



New South Wales

Marine Parks Amendment Bill 2007

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Marine Parks Act 1997* (the **Principal Act**):

- (a) to establish a review process for zoning plans for marine parks that includes public consultation, and
- (b) to change the objectives of operational plans for marine parks and the process for making and reviewing those plans, and
- (c) to clarify that sand dredging for beach nourishment within a marine park does not constitute mining, and
- (d) to expand the regulation-making powers to enable regulation of aircraft in or over marine parks and the possession of animals, plants and materials taken from marine parks, and
- (e) to require relevant marine park closures to be taken into consideration before consent or approval is given to the carrying out of development on land in a marine park, and
- (f) to increase the penalties for certain offences under the Principal Act, and

* Amended in committee—see table at end of volume.

- (g) to make various changes in relation to the functions of the Marine Parks Advisory Council and the functions and membership of marine parks advisory committees, and
- (h) to make other changes to improve the administration of the Principal Act and for the purposes of statute law revision.

The Bill also amends the *Subordinate Legislation Act 1989* to exempt zoning plans for marine parks from the operation of certain provisions of that Act.

Outline of provisions

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 the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Marine Parks Act 1997* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Subordinate Legislation Act 1989* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Marine Parks Act 1997

Zoning plans for marine parks

Schedule 1 [2] repeals section 16 of the Principal Act which currently provides for regulations to be made prescribing zoning plans for marine parks.

Schedule 1 [6] inserts a new Division 1A into Part 3 of the Principal Act dealing with zoning plans for marine parks. The proposed Division consists of the following provisions:

Proposed section 17B enables regulations to be made with respect to the use and management of marine parks by means of prescribed zoning plans.

Proposed section 17C sets out the procedure for making zoning plans for a marine park which includes a 3 month public consultation period.

Proposed section 17D requires reviews of each zoning plan for a marine park to be undertaken by the Marine Parks Authority and submitted to the relevant Ministers. The initial review for a zoning plan is to be undertaken as soon as practicable after 5 years from the commencement of the zoning plan and subsequent reviews are to be undertaken as soon as practicable after 10 years from the previous review date.

Proposed section 17E sets out the procedure for amending a zoning plan for a marine park. The same procedure applies as for the making of the zoning plan (that is, 3 months of public consultation required) except where the relevant Ministers

consider that the amendment is to be made as a consequence of the making of certain instruments under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*, or the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth, or the amendment is of a minor nature.

Proposed section 17F provides that the zoning plan for a marine park prevails over any relevant plan of management under the *National Parks and Wildlife Act 1974* or the *Crown Lands Act 1989*.

Schedule 1 [1], [5], [8], [10], [12], [14] and [26] make consequential amendments.

Operational plans for marine parks

Schedule 1 [27] omits sections 24–26C of the Principal Act which deal with operational plans for marine parks and inserts the following proposed sections:

Proposed section 24 sets out the objective of an operational plan for a marine park which is to identify and define a scheme of the strategies, actions or activities that are proposed to be undertaken by the Marine Parks Authority (including arrangements with other agencies) to operate the marine park.

Proposed section 25 provides for the Marine Parks Authority to adopt a draft operational plan after referring the draft to the advisory committee for the marine park for advice and considering any of the committee's comments.

Proposed section 26 enables the Marine Parks Authority to amend or replace the operational plan for a marine park. The same procedure applies to any amendment or replacement of an operational plan as applies to its adopting.

Proposed section 26A requires the Marine Parks Authority to review an operational plan for a marine park as soon as practicable after the zoning plan for the marine park is amended or replaced, except after a minor amendment to the zoning plan.

Schedule 1 [28] makes a consequential amendment.

Activities in marine parks

Schedule 1 [3] amends section 17 of the Principal Act to enable regulations to be made regulating or prohibiting the possession of animals, plants or materials that have been taken from marine parks.

Schedule 1 [4] amends section 17 of the Principal Act to enable regulations to be made regulating or prohibiting the use of aircraft over or within marine parks.

Schedule 1 [7] amends section 18 of the Principal Act to make it clear that sand extraction for the purpose of beach nourishment does not constitute mining in a marine park.

Schedule 1 [16] amends section 20A of the Principal Act to make it clear that a marine park closure (that is, a notification under that section that prohibits the carrying out of a specified activity in a marine park or part of a marine park) may prohibit an activity unless the consent of the Marine Parks Authority or a permit issued by the Authority has been obtained.

Schedule 1 [9], [11], [13] and [15] amend section 19 of the Principal Act to require a consent authority for development under Part 4 of the *Environmental Planning and Assessment Act 1979* in a marine park, or the determining authority for the carrying out of an activity (within the meaning of Part 5 of that Act) in a marine park, to take into consideration any relevant marine park closures.

Schedule 1 [17] amends section 20H of the Principal Act which currently enables the Marine Parks Authority to direct the owner or person responsible for certain property left in a marine park to remove it and makes it an offence to fail to comply with the direction. The proposed amendment defines who is taken to be a person responsible for the property.

Schedule 1 [20] amends section 20H of the Principal Act to increase the penalties for the offence of failing to comply with such a direction.

Schedule 1 [22] amends section 20H of the Principal Act to enable the Marine Parks Authority to repair, remedy, mitigate or prevent further damage caused by any such property if the Authority considers that significant environmental damage has been or is likely to be caused by the property.

Schedule 1 [18], [19], [21], [23] and [24] contain consequential amendments to section 20H of the Principal Act.

Schedule 1 [25] omits section 21 of the Principal Act which currently requires the Minister administering Part 3 of the *Coastal Protection Act 1979* to notify the Marine Parks Authority of the Minister's intention to give concurrence under that Part to the carrying out of development within a marine park or the use or occupation of any area in a marine park. Section 19 of the Principal Act deals comprehensively with proposed development and activities within a marine park.

Schedule 1 [41] amends section 48 of the Principal Act to increase the penalties that may be imposed for offences under the regulations.

Marine Parks Authority, Marine Parks Advisory Council and marine parks advisory committees

Schedule 1 [32], [33] and [34] amend section 33 of the Principal Act to qualify the functions of the Marine Parks Advisory Council. The proposed amendments provide that the Council is to give its advice in relation to the matters specified in that section from a statewide perspective and remove the functions of giving advice in relation to variations of the areas of marine parks and the classification of areas within marine parks.

Schedule 1 [35] substitutes section 35 of the Principal Act to change the constitution of advisory committees for marine parks so as to remove the requirement that a committee has to comprise at least 9 members and that there are to be members of the committee representing the interests of the Department of Environment and Climate Change and the Department of Primary Industries. The proposed amendment also inserts proposed section 35AA into the Principal Act which sets out the functions of marine parks advisory committees. These are similar to their existing functions under the current section 35 of the Principal Act with the addition of advising on marine park closures.

Schedule 1 [40] substitutes section 44 of the Principal Act to enable certain ex officio members of the Marine Parks Authority and the Marine Parks Advisory Council to appoint specified officers to act in their place.

Schedule 1 [43] amends Schedule 2 to the Principal Act to enable the relevant Ministers to remove an appointed member of the Marine Parks Advisory Council or a marine parks advisory committee, on the request of the Marine Parks Authority, if the Authority considers that the person is unable to adequately represent the interests that he or she was appointed to represent or is unable to adequately provide the relevant expertise.

Schedule 1 [45] amends Schedule 2 to the Principal Act to enable the relevant Ministers to appoint alternate members to act in the absence of an appointed member of the Marine Parks Advisory Council or a marine parks advisory committee. The proposed amendment also enables the transaction of business by the Marine Parks Advisory Council or a marine parks advisory committee by the circulation of papers or by telephone or other appropriate means.

Other miscellaneous amendments

Schedule 1 [36] amends section 35A of the Principal Act to enable the relevant Ministers to appoint any officer or employee of a Government Department or public or local authority as a marine park ranger.

Schedule 1 [29]–[31], [37]–[39], [42], [44] and [47] amend various provisions of the Principal Act to update references to positions and Government Departments.

Schedule 1 [46] and [48] contain savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Subordinate Legislation Act 1989

Schedule 2 [1] amends section 10 of the *Subordinate Legislation Act 1989*, which provides for the staged repeal of statutory rules, so as to exempt from the operation of that section regulations containing only provisions relating to zoning plans for marine parks.

Schedule 2 [2] amends Schedule 3 to the *Subordinate Legislation Act 1989*, which lists matters not requiring regulatory impact statements under that Act, so as to include in that Schedule zoning plans for marine parks.