

[Act 1997 No 64]



New South Wales

Marine Parks Bill 1997

Explanatory note

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

Overview of Bill

The object of this Bill is to provide for the establishment of marine parks for the primary purpose of conserving marine biological diversity.

Amended in committee—see table at end of volume.

Outline of provisions

Part 1 Preliminary

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

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

Clause 3 states the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act.

Clause 5 provides that a reference in the proposed Act to “relevant Ministers” is a reference to the Minister administering the *National Parks and Wildlife Act 1974* and the Minister administering the *Fisheries Management Act 1994* acting together.

Part 2 Declaration of marine parks

Clause 6 enables the Governor to proclaim as marine parks areas of waters of the sea or subject to tidal influence and areas of land adjacent to such waters, within such waters or covered from time to time by such waters.

Clause 7 enables the Governor, by proclamation, to assign a name to, or alter the name of, a marine park.

Clause 8 prevents the declaration of a marine park being revoked except by an Act of Parliament.

Clause 9 enables the area of a marine park to be varied by proclamation. A variation that would reduce the overall size of a marine park is disallowable by Parliament.

Clause 10 provides that the declaration of an area as a marine park revokes any declaration of the area as an aquatic reserve under the *Fisheries Management Act 1994*.

Clause 11 provides that land reserved or dedicated for a public purpose (including reserved or dedicated under the *National Parks and Wildlife Act 1974* or any other Act) may be declared as a marine park and may continue to be used for that public purpose so long as the use is not inconsistent with the proposed Act or the regulations under the proposed Act.

Clause 12 provides that the declaration of an area as a marine park does not affect any existing aquaculture permit or aquaculture lease under the *Fisheries Management Act 1994*. However, such leases cannot be renewed unless aquaculture is permitted in the relevant area by the regulations under the proposed Act.

Clause 13 requires the Minister administering the *Crown Lands Act 1989* to consult with the relevant Ministers before approving of any change of use, or the conversion, sale or disposal of lands leased under that Act and situated within a marine park.

Clause 14 requires a copy of any proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* that relates to land within a marine park to be served on the Marine Parks Authority established under Part 5 (“the Authority”).

Part 3 Regulation of activities in marine parks

Clause 15 enables regulations to be made in relation to the management, protection and conservation of marine parks.

Clause 16 enables regulations to be made prescribing zoning plans that will classify areas within marine parks depending on the uses to be allowed in those areas. The clause requires the relevant Ministers to undertake public consultation on proposed regulations that contain a zoning plan for a marine park.

Clause 17 enables other regulations to be made regulating or prohibiting activities within marine parks.

Clause 18 prohibits mining in marine parks but does not affect existing mining rights. However, existing mining rights cannot be renewed or extended.

Clause 19 requires consent authorities and determining authorities (within the meaning of the *Environmental Planning and Assessment Act 1979*) in relation to proposed development or activities within a marine park to take into consideration the objects of the proposed Act and the regulations and to consult with the Authority.

Clause 20 requires consent authorities and determining authorities (within the meaning of the *Environmental Planning and Assessment Act 1979*) in relation to proposed development or activities within the locality of a marine park to take into consideration the objects of the proposed Act, the regulations and any relevant advice given to it by the Authority. If the development or activity is likely to have an effect on the marine park, the consent authority or determining authority must consult with the Authority.

Clause 21 requires the Minister administering Part 3 of the *Coastal Protection Act 1979* to notify the Authority of the Minister’s intention to give concurrence under that Part to any development or use or occupation of land within a marine park.

Clause 22 provides that any requirement made by or under the Part is in addition to any requirement under any other Act or statutory instrument.

Part 4 Operational plans

Clause 23 requires the Authority to prepare an operational plan for each marine park.

Clause 24 requires the operational plan for a marine park to contain a scheme of the operations that the Authority proposes to undertake or permit in the marine park.

Clause 25 sets out the procedure for preparing and consulting on an operational plan before submitting it for adoption by the relevant Ministers.

Clause 26 sets out the procedure for altering or revoking and substituting an operational plan.

Clause 27 requires operations of the Authority and marine park rangers to be in accordance with the operational plan.

Clause 28 provides for an operational plan under the proposed Act for a marine park to prevail, to the extent of any inconsistency, over a plan of management under the *National Parks and Wildlife Act 1974* in respect of the marine park.

Part 5 Marine Parks Authority

Clause 29 establishes a Marine Parks Authority. The Authority will consist of the Director-General of the Premier's Department (who will be the Chairperson), the Director of NSW Fisheries and the Director-General of National Parks and Wildlife.

Clause 30 sets out the functions of the Authority which include the consideration of proposals for the establishment of marine parks, the preparation of operational plans for marine parks and the management and control of marine parks.

Clause 31 enables the Authority to make use of the services of staff of government departments or public and local authorities.

Part 6 Marine Parks Advisory Council and advisory committees

Clause 32 establishes a Marine Parks Advisory Council consisting of 11 members appointed by the relevant Ministers and representing various conservation, commercial and community interests.

Clause 33 sets out the functions of the Advisory Council which include giving advice on proposals for the establishment of marine parks, the zoning of areas of marine parks for appropriate uses and the conservation of marine biological diversity within marine parks.

Clause 34 gives effect to Schedule 2 which provides for the procedure of the Advisory Council.

Clause 35 enables the Authority to establish advisory committees for marine parks to advise on the management of marine parks.

Part 7 Enforcement

Clause 36 applies certain provisions of the *Fisheries Management Act 1994* relating to powers of entry, search and seizure for the purposes of enforcing provisions of the proposed Act.

Clause 37 applies certain provisions of the *National Parks and Wildlife Act 1974* relating to enforcement powers for the purposes of enforcing provisions of the proposed Act.

Clause 38 enables penalty notices to be issued for offences under the proposed Act.

Clause 39 provides for the taking of proceedings for offences under the proposed Act.

Clause 40 provides for the time in which proceedings for offences under proposed Act are to be commenced.

Clause 41 makes directors and other persons concerned in the management of a corporation liable for offences committed by the corporation under the proposed Act.

Part 8 Finance

Clause 42 establishes a Marine Parks Fund for the purposes of the proposed Act.

Part 9 Miscellaneous

Clause 43 provides that the proposed Act binds the Crown.

Clause 44 enables the Director-General of the Premier's Department, the Director of NSW Fisheries and the Director-General of National Parks and Wildlife to nominate persons to act in their places at meetings of the Authority or the Advisory Council.

Clause 45 preserves native title in respect of land declared to be a marine park.

Clause 46 provides that the Premier can settle disputes arising under the proposed Act between the relevant Ministers or between public authorities.

Clause 47 authorises arrangements with the Commonwealth for the purposes of exercising functions under the proposed Act over waters subject to the control of the Commonwealth.

Clause 48 enables regulations to be made for the purposes of the proposed Act.

Clause 49 requires the relevant Ministers to review the operation of the proposed Act after 5 years from the date of assent to the Act.

Clause 50 gives effect to Schedule 3 which contains savings and transitional provisions.

Clause 51 gives effect to Schedule 4 which contains amendments to the *Mining Act 1992* and the *National Parks and Wildlife Act 1974*,

Schedule 1 Provisions relating to procedure of Authority

Schedule 1 contains provisions relating to the procedure of the Authority with respect to meetings of the members.

Schedule 2 Provisions relating to members and procedure of Advisory Council

Schedule 2 contains provisions relating to the members and procedure of the Advisory Council, including provisions relating to the term of office of members, vacation of office and conduct of meetings.

Schedule 3 Savings, transitional and other provisions

Schedule 3 enables regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act. The Schedule also provides for the continuation of regulations relating to an aquatic reserve as a transitional measure in the event of the declaration of the aquatic reserve as a marine park.

Schedule 4 Amendment of other Acts

Schedule 4 amends the *National Parks and Wildlife Act 1974* to enable money to be paid out of the National Parks and Wildlife Fund for costs of administering the proposed Act. The Schedule amends the *Forestry Restructuring and Nature Conservation Act 1995* to enable access to funds available under the environmental trust legislation. The Schedule also makes a consequential amendment to the *Mining Act 1992*.