# Marine Parks Bill 2004

# Explanatory Notes

## General Outline

### Short Title

The short title of the Bill is the *Marine Parks Bill 2004*.

### Policy Objectives of the Legislation

The *Marine Parks Bill 2004* ("the Bill") will provide for the protection and maintenance of the marine environment while allowing for its ecologically sustainable use. The Bill has been drafted to be consistent with current legislative drafting practice and modern language. As a consequence, particular sections, clauses and sub-clauses are not considered to require detailed explanation and these Explanatory Notes focus on policy matters that are specific to the technical content of the Bill.

The Bill will replace the *Marine Parks Act 1982*. It will update the legislation to promote modern standards for the conservation of the Queensland's marine environment.

### Reasons for the Bill

The current Act has not been significantly amended since its enactment in 1982 and does not reflect current knowledge, community expectations or best practice management with respect to the conservation of the marine environment. The current Act has a number of particular deficiencies, which are addressed in the Bill:

- It does not provide a clear statement of purpose to guide decisions and actions taken under the Act;
- It does not adequately promote modern accepted standards for the management of marine parks and marine environment generally which are based on a multiple-use, ecosystem, cooperative and participatory management approach;

- Provisions dealing with the reclamation of marine park areas are ambiguous resulting in administrative uncertainty, divergent legal interpretation, public criticism and potential legal challenge;
- It does not provide adequate authority to manage vessel operations and their associated impacts on the resources and users of a marine park, despite vessels providing the primary mode of access and transport in such areas;
- Penalty levels for offences under the Act have not kept pace with other offences of a similar character and therefore offer little deterrent value; and
- It pre-dates the establishment of fundamental legislative principles under the *Legislative Standards Act 1992*, and in particular, does not have sufficient regard to Aboriginal tradition and Island custom; contains enforcement powers without necessary community safeguards; and does not subject important decisions such as zoning plans and permits to public scrutiny or appeal processes.

## Achieving the Objectives

The objectives of the Bill will be achieved by repealing the existing Act and replacing it with a Bill that continues to adopt the core elements of the model provided by the *Great Barrier Reef Marine Park Act 1975,* while resolving the deficiencies outlined above. In particular, key features of the Marine Parks Bill include:

- A new "Objects" provision which promotes the conservation of the marine environment and the principles of ecologically sustainable use;
- Formal recognition of the cooperative arrangements between the Queensland and Commonwealth Governments in relation to the Great Barrier Reef to simplify, as far as practicably possible, the complex legislative environment created by uncertain boundaries and jurisdictions;
- Avenues for increased involvement by Aboriginal and Torres Strait Islander peoples and the general community in marine park planning and management;
- Increased security for marine parks through the requirement to table information about the downgrading of zones in the Legislative Assembly and increased penalties for inappropriate entry or use; and
- A balanced approach to the assessment and management of reclamation in marine parks involving early consideration of the

potential impacts resulting from both the reclamation and excision of reclaimed areas, public scrutiny, and where these requirements are met, a non-Parliamentary excision process for general use and habitat protection zones.

## Alternatives to the Bill

The alternatives to the creation of a new Bill, which repeals the existing Marine Park Act would be to leave the current legislation as it is and not proceed with amendments, or to incorporate any necessary amendments into the structure of the existing Act. As some amendments are essential (eg. on processes for reclamation) and as the current Act does not comply with current legislative standards, the amount of redrafting required is considerable, and the framing of a new Bill has been adopted by the Office of the Queensland Parliamentary Council as the most efficient and effective drafting method.

## Administration costs

The amendments will not impose further costs on either the EPA or other Government departments. The Bill promotes a coordinated and integrated approach with other marine legislation, thus encouraging the formulation of arrangements to maximise efficiencies in management.

## Consistency with Fundamental Legislation Principles

The Bill has been drafted with due regard to the fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992*. The following elements of the Bill are, however, situations where a balanced interpretation of the principles, rather than their literal application, has been considered necessary.

## Retrospective validation of past reclamations

A retrospective amendment has been included in the Bill to validate past zoning plans and permits in connection with reclamation in marine parks. The proposed amendments will remove any uncertainty over the validity of reclamations completed before the commencement of the Bill and the status of land which has been removed from marine park as the result of reclamation works.

## Delegation of legislative power to prescribe penalties over 20 penalty units

The Bill allows penalties of up to 165 penalty units to be provided for in zoning plans (clause 24) and regulations (clause 150). The view of the Scrutiny of Legislation Committee is that the maximum penalties applied under subordinate legislation should be generally limited to 20 penalty units. The level of penalties allowed in the Bill is identical to the level provided under the *Nature Conservation Act 1992*. This is necessary to allow consistency of penalties for offences on national park islands and adjoining marine park beaches, and for protection of wildlife such as seabirds on islands and adjacent beaches and waters.

In addition, current penalties for offences in regulations and zoning plans under the *Great Barrier Reef Marine Park Act 1975* can apply a maximum of 50 (Commonwealth) penalty units, which equates to roughly 75 penalty units under the State's penalty unit conversion formula. State-Commonwealth Offshore Constitutional Settlement agreements that require the Queensland marine parks legislation to be brought into line with the *Great Barrier Reef Marine Park Act 1975* make it necessary for the framing of the Bill, regulations and zoning plans to be able to provide consistent State and Commonwealth penalty levels. It is impossible, for example, for every penalty contained in a Commonwealth zoning plan to be omitted from the matching State zoning plan and instead inserted in the Bill.

## Delegation of legislative power only in appropriate cases

The Bill allows for the development of plans for marine parks which zone different locations for different categories of use. The zoning plans may limit some forms of use or even prohibit entry completely in some cases. The regulatory framework allowed under the Bill is the same as the framework allowed under the existing Act, upon which all existing marine park zoning plans are based.

The Scrutiny of Legislation Committee is of the option that the greater the level of potential interference with individual rights and liberties, the greater the likelihood that the power should be in an Act of Parliament and not delegated. The level of legislative intervention theoretically possible in zoning plans is recognised as not being strictly in keeping with recommendations of the Scrutiny of Legislation Committee.

In addition, the scheme for issuing, amending and canceling permissions to enter or use a marine park is to be provided for by regulation. This provides

an appropriate degree of flexibility given the large number of permissions involved.

However, the State-Commonwealth commitments to cooperative planning and management of marine parks make it essential for the Act, regulations and zoning plans to be similar to the Commonwealth models adopted for the Great Barrier Reef. In addition, zoning plans are developed with a very high level of public participation, and are subject to tabling in Parliament and potential disallowance. In practice, the powers which the Bill conveys in relation to the framing of marine park zoning plans and regulations are well accepted, and limitations on individual rights and liberties of some sectors of the community are only applied where this is needed to maximise beneficial outcomes for the community as a whole.

## Codes of practice

The making of codes of practice under clauses 141 to 143 of the Bill raises a potential fundamental legislative principle issue. The Scrutiny of Legislation Committee is of the view that an Act should not permit statutory instruments of a legislative nature to be made other than by regulation. It is not envisaged that codes would be "of a legislative nature". They are mostly intended as "best practice" documents, or standardised sets of provisions that might otherwise be included as permit conditions. The Bill, however, applies sections 49, 50 and 51 of the *Statutory Instruments Act 1992* to the codes as if they were subordinate legislation. The codes must therefore be tabled in Parliament, and are subject to potential disallowance. Similar processes are adopted for codes under other legislation such as the *Nature Conservation Act 1992.*

## Sufficient regard to the institution of Parliament

The process allowed in the Bill for excising reclaimed areas from marine parks (except in "highly protected areas" such as conservation park zones, national park zones and preservation zones) removes the requirement to seek a resolution of Parliament. However, the Governor in Council's preliminary "notice of intent" to revoke the area prior to the issue of a marine park permission is subject to the requirements of sections 49, 50 and 51 of the *Statutory Instruments Act 1992* and must be tabled in Parliament and could be subject to disallowance. The revocation of an area of marine park prior to the undertaking of reclamation works is not desirable, as it would totally remove a development from the scope of the Bill. This, in turn, would prevent the Chief Executive from imposing management, rehabilitation, monitoring and supervision conditions and

bonds, from adequately protecting adjacent marine park areas and from managing the reclamation until its completion. The provisions are considered to be balanced in that a Parliamentary resolution will still be required before a "highly protected area" could be revoked, and Parliament has three opportunities for disallowance of any provisions related to revocation of areas which are not "highly protected":

- firstly, in the approval of the relevant zoning plan, which must incorporate provisions allowing for reclamation works in the respective zones before any reclamation can occur;
- secondly, through the tabling of the Governor in Council "notice of intent" prior to the grant of any permit for the reclamation; and
- thirdly, through the tabling of the Governor in Council regulation revoking the reclaimed area following satisfactory completion.

## Sufficient regard to the rights and liberties of individuals

A number of offence provisions in the Bill carry a penalty in certain circumstances of 3 000 penalty units, or 3 000 penalty units or 2 years imprisonment. At present, the maximum penalty that can be imposed is 100 penalty units. This offers little deterrent value. In many cases the financial rewards for committing the offence are substantially greater than the financial liability attached to the offence itself. In addition, many offenders are unincorporated entities therefore section 181B of the *Penalties and Sentences Act 1992* which provides for maximum penalties for corporations of 5 times the maximum for an individual does not apply. This is a significant shortcoming especially where the offence relates to significant damage to the environment or the use and non-use values of a highly protected area (for example, a marine national park zone) of a marine park.

The proposed penalty units are generally consistent with other natural resource management legislation including the Commonwealth *Great Barrier Reef Marine Park Act 1975* and will enhance conservation outcomes sought under the Bill.

## Power to enter premises, and search for or seize property, only with a warrant

The Bill allows an inspector to enter and search a vessel, vehicle or aircraft without consent or a warrant. However, it only applies if the vessel etc. is in a marine park. Also, the Bill requires the inspector:

- to take reasonable steps to attempt to tell the owner or person in control of the inspector's intention to enter;
- after entering, to leave a notice in a conspicuous placing stating when and why the entry happened and what powers were exercised; and
- to take reasonable steps to request that the person in control of the vessel etc. accompany the inspector before entering an area used only as a living area.

These powers and requirements are standard enforcement powers under most legislation dealing with vessel, vehicles and aircraft and are considered essential. In the absence of such provisions, the ability to search vessels, vehicles or aircraft in marine parks for the presence of illegally taken marine products would be seriously undermined.

## Reversal of onus of proof

The Bill provides that, if a person acting under the authority of another is convicted of an offence, the person with authority (eg. an executive officer of a corporation, a holder of a permit or an owner or another person in control of a vessel, vehicle or aircraft) is taken to have committed an offence of failing to ensure that the persons acting under their authority comply with that provision (see clause 136, 137 and 138 of the Bill). These sections, however, provide for a defence that the relevant officer exercised reasonable diligence or that the officer was not in a position to influence the conduct of their subordinates. Whilst the provisions in the Bill could be considered to reverse the onus of proof, they are considered essential to ensure that there is effective accountability at the top management and decision-making level. Such obligations are now reflected in most natural resource management legislation as well as national and international standards for environmental management (eg *AS/NZS ISO14000*: *Environmental Management Systems* (Standards Australia, 1996)).

## Consultation

The EPA involved more than 150 stakeholders representing the Great Barrier Reef Marine Park Authority, Environment Australia, local government, conservation, Indigenous interests, tourism, commercial and recreational fishing, industry and science to participate in the development of the Bill. In addition, the EPA consulted extensively with the following Agencies throughout the development of the Bill:

- Department of the Premier and Cabinet;
- Queensland Treasury;

- Department of State Development and Innovation;
- Queensland Police Service;
- Department of Justice and Attorney-General;
- Department of Transport;
- Department of Natural Resources, Mines and Energy;
- Department of Primary Industries and Fisheries;
- Department of Tourism, Fair Trading, and Wine Industry Development;
- Department of Local Government, Planning, Sport and Recreation; and
- Department of Aboriginal and Torres Strait Islander Policy.

All stakeholders have indicated support for the proposed amendments.

# Notes on Provisions

## Part 1 Preliminary

### Short title

Clause 1 provides that the title of the Bill will be the *Marine Parks Bill 2004* ("the Bill").

### Commencement

Clause 2 provides that Parts 12 (Validation and declaration provisions) and 13 (Amendment of the *Marine Parks Act 1982)* commences on assent while the remainder of the Bill commences on a date to be fixed by proclamation.

## Definitions

Clause 3 refers to the dictionary in the schedule of the Bill that defines particular terms used in the Bill.

## Notes in text

Clause 4 provides that a note in the text of the Bill is part of the Bill.

## Purpose of Bill

Clause 5 defines the main purpose of the Bill as being to provide for the conservation of the marine environment. This clause also defines how the purpose and object of the Bill is to be primarily achieved by express statements of principle and strategies.

In addition, clause 5 provides that it is a function of the Bill to implement State-Commonwealth agreements as far as practicable on the Great Barrier Reef entered into in connection with the 1979 Offshore Constitutional Settlement.

The Offshore Constitutional Settlement provides that the States are responsible for marine parks within coastal waters of the States, and the Commonwealth is responsible for marine parks further offshore. However, a specific exception was made for the Great Barrier Reef, where the Commonwealth *Great Barrier Reef Marine Park Act 1975* was to apply in to low water on the Queensland coast. The Queensland and Commonwealth Governments agreed that the Queensland marine parks legislation would be brought into line, as far as practical with the Commonwealth, and that Queensland would be assigned the role of day to day management for the Great Barrier Reef Marine Park.

Throughout the Bill, many clauses are included to maintain uniformity with the Commonwealth *Great Barrier Reef Marine Park Act 1975*.

## Bill binds all persons

Clause 6 provides that the Bill will bind all persons, Queensland, other States, and the Commonwealth. However, the Commonwealth, Queensland, or another State cannot be prosecuted for an offence under the Bill.

### Territorial application of Bill

Clause 7 provides that the Bill has extra-territorial application. Under the Offshore Constitutional Settlement, the States are responsible for marine parks within coastal waters of the States, and the Commonwealth is responsible for marine parks further offshore. This provision is consequently not intended to take the seaward application of the Bill outside Queensland coastal waters unless this is specifically negotiated with the Commonwealth, or where there is uncertainty over the location of offshore jurisdictional boundaries.

Clause 7 also provides that if all or part of a marine park is within a marine park established under the Commonwealth Act, the Bill is intended to operate only to the extent that it is consistent with the operation of the Commonwealth Act. The clause is framed so as to confirm the superiority of Commonwealth legislation in the case of inconsistency, but to address the matter of inconsistency at the detailed operational level, rather than at the level of the Commonwealth having covered the field on the whole of the subject matter of marine parks. For example, where a State and a Commonwealth plan both had a requirement for a tourism permit in a particular area, the Commonwealth provision clearly prevails and there is no room for the State provision. However, if the Commonwealth legislation is totally silent, for example on the matter of organised events or domestic animals, the State provisions could still operate.

# Part 2 Marine Parks

## Division 1 Establishment

### Declaration of park

Clause 8 provides for the declaration and amalgamation of marine parks by regulation made by the Governor in Council. The Bill will allow non-tidal lands and waters to be included in a marine park, but only if the land or waters are contiguous with and have a relationship with the tidal land or waters within the declared area. This overcomes some difficulties encountered under the present legislation where natural erosion and accretion cycles on reefs and elsewhere result from time to time in the inadvertent removal of areas from marine park status because the legislation does not allow non-tidal land to be part of a marine park. It also

accommodates situations where there is uncertainty over whether or not some areas are tidal such as in wetland areas and facilitates boundary descriptions and interpretations.

The regulation must also describe, or define by map, the boundaries of the declared park and assign a name to the park.

Clause 8 also allows marine parks to include land and waters beyond the outer limits of Queensland waters where connected with Queensland including any area regulated under a law of another Queensland Act and 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.

## Division 2 Revocation

### Revocation of park

Clause 9 provides that a regulation may revoke the declaration of part or all of a marine park only if the Legislative Assembly has, following 28 days notice, passed a motion requesting the revocation. Some exceptions to this rule are provided in clauses 11, 12 and 19. Consultation on the making of the regulation will be conducted in accordance with Part 5 of the *Statutory Instruments Act 1992* except in relation to regulations made under clause 19. In the latter case, consultation will occur as part of the environmental impact statement (EIS) process.

### Publication of revocation notice

Clause 10 provides that within 10 days after the notice of motion mentioned in clause 9 is given, the Chief Executive must publish a notice of the proposed revocation in a newspaper circulating in the locality of the marine park and throughout the State.

### Revocation of park included in or amalgamated with another park

Clause 11 provides that if a regulation amalgamates existing marine parks or declares a new marine park that includes an existing marine park, the regulation may also revoke former declarations that have thus been made superfluous without a resolution of the Legislative Assembly. This is simply a technical provision. In practice, no marine park area is actually removed in such situations.

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

Clause 12 provides that if part of a marine park is dedicated as a protected area (eg. a national park) under the *Nature Conservation Act 1992* and the protected area provides a higher level of protection of the park's marine environment than the Bill, a regulation may revoke the part of the park comprising the protected area without a resolution of the Legislative Assembly. This simply clarifies a situation that has previously resulted in some uncertainty, and avoids duplication of management regimes and permits. The area remains set aside for conservation purposes. The only category of protected area likely to be declared over a marine park would be a national park or conservation park. Interpretation of the provision in practice will consequently be straightforward, as these categories correlate directly with names and management objectives of marine park zones.

## Division 3 Reclamation of tidal land, and revocation

### Simplified outline of div 3

Clause 13 provides that generally, division 3 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 clause 9(2).

### Notice of proposed revocation of reclaimed part of park

Clauses 14 to 19 clarify the processes that will, in future, be applied to most commercial developments for tourism, marinas, port development, foreshore reclamation and similar purposes in marine parks. Reclamation works generally lead to the development of land that needs to be removed from marine park status. The provisions in the Bill provide clarity and certainty for developers at all stages, even where the development may be staged or take some years to complete. They also allow for an area under development to remain in a marine park subject to the environmental supervision of the Chief Executive until the works are fully completed.

Clause 14 provides that the Governor in Council may by gazette notice state the intention to revoke the declaration of a reclaimed part of a marine park by regulation. The notice must identify the marine park, define by map or description the proposed boundaries of the reclaimed part of the park, and state when the notice will expire.

Although the notice is not subordinate legislation, sections 49 to 51 of the *Statutory Instruments Act 1992*, will apply to it, as if it were subordinate legislation. That is, the notice must be tabled in the Legislative Assembly and can potentially be subject to a disallowance motion.

The future revocation of marine park status is, in practice, subject to certain procedures that involve the Chief Executive issuing a permission for the reclamation under clause 15 and giving the permission holder a certificate of satisfactory completion for the reclamation.

## Permission for carrying out proposed reclamation

Clause 15 outlines the requirements for issuing a permission for reclaiming tidal land in a marine park if, on completion of the reclamation, the declaration of the reclaimed part of the park is intended to be revoked. The Chief Executive may issue such a permission only if this is compatible with the zoning of the area, and if a notice of intention to revoke the reclaimed part of the marine park under clause 14 is in force.

If the land is in a highly protected area (eg. a national park or conservation park zone) clause 15 provides that the Chief Executive may not issue a permission for reclamation involving removal of an area from marine park. It is unlikely that a development involving major reclamation works would be proposed in a highly protected zone, but if such a situation were to arise, the area would need to be rezoned under the provisions of part 3 of the Bill, or removed from the park following a resolution of the Legislative Assembly pursuant to clause 9.

Clause 15 also requires the Chief Executive to consider an EIS, written submissions and any other matter prescribed under a regulation or zoning plan before issuing the permission.

Clause 15 does not apply if the reclamation is necessary:

(a) to deal with an emergency involving a serious threat to a natural or cultural resource; 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.

## EIS required

Clause 16 requires an applicant seeking permission for reclamation in a marine park under clause 15, to give the Chief Executive an EIS prepared in accordance with this clause. The EIS must consider:

- how the reclaimed part of the park is proposed to be used;
- the likely impacts on the environment and use and non-use values of the marine park and adjacent or contiguous areas.

The EIS must also include the information that would, but for clause 19(5), be required under the *Statutory Instruments Act 1992*, section 44, for a regulatory impact statement about the proposed regulation revoking the declaration of the reclaimed part of the park. This will ensure that all major issues associated with the reclamation and potential regulation revoking the reclaimed area are adequately considered before the issue of a permission in order to provide greater decision-making and project certainty.

The EIS must be prepared under any guidelines or terms of reference, approved by the Chief Executive. However, the clause recognises that, for a major development, the EIS might be prepared under legislation such as the *State Development and Public Works Organisation Act 1971* or the *Integrated Planning Act 1997*, in which case the requirements of the Chief Executive under the marine parks legislation might be incorporated into a larger document. Clause 16 allows the Chief Executive to require the applicant to give the Chief Executive additional information about a matter mentioned under clause 16(1) and (2).

In practice, the EIS would be provided to the Chief Executive before the Governor in Council gives notice under clause 14.

## Public consultation about EIS and other information

Clause 17 requires the applicant for the permission to publish, in a newspaper likely to be read by persons particularly affected by the proposed reclamation and revocation, a notice about the EIS and any additional information given to the Chief Executive under clause 16(4).

## Certificate of satisfactory completion

Clause 18 provides that if the Chief Executive is satisfied the reclamation has been completed in accordance with the permission under clause 15, the Chief Executive must give the permission holder a certificate of satisfactory completion for the reclamation. This is a procedural step that basically clears the way for the final revocation of the developed area from marine park status.

## Revocation of reclaimed part of park

Clause 19 allows for a regulation to be made revoking an area of a reclaimed part of a marine park without a resolution of the Legislative Assembly in a limited range of situations.

The clause is primarily intended to allow for the formal revocation of marine park status where an area has been reclaimed by development works under division 3. In such situations there are a number of preconditions to be met, as outlined above, including the need for the reclamation works to be allowed for in any relevant zoning plan, and the approval of a notice under clause 14 by the Governor in Council. Both the zoning plan and the notice must be tabled in the Legislative Assembly under the provisions, respectively, of section 49 of the *Statutory Instruments Act 1992* or clause 14(5) of the Bill.

The clause also covers the situation where a development has been commenced under a permit but not completed, or where illegal reclamation has taken place, and where it is not practical to rehabilitate the area involved.

A regulatory impact statement under the *Statutory Instruments Act 1992* is not required for the making of a regulation under this clause. The requirements for preparing an EIS under clause 16 of the Bill are considered to provide a comparable public process, and in situations where illegal reclamation has been undertaken or authorised reclamation has been completed there is little point in undertaking a RIS after the event when most marine park values have already been lost.

Finally, the clause includes a transition provision through the reference in subclause 19(6) to clause 160 of the Bill. This accommodates situations where reclamation works are commenced under a permit issued under the current Act, but completed after introduction of the new provisions of the Bill.

## Division 4 Other provisions about marine parks

### What park comprises

Clause 20 provides that a marine park established before or after the commencement of the Bill comprises the land and waters in the park's declared area, the park's associated airspace, subsoil and other natural and cultural resources. Any land or waters resulting from reclamation works carried out after the park is established remain in the park (unless they are revoked under other provisions of the Bill after commencement of the Bill), but any reclamation completed prior to the commencement of the Bill in accordance with the transition provisions in clause 165 is not part of a marine park. This removes any possible doubts over the status of reclamation works carried out under permits granted under the current legislation.

# Part 3 Zoning and management plans

## Division 1 Zoning plans

## Subdivision 1 Prescription

### Zoning plan

Zoning plans work in a similar way to local government town plans in designating certain areas of a marine park for certain types of activity. They are central to the whole operation of the multiple use framework which has been adopted for marine parks in Queensland, and which is also at the core of the Commonwealth *Great Barrier Reef Marine Park Act 1975*.

It should be noted, however, that a park could sometimes be declared without a zoning plan being immediately put in place, in which case the park is managed under certain basic provisions set out in regulations.

It would also be possible for a marine park or a defined marine area to be managed under a special set of regulations in cases where the usual zoning model was not considered appropriate, and this is likely to be the case for the management of the proposed dive site over the former *HMAS Brisbane*.

Nonetheless, zoning plans have been prepared for all marine parks in Queensland to date, and this will continue to be the most frequent practice.

Clause 21 provides that a regulation may prescribe a zoning plan for a marine park if the plan has been prepared under sections 22 and 23. The plan is subordinate legislation and the normal tabling and disallowance procedures in sections 49 to 51 of the *Statutory Instruments Act 1992* apply to it.

## Preparation and notice of draft plan

Clause 22 outlines the process for preparing a draft zoning plan. The Minister must ensure that the content of the plan complies with clause 24 (Content of zoning plan), and that public notice is given about it. The notice must state:

- the marine park to which it applies;
- where the plan and associated documents are available for free inspection, during normal business hours at a department office, or on the department's web site.

The notice must also invite members of the public and other persons to make written submissions to the Minister about the plan, within a stated period.

In addition, subclause 22(4) allows discretion not to release a draft of proposed amendments in situations where consultation has occurred through other avenues or where the legislation is to be uniform or complementary with other legislation.

## Preparation of final plan

Clause 23 provides that the Minister must prepare a final zoning plan after considering each submission made in accordance with the public notice and submission process under clause 22. The Minister must also prepare the final plan having regard to the purposes of the Bill.

## Content of zoning plan

Clause 24 sets out the content requirements of a draft or final zoning plan. The plan must state the following for each zone or designated area within the marine park:

- its name;
- the objects of the zone or designated area;
- the purpose for which it may be entered; and
- the external boundaries, by map or appropriate description, if a park consists of 2 or more zones or designated areas.

Subclause 24(2)(a) makes it clear that a zoning plan may allow for the reclamation of tidal land, thus linking back to the earlier provisions of clause 15(1)(a)(i) dealing with approval processes for reclamation which is intended to result in revocation of an area from a marine park.

Subclause 24(2)(b) allows for a maximum penalty of not more than 165 penalty units for contravening the plan. The level of penalties allowed in the Bill is identical to the level provided under the *Nature Conservation Act 1992*. This is necessary to allow consistency of penalties for offences on national park islands and adjoining marine park beaches, and for protection of wildlife such as seabirds on islands and adjacent beaches and waters.

## Subdivision 2 Amendment

### Amendment of zoning plan

Clause 25 allows a zoning plan to be amended by regulation, but requires any amendment to be subject to the release of a draft for public comment and consideration of public submissions as provided by clauses 26 and 27.

Subclause 25(2) allows a discretion not to release a draft plan if the amendment is minor, not a change of substance, or of a type the zoning plan says may be made under this provision.

In addition, subclause 25(3) also allows discretion not to release a draft of proposed amendments in situations where consultation has occurred through other avenues or where the legislation is to be uniform or complementary with other legislation.

### Preparation and notice of draft amendment

If the public consultation exemptions under clause 25 do not apply, clause 26 sets out the requirements for public notice of a draft amendment to a zoning plan. The Minister must prepare and give public notice about a draft amendment and must allow at least 28 days for written public submissions

on the draft amendment. A fee, if any, may be charged for a copy of the draft amendment.

### Preparation of final amendment

Clause 27 provides that the Minister may prepare a final amendment to a zoning plan after considering each submission made under clause 26, and having regard to the purposes of the Bill.

## Subdivision 3 Other provisions

### Tabling of statement with zoning plan or amendment

Given the multiple use nature of marine parks it would be possible for a highly protected area to be downgraded through a rezoning process. This might for example be associated with declaration of a larger area of highly protected status at another location after negotiation with fishing and conservation interests as has occurred. Unlike the downgrading of national parks under the *Nature Conservation Act 1992*, such actions presently do not involve a resolution of the Legislative Assembly.

To support Parliamentary scrutiny and involvement, clause 28 now requires any downgrading of a zone to be specifically drawn to the attention of the Legislative Assembly. The clause states that if the level of protection for the marine environment of a zone is decreased, the Minister must, under section 49 of the *Statutory Instruments Act 1992,* table a statement in the Legislative Assembly:

- identifying the zone, and location of the area, where the level of protection is decreased; and
- giving reasons for the decrease.

The downgrading of an area will generally happen as part of a larger planning exercise involving public comment, release of draft plans and consideration of various options by the Chief Executive and Minister. In addition, zoning plans provide area-based management using a system of zones and designated areas. It is possible, therefore, to isolate the consideration of issues relating to the downgrading of an area from other areas managed under the zoning plan. Parliament could, therefore, under section 50(5) of the *Statutory Instruments Act 1992*, disallow provisions downgrading a zone, without affecting the operation of the remainder of the zoning plan.

# Division 2 Management plans

## Subdivision 1 Approval

### Approval of management plan

Management plans provide for the detailed site management of local areas within a marine park. They are normally concerned with a much greater level of detail than zoning plans, and are only required when there is relatively high use of an area. The management plans are policy documents which are used to support decisions on approvals. In circumstances where restrictions on certain forms of public activity are necessary, a management plan may be supported by specific regulations, as has occurred in the Cairns area, the Whitsundays and the Hinchinbrook area under existing management plans prepared under the Commonwealth *Great Barrier Reef Marine Park Act 1975*.

Clause 29 provides that if a management plan for a marine park, is prepared under sections 30 to 32 of the Bill, the Governor in Council may by gazette notice, approve the plan. Although the gazette notice is not subordinate legislation, sections 49 to 51 of the *Statutory Instruments Act 1992*, will apply to it, as if it were subordinate legislation. That is, the notice and management plan must be tabled in the Legislative Assembly and can potentially be subject to a disallowance motion.

### Preparation of draft plan

Clause 30 provides that the Minister must prepare a draft management plan. The draft plan may apply, with or without modification, the provisions of another similar or different document. Unless the draft plan expressly says otherwise, the applied provision is the provision as in force from time to time. This will facilitate coordinated management and the implementation of non-statutory plans where such plans assist in the conservation of the environment or the use and non-use values of a marine park.

### Public notice of draft plan

Clause 31 provides that the Minister must give public notice about the draft management plan. A copy of the draft plan must be available for inspection

during normal business hours at each department office and on the department's web site.

The notice must also invite written public submissions on the draft plan to the Minister, within a minimum period of at least 28 days after the public notice is given.

Clause 31(4) allows discretion not to release a draft of proposed amendments in situations where consultation has occurred through other avenues or where the legislation is to be uniform or complementary with other legislation.

Clause 31(6) allows a fee, if any, to be charged for copies of the draft plan.

### Preparation of final plan

Clause 32 provides that the Minister must prepare a final management plan after considering each submission made under clause 31, and having regard to the purposes of the Bill.

### When management plan has effect

Clause 33 provides that a management plan has effect from the day the notice approving the plan is published in the gazette or the commencement day stated in the plan, whichever happens last.

## Subdivision 2 Amendment and review

### Approval of amendment of management plan

Clause 34 provides that the Governor in Council may approve an amendment of a management plan by gazette notice but requires any amendment to be prepared under clauses 35 to 37 of the Bill.

The gazette notice is not subordinate legislation. However, sections 49 to 51 of the *Statutory Instruments Act 1992*, will apply to it as if it were subordinate legislation. That is, the notice and management plan must be tabled in the Legislative Assembly and can potentially be subject to a disallowance motion.

### Preparation and notice of draft amendment

Clause 35 requires the Minister to prepare a draft of a proposed amendment. The draft may incorporate provisions of another similar or different document. A reference to an incorporated provision will be regarded as a reference to the provision in force from time to time, unless the draft amendment expressly provides otherwise.

### Public notice of draft amendment

Clause 36 requires the Minister to give public notice about the draft amendment. The requirements are similar to the requirements under clause 31 in relation to the making of a plan and require notice to be given, the draft amendments to be available at departmental offices and on the Internet and allowing 28 days for receipt of public submissions.

Subclause 36(5) allows for discretion not to the release of the draft amendment plan if the amendment is minor, not a change of substance, or of a type the management plan says may be made under this provision.

In addition, subclause 36(6) allows discretion not to release a draft of the proposed amendment in situations where consultation has occurred through other avenues or where the legislation is to be uniform or complementary with other legislation.

### Preparation of final amendment

Clause 37 provides that the Minister must prepare a final amendment of a management plan after considering each submission made under clause 36 and having regard to the purposes of the Bill.

### When amendment has effect

Clause 38 provides that the amendment takes effect on the later of the following days:

(a) the day the gazette notice approving the amendment, is published in the gazette; or

(b) the commencement day stated in the amendment.

### Review of management plan

Clause 39 provides that the Minister must review each management plan within 10 years after its commencement, to ensure its continued effectiveness.

## Subdivision 3 Other provisions

### Public access to current management plan

Clause 40 requires the Chief Executive to keep a copy of a current management plan available on the department's website and during business hours at the department's offices.

On payment of a fee, if any, decided by the Chief Executive, a person may obtain a copy of the current management plan.

### Chief Executive may enter into cooperative arrangement for management plan

Clause 41 allows the Chief Executive to make an agreement or other arrangement with a group or person having a special interest in a marine park, about preparing, amending, reviewing or implementing a management plan for the park. A "special interest" in the park could, for example, include native title, or some other special identification with the park or its natural or cultural resources.

### Moratorium on grant of new permissions

Clause 42 allows the Minister to publish 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. A moratorium notice preserves the status quo on specified activities conducted in an area for up to one year while a management plan is being prepared, or until the plan takes effect. If a notice is given, an application for a specified authority will not be granted during the moratorium period, and will apply equally to applications received before, or after start of the moratorium. The notice must be published in the gazette, and a newspaper circulating throughout Queensland.

# Part 4 Offences

## Division 1 Entry to or use of marine park

### Entry or use for a prohibited purpose

Clause 43 creates offences for entering or using a marine park for a prohibited purpose specified in a regulation or zoning plan.

A person, who wilfully enters or uses a marine park for a prohibited purpose involving the taking of natural or cultural resources, incurs a maximum penalty of 3000 penalty units. A person wilfully entering or using a marine park for another prohibited purpose incurs a maximum penalty of 295 penalty units. Entering or using a marine park for a prohibited purpose (not being wilful entry or use) incurs a maximum penalty of 90 penalty units. The specified penalty units provide consistency with similar offences under the *Great Barrier Reef Marine Park Act 1975* and other natural resource management legislation.

This clause does not apply to a person performing a function, or otherwise authorised under the Bill, to do an act or make an omission.

The performance of functions and the exercise of powers under other Acts are currently addressed under regulations and zoning plans (eg. compliance and enforcement operations, the installation of navigation aids and securing the safety of persons and vessels) and therefore would be exempt from the offence under clause 43 of the Bill. In some cases, however, permits or notification to the Chief Executive may be required.

### Entry or use without an authority

Clause 44 states that if a person requires an authority under the Bill to enter or use a marine park for a particular purpose, they must not wilfully enter or use the park for the purpose without the authority.

A breach that involves the taking of natural or cultural resources attracts a maximum penalty of 3000 penalty units, and for another purpose, a maximum penalty of 295 penalty units may be imposed. The specified penalty units provide consistency with similar offences under the *Great Barrier Reef Marine Park Act 1975* and other natural resource management legislation.

This clause is similar to clause 43 in that it does not apply to someone performing a function, or otherwise authorised under the Bill, to do an act or make an omission.

As outlined under clause 43, the performance of functions and the exercise of powers under other Acts in most cases are exempt under the regulations and zoning plans from permit requirements and therefore would be exempt from the operation of clause 44. The model is retained under the Bill.

### Entry or use requiring notice

Clause 45 states that if a person requires a notice under the Bill to enter or use a marine park for a particular purpose, they must not wilfully enter or use the park for the purpose without the notice. If the Chief Executive makes the entry or use subject to conditions, they must comply with the conditions. The specified penalty units provide consistency with similar offence provisions under the *Great Barrier Reef Marine Park Act 1975*.

## Division 2 Other offence provisions

### False or misleading information given by applicant

Clause 46 makes it an offence to make false or misleading statements in an application for permission and prescribes a maximum penalty of 100 penalty units.

### False or misleading documents given by applicant

Clause 47 requires a person who makes an application for a permission, not to give the Chief Executive a document containing information they know is false or misleading in a material particular. A breach of this clause attracts a maximum penalty of 100 penalty units.

This clause does not apply to a person who, when giving the document informs the Chief Executive, to the best of their ability, how it is false or misleading and gives the correct information to the Chief Executive if they have, or can reasonably obtain, that information.

### Noncompliance with temporary restricted area declaration

Clause 48 provides that a person who does not comply with a temporary restricted area declaration, is liable for a maximum penalty of 3000 penalty

units or 2 years imprisonment. However, the clause does not apply if an authorised person performs a function under the Bill or someone else is authorised to do the act or make the omission.

### Noncompliance with conditions of an authority

Clause 49 provides that the holder of an authority issued under the Bill must comply with the conditions of the authority. Failure to do so attracts a maximum penalty of 3000 penalty units for a condition about the taking of natural or cultural resources, or 295 penalty units for another condition.

### Unlawful serious environmental harm

Clause 50 makes it an offence for a person to 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. A maximum penalty of 3000 penalty units or 2 years imprisonment may be imposed for breaching this clause in line with similar offences under other Queensland natural resource management legislation. The clause does not apply to an authorised person performing a function under the Bill, or someone authorised under the Bill. Also the clause does not apply if harm was caused by a lawful activity conducted outside the marine park or inside the marine park if there is no zoning plan or park-specific regulations.

"Serious environmental harm" is defined as:

(a) actual or potential harm to the park's environment or use or 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 or non-use values.

### Unlawful use of particular words

Clause 51 makes it an offence for a person to use words about an area that is not a marine park in a way that is likely to cause someone else to reasonably believe the area is a marine park or part of a marine park with the intention of gaining a benefit or causing detriment to a person.

It is also an offence for a person to use words about a zone or other area in a marine park in a way that is likely to cause someone else to reasonably believe the zone or area is of a classification different to its classification under the Bill with the intention of gaining a benefit or causing detriment to

a person. Contravention of this clause attracts a maximum penalty of 50 penalty units.

# Part 5 Monitoring and enforcement

## Division 1 Inspectors

### Appointment and qualifications

Clause 52 authorises the Chief Executive to appoint a public service employee, Commonwealth APS employee, local government employee, police officer; or another individual, who consents to being appointed, as an inspector, if satisfied that the individual is suitably qualified.

### Appointment conditions and limit on powers

Clause 53 allows conditions to be stipulated in connection with the appointment of an inspector. These can be conveyed through an instrument of appointment, a notice signed by the Chief Executive or a regulation.

### Issue of identity card

Clause 54 requires the Chief Executive to issue an identity card to each inspector containing a recent photo of the inspector, and a copy of the inspector's signature. The card must also identify the individual as an inspector under this Bill, and the date the card expires. Subclause 54(3) allows scope for combined identity cards to be issued under more than one piece of legislation, for example, where an EPA officer is both a marine parks inspector and a conservation officer under the *Nature Conservation Act 1992*.

### Production or display of identity card

Clause 55 provides that before exercising a power under this Bill, an inspector (other than a police officer in uniform), must show their identity card; or have the identity card clearly displayed to the person. However, where this is not practicable, the identity card must be produced at the first reasonable opportunity.

### When inspector ceases to hold office

Clause 56 provides that an inspector ceases to hold office if:

- the term of office in a condition of office ends;
- the inspector ceases to hold office under another condition of office; or
- the inspector's resignation under clause 57 takes effect.

However, these ways of cessation do not limit the ways an inspector may cease holding office.

### Resignation

Clause 57 provides that an inspector may resign by giving a signed notice to the Chief Executive.

### Return of identity card

Clause 58 provides that if a person ceases to be an inspector, they must return their identity card to the Chief Executive within 21 days, unless they have a reasonable excuse.

## Division 2 Powers of inspectors

## Subdivision 1 Entry to Places

### Power to enter places

Clause 59 provides for the conditions of entry to a place by an inspector. The provisions of clause 59 generally allow entry only with an owner's consent or with a warrant, or to public places or places which are open for business. However, subclause 58(1) makes it clear that the clause does not limit the power to board and search vessels conveyed under clause 72(2).

## Subdivision 2 Procedure for entry

### Entry with consent

Clause 60 outlines the procedures an inspector must follow where the occupier consents to entry under clause 59(1)(a). Prior to asking for consent, the inspector must tell the occupier the purpose of the entry. The occupier is not required to consent, and must be so informed by the inspector. However, if consent is given, the occupier may be asked to sign an acknowledgment of the consent.

Where an issue arises in a proceeding about whether the occupier consented to the entry and an acknowledgment 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.

### Application for warrant

Clause 61 describes the process by which an inspector may apply to a Magistrate for a warrant to enter a place. The inspector must swear a written application stating the grounds on which a warrant is sought, and may also be required to provide further information the Magistrate requires by statutory declaration.

### Issue of warrant

Clause 62 provides for the circumstances in which the Magistrate may issue a warrant, and the contents of a warrant. The warrant may be issued if the Magistrate is satisfied that there are reasonable grounds to suspect a particular thing or activity at a place may provide evidence of an offence against the Bill. The warrant must also state the date it ends, and cannot be valid for more than 14 days.

### Application by electronic communication and duplicate warrant

Clause 63 allows an inspector to apply for a warrant by phone, fax, radio, videoconferencing or another form of electronic communication, if the inspector considers it is necessary because of urgent circumstances or other special circumstances, including the inspector's remote location. The clause spells out procedural details of how the warrant may be issued, documentation and similar matters.

Where an issue arises in proceedings about whether the exercise of a power was authorised by a warrant issued under this clause; (and the original warrant is not produced in evidence) the onus is on the person relying on the exercise of the power, to prove that the power was exercised under the warrant.

### Defect in relation to a warrant

Clause 64 provides that a warrant is not invalidated by a defect in the warrant, or a defect in compliance with the procedures for obtaining a warrant set out in clauses 61, 62, or 63, unless the defect affects the substance of the warrant in a material particular.

### Warrants—procedure before entry

Clause 65 outlines the procedures that an inspector must follow or attempt to follow, before entering a place under a warrant. An inspector must identify himself or herself to the occupier and provide a copy of the warrant. However, the procedures need not be complied with in circumstances where immediate entry is required to ensure that effective execution of the warrant is not frustrated.

## Subdivision 3 Powers after entry

### General powers after entering places

Clause 66 authorises an inspector to search, inspect, measure, test, photograph or film any part of a place or anything at the place, take samples, take or copy documents, and take into the place any person, equipment and materials the inspector reasonably requires for exercising a power.

### Power to require reasonable help or information

Clause 67 allows an inspector to require the occupier of a place, or a person at the place, to provide the inspector with reasonable help to exercise a power of search under clause 66(3), or to provide information to help the inspector assess whether the Bill is being complied with.

It is an offence not to comply with the inspector's requirements, unless the person has a reasonable excuse. A reasonable excuse for individual non-compliance would be self-incrimination.

## Subdivision 4 Other powers

### Power to require name and address

Clause 68 provides that an inspector may require a person to give their name and residential or business address if the inspector finds the person committing an offence, or the inspector reasonably suspects an offence has been committed against this Bill. A person must supply the information, unless they have a reasonable excuse. A maximum penalty of 15 penalty units applies for non-compliance. However, a person does not commit an offence if the requirement was given because the inspector suspected the person had committed an offence against the Bill and the person is not proved to have committed the offence.

### Power to require information about contravention

Clause 69 allows an inspector to require a person who is believed to be able to give information about a contravention against the Bill to provide such information. The inspector may specify that the information is to be provided in a reasonable time and a certain way. The inspector must warn the person that failure to comply without a reasonable excuse is an offence. A maximum penalty of 15 penalty units may be imposed.

### Power to stop persons

Clause 70 allows an inspector to require a person to stop and not move on if the person is found committing an offence, or an inspector suspects that the person has just committed an offence. The inspector may detain the person only as long as is reasonably necessary. It is an offence not to comply with such a direction unless the person has a reasonable excuse. A maximum penalty of 100 penalty units may be imposed.

### Power to give direction to leave area

Clause 71 authorises an inspector to direct a person to leave a marine park or part of it immediately if the inspector finds the person committing, or attempting to commit, an offence against the Bill or suspects the person has committed or attempted to commit an offence against this Bill. An inspector may also require the person to remove the person's property from the park or part of the park. A maximum penalty of 15 penalty units applies in these circumstances, unless the person has a reasonable excuse.

When giving the direction, an inspector is required to tell the person the reason for giving it and if it is reasonably practicable, the direction must be given in writing.

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.

## Power to stop and search vessels, vehicles and aircraft

Clause 72 outlines the general powers of an inspector for stopping and searching vessels, vehicles and aircraft. An offence is created where a person fails to comply with a direction to stop and not move unless the person has a reasonable excuse, and a maximum penalty of 100 penalty units applies. It is a reasonable excuse for the person to fail to stop or to move the vessel, vehicle or aircraft if to immediately obey the signal would have endangered the person or someone else, provided that the person obeys the signal as soon as it is practicable to do so. The inspector may detain the person only for as long as is reasonably necessary for the inspector to exercise powers under this Bill in relation to the vessel, vehicle or aircraft.

Consistent with most other marine legislation, an inspector may board and search a vessel, vehicle or aircraft with necessary and reasonable help and force and without a warrant or the consent of the owner or person in control. However, before boarding or entering an unattended vessel, vehicle or aircraft, the inspector must take reasonable steps to advise its owner, or the person in control, of the intention to board or enter. After boarding or entering an unattended vessel, vehicle or aircraft, the inspector must attach or leave, in a conspicuous place in the vessel, vehicle or aircraft a notice stating:

- when the vessel, vehicle or aircraft was boarded or entered; and
- why it was boarded or entered; and
- what powers mentioned in section 66(3) were exercised; and
- what the exercise of the powers involved.

In addition, an inspector must not enter and search a part of a vessel, vehicle or aircraft used only as a living area, unless the person in control of

the vessel, vehicle or aircraft accompanies the inspector. However, this does not apply if the person is unavailable or unwilling to accompany the inspector or if the clause is unable to be complied with for another reason.

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

Clause 73 provides that an inspector may require the driver of a vessel, vehicle or aircraft to give reasonable help to enable a vessel, vehicle or aircraft to be boarded or entered under clause 72(2), for inspection. Unless the person has a reasonable excuse, a contravention a requirement under subclause (1), attracts a maximum penalty of 100 penalty units.

## Subdivision 5 Power to seize evidence

### Seizing evidence at place entered under s59

Clause 74 outlines the type of evidence that may be seized in particular circumstances.

### Seizing evidence on or in vessel, vehicle or aircraft entered or boarded under s72

Clause 75 gives an inspector the power to seize evidence on or in a vessel, vehicle, aircraft boarded under clause 72(2).

### Powers in support of seizure

Clause 76 allows an inspector to require a person in control of a thing to take it to a specified reasonable place by a reasonable time and if necessary, to remain in control of it at the place for a reasonable time. 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. An offence is created for failing to comply with the requirement unless the person has a reasonable excuse. A maximum penalty of 50 penalty units applies.

### Securing seized things

Clause 77 prescribes what an inspector may do with a seized thing. The inspector may move or leave the seized thing, and:

- take reasonable action to restrict access, or prevent or mitigate damage, to it; or
- direct the person the inspector believes is in control of the thing, to take action to restrict access, or prevent or mitigate damage to it; or
- make equipment inoperable or direct a person in control to take action to make it inoperable.

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 subclause (1) for no longer than is reasonably necessary for obtaining evidence of the offence for which the thing was seized.

A person to whom a direction is given must comply with the direction, or a maximum penalty of 50 penalty units may apply.

### Tampering with seized things

Clause 78 provides that if an inspector restricts access to a seized thing, a person must not tamper with it, without an inspector's approval. A maximum penalty of 100 penalty units applies for contravention of this subclause. The same penalty applies if a person tampers with equipment an inspector makes inoperable, without an inspector's approval.

### Receipt for seized things

Clause 79 requires an inspector to give a person a receipt for a seized thing, unless it is impracticable or unreasonable to do so, given the thing's nature, condition and value or when the person from whom it was seized cannot be located. If it is impractical to give the person from whom it was seized a notice, the inspector must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

### Inspector may dispose of natural resources taken unlawfully

Clause 80 applies if a natural resource is seized under the Bill and an inspector reasonably believes the resource has been taken unlawfully. Despite any other provision of the Bill, the inspector may deal with or dispose of the resource in the way the inspector considers appropriate, if satisfied that it is necessary to do so in the interests of the welfare of the resource or to conserve the resource or environment.

### Forfeiture of seized things

Clause 81 provides that a thing seized under this subdivision and not disposed of under clause 80, is forfeited to the State if the inspector who seized the thing cannot find its owner after making reasonable inquiries, or return it to its owner after making reasonable efforts. For example, the owner might have migrated to another country.

### Dealing with forfeited things

Clause 82 provides that a thing forfeited by the State, becomes the property of the State, and dealt with as the Chief Executive considers appropriate, including the thing's destruction or disposal.

### Return of seized things

Clause 83 provides that if a seized thing is not disposed of under clause 80 or forfeited under clause 81, the inspector must return it to the person from whom it was seized 6 months after its seizure. Alternatively, if proceedings involving the thing are started within the 6 months, the seized thing must be returned at the end of the proceedings and any appeal from the proceedings. Unless a thing seized as evidence is disposed of, or forfeited, the inspector must immediately return it to the person if satisfied that its continued retention as evidence, is unnecessary.

### Access to seized things

Clause 84 provides that 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, unless the inspection or copying is impractical or unreasonable.

## Division 3 General enforcement matters

### Definition for div 3

Clause 85 provides that in division 3, "inspector", for a power exercised under clause 100, 102, 103, or 109 includes the Chief Executive.

### Inspector's obligation not to cause unnecessary damage

Clause 86 requires an inspector exercising a power under division 2 or clause 100, 102, 103 or 109 of the Bill, to take all reasonable steps to ensure no unnecessary damage to property is caused and as little inconvenience as practicable.

### Notice of damage

Clause 87 applies if an inspector, or person directed by an inspector, damages property when exercising a power under the Bill. In these circumstances, the inspector must immediately give notice of the damage to the owner of the property (including a person in possession or control). If the inspector believes damage was caused by a latent defect in the property or circumstances beyond the inspector's control, the inspector may state this in the notice. If, for any reason, it is impracticable to notify the owner of the damage, the inspector must leave the notice in a conspicuous position, and a reasonably secure way where the damage happened. Clause 87 does not apply to damage the inspector reasonably believes is trivial.

### Compensation

Clause 88 allows a person to claim compensation from the State for incurring loss or expense because of the exercise or purported exercise of a power under division 2 (Powers of inspectors), subdivision 1, 3 or 4 or clause 100, 102, 103, or 109. Compensation may be claimed, and recovered in a court of competent jurisdiction, for loss or expense incurred in complying with the Bill. However, a court may order the payment of compensation, only if satisfied that it is fair to do so.

### False or misleading information given to inspector

Clause 89 imposes a maximum penalty of 100 penalty units if a person states anything to an inspector which the person knows is false or misleading in a material particular.

### False or misleading documents given to inspector

Clause 90 imposes a maximum penalty of 100 penalty units if a person gives an inspector a document containing information that the person knows is false or misleading in a material particular, unless the person tells the inspector how the document is false or misleading, or provides the

inspector with additional information to correct the false or misleading information.

### Obstructing an inspector

Clause 91 imposes a maximum penalty of 100 penalty units if a person obstructs an inspector in the exercise of a power, unless the person has a reasonable excuse. An inspector who has been obstructed, but nevertheless decides to exercise the power, must warn the person that it is an offence to obstruct an inspector, and that the inspector considers the person's conduct is an obstruction.

### Impersonating an inspector

Clause 92 imposes a maximum penalty of 100 penalty units if a person pretends to be an inspector.

## Division 4 Compliance notices

### Compliance notice

Clause 93 applies if the Chief Executive or an inspector (each the "notifier") reasonably believes a person is contravening a provision of the Bill, or has contravened the Bill and is likely to continue or repeat the contravention. Where the matter is capable of being rectified and it is considered appropriate to give the person and opportunity to rectify the matter, the notifier may give the person a compliance notice to remedy the contravention. The notice must state that the person may appeal against the decision to give the notice.

The clause also describes the contents of a compliance notice, and allows a notifier to state the steps believed to be necessary to remedy the contravention.

Where the Bill provides a penalty for contravening a provision, the maximum penalty for failing to comply with a compliance notice without a reasonable excuse is the same amount. In other situations a penalty of 5 penalty units may be imposed if the person does not comply with the notice.

Subclauses (4) and (5) take account of a situation where a person in contravention of the Bill may also be in breach of a permit or similar authority, and may have been served with a show cause notice as to why the

permit should not be revoked. In these circumstances, the officer is required to consider any reasons provided in response to the show cause notice before deciding whether to issue a compliance notice.

Subclause (9) makes it clear that once a compliance notice has been issued, a person cannot be prosecuted for contravening a provision of the Bill unless the person fails, without reasonable excuse, to comply with the compliance notice.

A person may appeal the decision to give the notice under Part 8 of the Bill.

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

## Division 1 Preliminary

### Definitions for pt 6

Clause 94 defines 3 terms used 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 immediately before it was abandoned, stranded, sunk or wrecked. "Property" does not include land.

## Division 2 Temporary restricted area declaration

### Temporary restricted area declaration

Clause 95 provides that 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 meet a risk of injury or illness to persons or damage to property or a serious threat to the park's environment or use or non-use values. The clause prescribes the information the declaration must contain, including the nature of the emergency, the boundaries of the temporary restricted area by a map or appropriate description and the regulation of things the Chief Executive reasonably considers are necessary to meet the risk or threat. The Chief Executive must publish the declaration in the gazette, and other ways the Chief

Executive considers appropriate including signs and radio announcements. In addition under clause 95, the Chief Executive is required to repeal the declaration as soon as possible after the Chief Executive considers the emergency no longer exists.

### Expiry of declaration

Clause 96 provides that unless earlier repealed, a temporary restricted area declaration expires on the expiry day stated in the declaration or at the end of 6 months, whichever is earlier. In addition under clause 95, the Chief Executive is required to repeal the declaration as soon as possible after the Chief Executive considers the emergency no longer exists.

### Declaration is not subordinate legislation

Clause 97 provides that although a temporary restricted area declaration is not subordinate legislation, the *Statutory Instruments Act 1992*, sections 49 to 51 apply to it as if it were subordinate legislation. That is, the notice must be tabled in the Legislative Assembly and might potentially be subject to a disallowance motion.

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

Clause 98 provides that if there is an inconsistency between the temporary restricted area declaration and a regulation or zoning plan or an authority issued under the Bill or another Act, the declaration prevails to the extent of the inconsistency.

## Division 3 Directions for protecting environment and users

### Inspector's power to give directions

Clause 99 applies if an inspector reasonably believes action is needed to deal with an emergency involving a marine park and a serious risk to the marine park's environment or use and non-use values or safety of a person or a person's property. The inspector may give a person an oral or written direction regulating or prohibiting the person's entry or use of the park. The inspector may also give the person in control of a vessel, vehicle or aircraft in the park a direction regulating the use of these forms of transport.

Directions may also be given in relation to abandoned, stranded sunk or wrecked property. A maximum penalty of 200 penalty units applies if the person does not. comply with a direction without reasonable excuse.

## Division 4 Removing abandoned, stranded, sunk or wrecked property

## Subdivision 1 Removal of property other than in urgent circumstances

### Inspector's power to remove property

Clause 100 applies if an inspector reasonably believes that property in a marine park is abandoned, stranded, sunk or wrecked and needs to be removed, but not urgently, to prevent or remedy harm, secure the safety of a person or property or minimise disturbance to persons in the park.

The inspector may seize and remove the property to a place decided by the inspector whether or not the seizure and removal is inconsistent with an authority held by a person.

When exercising a power under this clause, clause 86 of the Bill provides that an inspector and the Chief Executive must take all reasonable steps to cause as little inconvenience as practicable and not cause any unnecessary damage to property. If damage to property occurs, notice must be given to the person who appears to be the owner of the property under clause 87. In addition, persons may seek compensation for loss or damage caused through the exercise of this power under clause 88 of the Bill.

If a person has been given compliance notice, a notice under clause 99(4) in relation to the property (eg. to remove, secure or salvage) or an enforcement order, then an officer may seize and remove property only if the person has failed, without reasonable excuse, to comply with the compliance notice, directions or enforcement order.

### Removal notice

Clause 101 requires that before seizing and removing the property, and subject to clause 102, the inspector must give a notice in the approved form ("a removal notice'') to the person responsible for the property.

If the person is not known or can not be located, the notice must be given by attaching the notice to the property intended to be seized and publishing the notice set out in clause 101(3) in a newspaper circulating generally in the locality where the property is.

### Seizure, removal and disposal without giving removal notice

Clause 102 provides that 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 notice, seize and remove the property and having regard to the condition and value of the property, sell or dispose the property. Compensation is not payable for a sale or disposal under this clause.

## Subdivision 2 Removal of property in urgent circumstances

### Inspector's power to remove property

Clause 103 applies if an inspector reasonably believes property in a marine park is abandoned, stranded, sunk or wrecked and needs to be removed urgently in order to prevent or remedy harm, secure the safety of persons or their property or minimise disturbance to persons in the park.

The inspector may seize and remove the property to a place decided by the inspector whether or not the seizure and removal is inconsistent with an authority held by a person.

If, where the person responsible for the property has been given direction under clause 99, a compliance notice or an enforcement order to remove the property, then an inspector may seize and remove property only if the person has failed, without reasonable excuse, to comply with the notice, direction or order, or the inspector reasonably believes:

- the property needs to be removed immediately or sooner than as required; and
- the person responsible for the property is unwilling or unable to remove the property sooner than as required.

When exercising a power under this clause, clause 86 of the Bill provides that an inspector and the Chief Executive must take all reasonable steps to cause as little inconvenience as practicable and not cause any unnecessary

damage to property. If damage to property occurs, notice must be given to the person who appears to be the owner of the property under clause 87. In addition, persons may seek compensation for loss or damage caused through the exercise of this power under clause 88 of the Bill.

If the inspector seizes and removes the property under subsection 103(5)(b), the person responsible for the property cannot be prosecuted for failing to comply with the direction.

### Removal notice

Clause 104 provides that as soon as practicable after seizing and removing the property, the inspector must give a "removal notice" in the approved form to the person responsible for the property, if known, or must give 28 days notice as set out in clause 104(3) though newspaper advertisements.

## Subdivision 3 Dealing with property after removal

### Action inspector may take if property not claimed

Clause 105 provides that if no one claims property which is subject of a removal notice by the day stated in the notice, the inspector who gave the notice may sell it by public auction; destroy or otherwise dispose of it; and take any action reasonably necessary to restore the environment from which it was removed. No compensation is payable for a sale or disposal under this clause.

### Dealing with proceeds of sale

Clause 106 provides that the proceeds from a sale of property under clause 102(1)(b) or 105(1)(a)(i) must be applied first, to pay the expenses of the sale, secondly, to pay the costs of seizing, removing and storing the property and the seizure notice, thirdly to pay any costs of the State in taking action under clause 105(1)(b), and fourthly, to pay the balance to the owner of the property.

### Release of property

Clause 107 provides that if a person claims property that is subject to a removal notice, the inspector may release it only if the person satisfies the inspector they have a right to the property. The person must also pay the inspector's reasonable costs of seizing, removing and holding the property,

giving notice of the seizure; and any notice given of its sale. The person must also pay any costs associated with preventing or minimising impacts arising, from the abandonment, stranding, sinking or wrecking of the property.

### Recovery of costs of removal etc.

Clause 108 provides that 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 Bill is 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.

### Restoration of environment etc.

Clause 109 applies if an inspector reasonably believes that a person has failed to comply with a compliance notice, direction given under section 99 or enforcement order; or that urgent action is needed to deal with an emergency involving a marine park and a serious risk to the environment, human life or property. The inspector may take appropriate action (other than seizing and removing abandoned, stranded, sunk or wrecked property) to:

- Repair or remedy any condition caused by the contravention or emergency;
- Mitigate any damage caused by the contravention or emergency;
- Prevent any damage the inspector reasonably considers is likely to arise from the contravention or emergency.

Examples are given of action the inspector may take under this clause. Also, the costs reasonably incurred in taking action because of a person's contravention of a provision of the Bill, are a debt payable by the person to the State.

When exercising a power under this clause, clause 86 of the Bill provides that an inspector must take all reasonable steps to cause as little inconvenience as practicable and not cause any unnecessary damage to property. If damage to property occurs, notice must be given to the person who appears to be the owner of the property under clause 87. In addition, persons may seek compensation for loss or damage caused through the exercise of this power under clause 88 of the Bill.

# Part 7 Proceedings for enforcement orders

## Division 1 Preliminary

### Definitions for pt 7

Clause 110 provides that in part 7 of the Bill:

- "court" means the Planning and Environment Court.
- "person" includes a body of persons, whether incorporated or unincorporated.

## Division 2 Enforcement orders

### Proceeding for enforcement orders

Clause 111 provides for when and how, the Chief Executive, inspector or a person may bring a proceeding in the Planning and Environment Court for an "enforcement order" or an "interim enforcement order" to remedy or restrain the commission of an offence against the Bill.

The Chief Executive or an inspector may bring a proceeding in the court for an order to remedy or restrain the commission of an offence against the Bill (an "enforcement order"), an interim enforcement order under clause 112 or for an order to cancel or change an enforcement order or interim enforcement order.

Clause 111(2) provides that any other person may bring a proceeding in the court for an order to remedy or restrain the commission of an offence against clause 43 (Entry or use for a prohibited purpose) or 50 (Unlawful serious environmental harm) (an "enforcement order"), an interim enforcement order under clause 112 or for an order to cancel or change an enforcement order or interim enforcement order.

A person may commence enforcement proceedings whether or not any right of the person has been infringed by the offence.

If the Chief Executive is not a party to a proceeding for an order mentioned in 111(2), the person must, within 7 days after starting the proceeding, give the Chief Executive written notice of it. A maximum penalty of 15 penalty units applies for not doing so.

The Minister or the Chief Executive may choose to be a party to the proceeding by filing a notice of election in the court.

### Making interim enforcement order

Clause 112 provides that the Planning and Environment Court may make an order before a decision of a proceeding for an enforcement order is made, if the court is satisfied it would be appropriate to do so. The order may also be made subject to conditions. However, the court may not impose a condition requiring the applicant to give an undertaking about damages.

### Making enforcement order

Clause 113 provides that the Planning and Environment Court may make an enforcement order if satisfied the offence is being, or has been committed or will be committed unless the order is made. The court may make an enforcement order whether or not there has been a prosecution for the offence under the Bill.

### Effect of orders

Clause 114 provides that an enforcement order, or an interim enforcement order may direct a party to the proceedings to stop an activity that will constitute an offence, or not to commence any such activity, or to do anything to stop committing an offence or to do anything to prevent or minimise impacts arising from an offence, or to do anything to comply with the Bill.

Without limiting the court's powers, an order may require the repair, demolition or removal of a building and the restoration of an affected area. An order must state the time by which the order is to be complied with.

A maximum penalty of 3000 penalty units or 2 years imprisonment may be imposed for contravening an enforcement order or an interim enforcement order.

### Court's powers about orders

Clause 115 provides that the Planning and Environment Court's power to make an enforcement order or interim enforcement order to stop an activity, may be exercised whether or not it appears that the person against whom the order is made intends to engage, continue to engage, or has previously engaged in the activity, and whether or not there is a serious threat to the environment or to other persons.

Orders to do anything may similarly be made whether or not it appears that the person against whom the order is made intends to engage, continue to engage, or has previously engaged in the activity, and whether or not there is a serious threat to the environment or to other persons. The court may also make an order to cancel or change an enforcement order or interim enforcement order.

Subclause 115(4) provides that the powers under this clause are in addition to any other powers of the Planning and Environment Court.

## Division 3 General procedural provision

### Proceeding brought in representative capacity

Clause116 provides that a proceeding under part 7 may be brought by a person on behalf of an entity with the entity's consent. 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. 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

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

Clause 117 provides that a person who is given a compliance notice or removal notice may appeal by making an application for internal review under division 2 (Internal review) or an alternative dispute resolution process provided for under a regulation. Without limiting subclause (1)(b), a regulation may provide for the use of mediators and case appraisers approved under the *District Court of Queensland Act 1967*, part 7 or the *Uniform Civil Procedure Rules 1999*, chapter 9, part 4.

## Division 2 Internal review

### Applying for an internal review

Clause 118 provides that an application for internal review must be made in the approved form within 28 days and supported by enough information to enable the Chief Executive to decide the application. The Chief Executive may extend the time for applying for internal review.

The application does not stay the original decision.

The application for internal review cannot be dealt with by the person who made the original decision or a person in a less senior office than the person who made the original decision, unless the original decision was made by the Chief Executive.

### Review decision

Clause 119 provides that if the Chief Executive is satisfied the applicant has complied with the requirements of clause 118, the Chief Executive must review the original decision within 28 days after receiving the application. The Chief Executive must make the "review decision" to confirm, or amend the original decision, or substitute another decision for the original decision.

Within 14 days after making the review decision, the Chief Executive must give the applicant a "review notice" of the review decision, stating the reasons for the review decision; and that the applicant may, within 28 days after the day the applicant is given the notice, appeal against the review decision to the Magistrates Court.

### Stay of operation of original decision

Clause 120 provides that if an application is made for internal review of an original decision, the applicant may immediately apply for a stay of the original decision to the Magistrates Court. The court may stay the original decision to secure the effectiveness of the review and any later appeal to the court. A conditional stay may also operate for a period fixed by the court.

## Division 3 Appeals to Magistrates Court

### How to start appeal

Clause 121 provides that an appeal is started by filing written notice of the appeal with the registrar of the Magistrates Court, and must comply with the rules of court applicable to it. The notice of appeal must be filed within 30 days after the appellant receives notice of the review decision and fully state the grounds of the appeal and the facts relied on.

### Appellant to give notice of appeal

Clause 122 provides that within 7 days after filing a notice of appeal, the appellant must serve notice of the appeal on the Chief Executive.

### Stay of operation of decision

Clause 123 provides that the court may grant a stay of the operation of the decision to secure the effectiveness of the appeal. The stay may be given on conditions the court considers appropriate and operates for the period fixed by the court. The stay may also be revoked or amended by the court.

### Powers of court on appeal

Clause 124 provides that in deciding the appeal, the court may confirm or set aside the review decision; change it with a decision the court considers

appropriate, or send the matter back to the Chief Executive with directions the court considers appropriate.

# Part 9 Legal proceedings

## Division 1 Evidence

### Application of div 1

Clause 125 provides that division 1 applies to a proceeding under the Bill.

### Appointments and authority

Clause 126 provides that it is not necessary to prove the appointment of the Minister, Chief Executive, or an inspector, or their authority to do anything under the Bill.

### Signatures

Clause 127 provides that 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.

### Certificate about evidence of location of aircraft or vessel

Clause 128 provides that a certificate signed by the Chief Executive or an inspector stating that:

- A person used equipment under a regulation to retrieve data, sent from the monitoring system equipment for a stated aircraft or vessel; and
- The equipment recorded the monitoring system equipment's position to be at a stated place, time and day;

is evidence that the aircraft or vessel was at the place at the time on the day.

A single certificate may be issued for data sent at more than one time on a day or on more than one day.

### Evidentiary matters

Clause 129 provides guidance on evidentiary matters.

## Division 2 Matters about offence proceedings and indictable and summary offences

### Types of offences

Clause 130 provides that, an offence against the Bill is a summary offence and an offence against the Bill for which the maximum penalty of imprisonment is 2 years, is an indictable offence that is a misdemeanour.

### Proceedings for indictable offence

Clause 131 provides that a proceeding for an indictable offence against the Bill may be taken at the election of the prosecution by way of a summary proceeding under the *Justices Act 1886* or on indictment. A magistrate must not hear an indictable offence summarily if the defendant asks that the charge be prosecuted on indictment or the magistrate believes the charge should be prosecuted on indictment. The maximum penalty that may be summarily imposed for an indictable offence is 165 penalty units or 1 year's imprisonment.

### Limitation on who may summarily hear indictable offence

Clause 132 provides that a proceeding for the summary conviction of a person on a charge for an indictable offence; or an examination of witnesses for a charge for an indictable offence must be before a magistrate. 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*.

### Limitation on time for starting summary proceeding

Clause 133 provides that a proceeding for a summary offence against the Bill under the *Justices Act 1886* must start within 1 year after the commission of the offence; or within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence. If a Magistrates Court considers it just and equitable in the

circumstances, the court may extend the time. In deciding what is just and equitable, the court may have regard to the:

- Availability of evidence of the offence;
- Conduct of the defendant since the alleged offence;
- Prejudice the proposed extension of time is likely to cause the defendant;
- Adverse impact on a marine park's environment and use and non-use values the alleged offence has caused, or is likely to cause, on the marine environment.

### Allegations of false or misleading information or documents

Clause 134 provides that it is enough for a complaint for an offence against the Bill involving false or misleading information, or a false or misleading document, to say that the statement, or document given, was "false or misleading" to the person's knowledge, without specifying which.

### Responsibility for acts or omissions of representatives

Clause 135 applies in a proceeding for an offence against the Bill. In order to prove a person's state of mind about a particular act or omission, it is enough to show that the act was done or not done by a representative of the person within the scope of the representative's actual or apparent authority and the representative had the state of mind.

The term "representative" for a corporation means an executive officer, employee or agent of the corporation and for an individual, an employee or agent of the individual. The term "state of mind" includes the person's knowledge, intention, opinion, belief or purpose; and the person's reasons for the intention, opinion, belief or purpose.

### Executive officers responsible for ensuring corporation complies with Bill

Clause 136 provides that the executive officers of a corporation must ensure the corporation complies with the Bill. If a corporation commits an offence against a provision of the Bill, each executive officer of the corporation also commits the offence of failing to ensure the corporation complies with the provision. Also, evidence that the corporation has been convicted of an offence against the Bill, is evidence that each executive

officer committed the offence of failing to ensure the corporation complies with the Bill.

However, it is a defence for an executive officer to prove they exercised reasonable diligence to ensure the corporation complied with the provision or the officer was not in a position to influence the conduct of the corporation.

### Holder of authority responsible for ensuring Bill complied with

Clause 137 provides that the holder of an authority must ensure that everyone acting under the authority complies with the Bill. If another person acting under the authority commits, or is convicted of an offence under the Bill, the holder of the authority commits the offence of failing to ensure that person complied with the provision. Evidence that another person has been convicted of an offence against the provision under the authority, is also evidence that the authority holder committed the offence.

However, it is a defence for the holder of the authority to prove:

- the offence was committed without the holder's knowledge; and
- the holder exercised reasonable diligence to ensure the other person complied with the provision.

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

Clause 138 provides that each person responsible for a vehicle, vessel or aircraft (eg. the owner, person in control or operator) must ensure that it is not used to commit an offence against the Bill. If another person uses a vehicle, vessel or aircraft in committing an offence against a provision of the Bill, each person responsible for the vehicle, vessel or aircraft also commits an offence of failing to ensure that the other person complies with the provision. Also, evidence that the other person has been convicted of an offence against the Bill, is evidence that each responsible person committed the offence of failing to ensure that the other person complies with the provision.

However, it is a defence for a person responsible for a vehicle, vessel or aircraft to prove they exercised reasonable diligence to ensure the other person complied with the provision, or the officer was not in a position to influence the conduct of the other person.

### Court's powers on conviction for an offence

Clause 139 provides that, in addition to any penalty imposed for a particular offence against the Bill, the court may also order an offender to:

- Take action to prevent or minimise harm to the marine environment or a marine park's use and non-use values, rehabilitate an area, restore or replace damaged property, or remove property used to commit the offence from a marine park;
- Pay the State's reasonable costs for taking action under clause 108 or 109;
- Pay the State's reasonable cost for taking future action to prevent harm to the marine environment or its use and non-use values;
- Compensate the State for any harm, loss or destruction of the marine park's environment or use and non-use values;
- Compensate an affected person for injury, loss or damage suffered, or costs or expenses incurred, by the person as a result of the offence;
- Pay the department's reasonable costs of investigating the offence.

## Division 3 Judicial review of administrative decisions

### Extended standing for judicial review

Clause 140 provides that the *Judicial Review Act 1991* applies to a decision, or failure to make a decision under the Bill, and conduct engaged in to make a decision under the Bill. An individual is taken to be a person aggrieved by the decision, failure or conduct if they are Australian citizen or ordinarily resident in Australia; and at any time in the 2 years before the decision, the individual engaged in a series of activities in Australia for the protection or conservation of, or research into, the environment.

# Part 10 Miscellaneous

## Division 1 Codes of practice

### Approval or making of code

Clause 141 provides that the Chief Executive may approve or make a code of practice by gazette notice that provides standard conditions for authorities to enter or use a marine park. These codes are of an administrative nature, often providing best practice guidelines or addressing matters that might otherwise be inserted as conditions of a permission or other authority. While the code is not subordinate legislation, a code must be tabled in Parliament and may be disallowed under sections 49, 50 and 51 of the *Statutory Instruments Act 1992* as if it were subordinate legislation.

### When code has effect

Clause 142 provides that each code of practice approved or made by the Chief Executive has effect on the day it is published in the gazette notice or a later day stated in the notice.

### Access to code

Clause 143 provides that each code of practice must be made available for public inspection at the department's head office and website, each regional office and other appropriate places.

## Division 2 Other miscellaneous provisions

### Public authority's obligation about threatening incidents for marine parks

Clause 144 provides that if a public authority becomes aware of, or proposes carrying out an emergency response to, an incident having the potential to harm the environment, or a person or thing in a marine park, the authority must tell the Chief Executive about the nature of the incident or proposed emergency response and request the Chief Executive's advice. The power requires the Chief Executive to give the give the public

authority advice if requested and if the Chief Executive gives advice to a public authority before the authority needs to respond to an incident, the authority must consider the advice in responding to the incident. In other words, public authorities are not prevented from taking action before the advice given by the Chief Executive is received if such delays will impede effective incident response.

The above requirements do 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 subclause (1).

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

Clause 145 provides that if the Bill allows the Chief Executive to charge a fee for providing documents to the public (for example, for a copy of a final management plan or zoning plan), the fee, if any, decided by the Chief Executive must be not more than the reasonable cost of producing a copy of the document.

### Delegation of Minister's powers

Clause 146 provides that the Minister may delegate the Minister's powers under this Bill, other than clause 42 (Moratorium on the grant of new permissions) to an appropriately qualified public service officer. Subclause 12 defines "appropriately qualified", for a person to whom a power may be delegated, to include having the qualifications, experience or standing appropriate to exercise the power.

### Protecting prescribed persons from liability

Clause 147 provides that a prescribed person is not civilly liable for an act or omission made, honestly and without negligence under the Bill. If this clause prevents a civil liability from attaching to a prescribed person, the liability attaches to the State. A "prescribed person" means the Minister, the Chief Executive, an officer or employee of the department, an inspector, or a person acting under the direction or authority of an inspector.

### Annual report

Clause 148 provides the Chief Executive must, within 4 months after the end of each financial year, give the Minister a report on the administration

of the Bill during the year. The Minister must table the report before the Legislative Assembly within 14 sitting days after receiving it.

### Approved forms

Clause 149 provides that the Chief Executive may approve forms for this Bill.

### Regulation-making power

Clause 150 provides that the Governor in Council may make regulations under the Bill. Consistent with similar provisions under the *Nature Conservation Act 1992,* a regulation may prescribe a penalty of not more than 165 penalty units for contravention of a regulation. A regulation may also be made for fees (other than a charge mentioned in clauses 145).

### Relationship between regulation and zoning plan

Clause 151 provides that if a regulation is inconsistent with a zoning plan, the zoning plan prevails to the extent of the inconsistency. In other words, the zoning plan is taken to be the more specific legislation and is intended to prevail over any "general" regulations such as those which might apply to unzoned parks, However, a regulation is not inconsistent with a zoning plan merely because the regulation further regulates or prohibits an activity authorised under the plan, or otherwise increases the level of protection for the marine environment provided by the plan.

## Part 11 Transitional provisions

### References to *Marine Parks Act 1982*

Clause 152 provides that a reference in an Act or other document to the repealed *Marine Parks Act 1982* is, if the context permits, taken to be a reference to the Bill.

### Pending legal proceedings

Clause 153 provides that any legal proceeding by or against the State under the repealed Act not finished before the commencement of this clause may be continued and finished as if the Bill had not been enacted.

### Existing marine parks

Clause 154 provides that a marine park established under the repealed Act and in existence immediately before the commencement of this clause continues in existence. The park is taken to be established, and may be revoked, under this Bill.

### Existing zoning plans

Clause 155 saves zoning plans made and in force under the repealed Act, subject to the staged automatic expiry requirements under the *Statutory Instruments Act 1992*. The plan is taken to be prescribed under the Bill, however, is to be read with the changes necessary to make it consistent with, and adapt its operation to, the Bill.

### Existing management plans

Clause 156 saves any management plan for a marine park in force under the repealed Act, and provides that such plans are taken to be plans made under the Bill.

### Existing notices about designated areas

Clause 157 applies to a public notice, given under section 7 of the *Marine Parks Regulation 1990*, (and in force immediately before the commencement of this clause), that applies the provisions of a zoning plan to a designated area established under the repealed Act. The notice continues in force and may be amended or repealed by a regulation or zoning plan under this Bill. In this clause a public notice is one within the meaning of section 7 of the *Marine Parks Regulation 1990*.

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

Clause 158 saves the effect of section 31 of the *Marine Parks Act 1982* which permits the developers Norwood Street Project Pty Ltd ACN 099 371 972 (as trustee) and Cairns Blue Pty Ltd ACN 102 517 984 to dredge areas of Half Moon Creek and Half Moon Bay and dispose related spoil.

### Existing temporary restricted areas

Clause 159 provides that if a declaration of a temporary restricted area in force under the repealed Act immediately before the commencement of this

clause, the declaration continues in force, subject to clause 96, and is taken to have been made under part 6, division 2, and is to be read with the changes necessary to make it consistent with, and adapt its operation to, this Bill.

## Existing permissions

Clause 160 provides that a permit in force under the repealed Act continues in force and is taken to be a permit issued under the Bill other than a permission under clause 15 of the Bill, to make it clear that the new provisions on permits for reclamation are not relevant. This does not in any way prevent a reclamation permit issued under the repealed Act from being carried forward and remaining valued.

Section 13 of the current *Marine Parks Regulation 1990* states that if an application for grant of a further permission of the same kind (ie a renewal) is lodged before the original permission expires, then the permission remains in force until the application is granted or refused.

However, subclause 160(2) provides that this will not apply to the situation where a permit has authorised the reclamation of tidal land in a marine park, and where an application for a similar permit has been lodged but not yet processed. If the term of the original permit expired before commencement of the Bill, and if reclamation works have not yet been started, a new application will need to be lodged and the provisions of clauses 13 to 19 of the Bill will apply.

## Existing applications for permissions

Clause 161 allows for an application for a permission made under the existing Act to be carried over and processed under the Bill except where the application relates to reclamation works intended to result in revocation of an area of marine park. In this case the application is not covered by the transition provision and would need to be remade under the new provisions on reclamation and revocation under clause 13 to 19 of the Bill.

## Existing orders etc.

Clause 162 provides that 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 the Bill.

### Existing inspectors

Clause 163 provides that a person, who held an appointment as an inspector under the repealed Act immediately before the commencement of this clause, is taken to be appointed as an inspector under the Bill.

## Part 12 Validation and declaration provisions

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

Clause 164 provides that a zoning plan made under the *Marine Parks Act 1982* and providing for the reclamation of tidal land in a marine park under permission is taken to be, and to always have been, validly made.

A permission given under the zoning plan before commencement and authorising the reclamation of tidal land in a marine park is also taken to be, and to always have been, validly given.

A reference in subclause (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*.

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

Clause 165 removes any doubt over the status of land reclaimed under the *Marine Parks Act 1982*. The clause provides that non-tidal land and waters resulting from the reclamation of tidal land in a marine park in accordance with a permission issued under the *Marine Parks Act 1982*, and completed before the commencement of this section are not, and never were, part of the park.

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. This is necessary given that it is normal practice to require monitoring until the reclaimed area is properly stabilised.

Clause 165(3) also declares 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.

Clause 165(4) provides that 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 clause 169 – under section 22 of the *Marine Parks Act 1982* as if the non-tidal land and waters were tidal land and waters set apart and declared to be the park under section 16 of that Act; or

(b) on or after the commencement of clause 169 – under part 2, division 2.

Subclause (5) provides that "authorised reclamation", of tidal land, means reclamation of the land in compliance with a permission issued under the *Marine Parks Act 1982.*

### Effect of validation and declaration on proceedings

Clause 166 provides that clauses 164 and 165 do not affect:

- a proceeding relating to the park that was heard, in whole or part, in a court or tribunal before the commencement of this section;
- the completion, after the commencement, of any step in the proceeding taken before the commencement; or
- the taking and completion, after the commencement, of any step in the proceeding.

## Part 13 Amendment of Marine Parks Act 1982

### Act amended in pt 13

Clause 167 states that this part of the Bill amends the *Marine Parks Act 1982*.

### Insertion of new s 10A

Clause 168 inserts, after section 10 of the existing Act, a clause that provides that the Act has extra-territorial application. Under the Offshore Constitutional Settlement, the States are responsible for marine parks

within coastal waters of the States, and the Commonwealth is responsible for marine parks further offshore. This provision is consequently not intended to take the seaward application of the Act outside Queensland coastal waters unless this is specifically negotiated with the Commonwealth, or where there is uncertainty over the location of offshore jurisdictional boundaries. It is inserted at this stage simply to keep options open in relation to the *HMAS Brisbane* that is to be sunk as a dive site north east of Mooloolaba. The site is very near to the State-Commonwealth jurisdictional boundary.

# Part 14 Repeal

### Repeal

Clause 169 repeals the *Marine Parks Act 1982*.

# Part 15 Consequential amendments of other Acts

## Division 1 Amendment of *Coastal Protection and Management Act 1995*

### Act amended in div 1

Clause 170 provides that this division amends the *Coastal Protection and Management Act 1995.*

### Amendment of s 75 (Criteria for deciding applications)

Clause 171 amends section 75(1)(d)(ii), by substituting the repealed "*Marine Parks Act 1982*" with the "*Marine Parks Act 2004*".

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

Clause 172 amends section 93(1)(c)(ii) by substituting the repealed "*Marine Parks Act 1982*" with the "*Marine Parks Act 2004*".

## Division 2 Amendment of *Fisheries Act 1994*

### Act amended in div 2

Clause 173 states that this division amends the *Fisheries Act 1994*.

### Amendment of schedule

Clause 174 amends the schedule definition "fisheries legislation" by omitting "*Marine Parks Act 1982"*, and substituting "*Marine Parks Act 2004*".