and includes each of the following—

- (a) regional diversity, that is, the diversity of biotic and environmental components of a region, and the functional relationships that affect environmental conditions within ecosystems;
- (b) ecosystem diversity, that is, the diversity of the different types of communities formed by living organisms and the relations between them;
- (c) species diversity, that is, the diversity of species;
- (d) genetic diversity, that is, the diversity of genes within each species.

boat includes a ship, submersible boat, raft or pontoon but does not include a hovercraft or personal water craft.

Schedule (continued)

certificate of satisfactory completion, for a reclamation, means a certificate mentioned in section 18.

code of practice means a code of practice approved or made under section 141.

Commonwealth Act means the *Great Barrier Reef Marine Park Act 1975* (Cwlth).

compliance notice see section 93(2).

conservation, of the marine environment, means the protection and maintenance of the environment while allowing for its ecologically sustainable use.

corresponding authority means a permit, licence or other authority—

- (a) issued under another law of the State or a law of the Commonwealth or another State; and
- (b) directly or indirectly authorising the entry to or use of a marine park; and
- (c) either—
 - (i) required under a regulation or zoning plan for a particular purpose; or

Example—

A zoning plan may allow a person to enter or use a zone without a permission for carrying out a competition for motorised boats if the entry or use is carried out under an authority granted under the *Transport Operations (Marine Safety) Act 1994*.

- (ii) accredited by the chief executive under a regulation as a corresponding authority for this Act.

court, for part 7, see section 110.

cultural resources means places or objects having anthropological, archaeological, historical, scientific, sociological, spiritual or visual significance or value, including significance or value of that kind under Aboriginal tradition or Island custom.

Schedule (continued)

declared area, for a marine park, means—

- (a) for a park declared under section 8(1)(a)—the area, other than a revoked area, declared under the section to be the park; or
- (b) for a park declared under section 8(1)(b) by amalgamating existing parks—the combined area, other than a revoked area, of the areas declared under this Act or the repealed Act to be the parks; or
- (c) for a park taken, under section 154,³⁵ to be declared under this Act, the area, other than a revoked area—
 - (i) declared under the repealed Act to be the park; or
 - (ii) otherwise established under the repealed Act as the park.

designated area means—

- (a) an area established, by a regulation or zoning plan, for special management; or
- (b) a designated area established under a zoning plan mentioned in section 155.

ecologically sustainable use, for a marine environment, means using, conserving and enhancing the environment's natural and cultural resources so that ecological processes on which life depends are maintained, and the total quality of life, both now and in the future, can be improved, having regard to—

- (a) the guiding principles of the National Strategy for Ecologically Sustainable Development; and
- (b) the need to—
 - (i) protect biological diversity, ecological processes and life-support systems; and
 - (ii) enhance individual and community wellbeing through economic development that safeguards the wellbeing of future generations; and

35 Section 154 (Existing marine parks)

Schedule (continued)

(iii) provide equity within and between generations.

environment includes each of the following—

- (a) ecosystems and their constituent parts;
- (b) all natural resources;
- (c) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their—
 - (i) biodiversity and ecological integrity; or
 - (ii) intrinsic or attributed aesthetic, cultural, ecological, economic, recreational, social, scientific value or interest or amenity.

environment conservation legislation means another Act, or a law of the Commonwealth or another State, involving conservation of the marine environment.

Examples—

- Coastal Protection and Management Act 1995
- Environment Protection and Biodiversity Conservation Act 1999 (Cwlth)
- Fisheries Act 1994
- Great Barrier Reef Marine Park Act 1975 (Cwlth)
- Integrated Planning Act 1997
- Nature Conservation Act 1992
- Torres Strait Fisheries Act 1984 (Cwlth)
- Transport Operations (Marine Pollution) Act 1995

executive officer, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether the person is a director or the person's position is given the name of executive officer.

fee includes tax.

highly protected area means—

- (a) a zone classified as a conservation park zone, marine national park zone or preservation zone; or
- (b) another area prescribed under a regulation or zoning plan as a highly protected area.

Schedule (continued)

impacts, for sections 99, 107, 108 and 114, means impacts on a marine park's environment or use and non-use values.

inspector—

- (a) means a person appointed as an inspector under section 52; or
- (b) for part 5, division 3—see section 85; or
- (c) for part 6—see section 94.

management plan, for a marine park, means a management plan approved, or taken to be approved, under section 29 and in force for the park.

marine park means a marine park declared, or taken to be declared, under this Act.

name, for a marine park, zone or designated area, includes a number or other identifying designation.

National Strategy for Ecologically Sustainable Development means the National Strategy for Ecologically Sustainable Development endorsed by the Council of Australian Governments on 7 December 1992.

natural resources means the natural and physical features and processes of the environment, including living organisms, soil, water, minerals and air.

original decision see section 117(1).

permission means a permission issued under this Act.

person, for part 7, see section 110.

personal water craft means a power driven device that—

- (a) has a fully enclosed hull that is designed to not take on water if capsized; and
- (b) is designed to be operated by a person standing, crouching or kneeling on it or sitting astride it.

person in control, of a vessel, vehicle or aircraft, includes the person in command, or who apparently is in command or control of, the vessel, vehicle or aircraft.

Schedule (continued)

person responsible, for part 6, see section 94.

place includes a vessel, vehicle or aircraft.

precautionary principle means if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

property, for part 6, see section 94.

public notice means a notice published in a newspaper circulating throughout the State.

reasonable diligence, in relation to the defence provided under sections 135, 136 and 137, includes the taking of reasonable precautions, including, for example, the issuing of appropriate instructions.

reasonably believes means believes on grounds that are reasonable in the circumstances.

reasonably considers means considers on grounds that are reasonable in the circumstances.

reasonably suspect means suspect on grounds that are reasonable in the circumstances.

reclaimed part, of a marine park, means the part of the park comprising land or waters resulting from reclamation of tidal land.

reclamation, of tidal land, means raising the land above high-water mark, whether gradually and imperceptibly or otherwise, by carrying out works, including dredging and the depositing of solid material.

removal notice see sections 101(1) and 104(1).

repealed Act means the repealed *Marine Parks Act 1982*, as in force immediately before its repeal.

review decision see section 119(1)(b).

revoked area, for a marine park, means an area for which its declaration as a marine park has been revoked under this Act or the repealed Act.

Schedule (continued)

section 15 permission means a permission issued under section 15.

take, a natural or cultural resource, means—

- (a) remove, gather, catch, capture, kill, destroy, dredge for, raise, carry away, bring ashore, land from a vessel or otherwise remove the resource from a natural environment; or
- (b) attempt to do an act mentioned in paragraph (a).

temporary restricted area declaration means a declaration made and in force under part 6, division 2.

tidal land means land that is submerged at any time by tidal waters.

tidal waters means waters that are subject to tidal influence.

use and non-use values, of a marine park, include value derived from each of the following—

- (a) taking, using, visiting or viewing the park's natural or cultural resources;
- (b) the ecological functions and processes of the park's environment;
- (c) the park's potential future use or benefit, including, for example, its use for biodiscovery;
- (d) the mere existence of the park's natural and cultural resources;
- (e) the use or non-use of the park's natural and cultural resources by future generations.

vessel means a barge, boat, ferry, hovercraft, personal water craft, water taxi or other thing capable of carrying people or goods through water, but does not include an aircraft.

wilfully means—

- (a) intentionally; or
- (b) recklessly; or
- (c) with gross negligence.

Schedule (continued)

zone means a zone established for a marine park by a zoning plan.

zoning plan, for a marine park, means a zoning plan prescribed, or taken to be prescribed, under section 21 and in force for a marine park.