

South Australia

Adelaide Dolphin Sanctuary Act 2005

An Act to establish a sanctuary to protect the dolphin population of the Port Adelaide River estuary and Barker Inlet and its natural habitat; to provide for the protection and enhancement of the Port Adelaide River estuary and Barker Inlet; to amend the *Aquaculture Act 2001*, the *Coast Protection Act 1972*, the *Development Act 1993*, the *Environment Protection Act 1993*, the *Fisheries Act 1982*, the *Harbors and Navigation Act 1993*, the *Historic Shipwrecks Act 1981*, the *Mining Act 1971*, the *National Parks and Wildlife Act 1972*, the *Native Vegetation Act 1991* and the *Petroleum Act 2000*; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Adelaide Dolphin Sanctuary Act 2005*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

(1) In this Act, unless the contrary intention appears—

activity includes the storage or possession of anything (including something in liquid or gaseous form);

ADS Advisory Board means the Adelaide Dolphin Sanctuary Advisory Board established under Part 3 Division 3;

ADS Fund means the Adelaide Dolphin Sanctuary Fund established under Part 3 Division 4;

ADS Management Plan means the Adelaide Dolphin Sanctuary Management Plan adopted under Part 3 Division 2;

associate —see subsection (2);

authorised officer—see section 28;

business includes a business not carried on for profit or gain;

business day means any day except—

- (a) a Saturday, Sunday or public holiday; or
- (b) a day which falls between 25 December and 1 January in the following year;

council means a council within the meaning of the *Local Government Act 1999*;

domestic activity means an activity other than an activity undertaken in the course of a business;

ERD Court means the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*;

general duty of care means the duty under section 32;

implementation program—see section 26(2)(c);

place includes any land, water, premises or structure;

public authority includes a Minister, statutory authority or council;

public notice means a notice published in a newspaper circulating generally throughout the State;

related operational Act—see section 5;

Sanctuary means the Adelaide Dolphin Sanctuary established under section 10;

statutory authorisation means an approval, consent, licence, permit or other authorisation granted or required under a related operational Act;

statutory instrument means—

- (a) a plan, program or policy; or
- (b) any other instrument of a prescribed kind,

prepared pursuant to the provisions of an Act;

vehicle includes any—

- (a) vessel or craft;
- (b) plant or equipment designed to be moved or operated by a driver.

- (2) For the purposes of this Act, a person is an *associate* of another if—
 - (a) they are partners; or
 - (b) one is a spouse, parent or child of another; or
 - (c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
 - (d) one is a body corporate or other entity (whether inside or outside Australia) and the other is a director or member of the governing body of the body corporate or other entity; or
 - (e) one is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in 5 per cent or more of the share capital of the body corporate or other entity; or
 - (f) they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth; or
 - (g) a chain of relationships can be traced between them under any one or more of the above paragraphs.
- (3) For the purposes of subsection (2), a *beneficiary* of a trust includes an object of a discretionary trust.
- (4) A reference in this Act to the costs of any damage to the Sanctuary will be taken to include a reference to any costs associated with—
 - (a) minimising, managing or containing any such damage; or
 - (b) remedying any such damage; or
 - (c) addressing any consequences resulting from any such damage; or
 - (d) compensating for any loss or adverse impacts arising from any such damage.
- (5) For the purposes of this or any other Act, the Minister may, in assessing the costs or extent of any damage to the Sanctuary, apply any assumptions determined by the Minister to be reasonable in the circumstances.

4—Interaction with other Acts

Except where the contrary intention is expressed in this or any other Act, this Act is in addition to and does not limit or derogate from the provisions of any other Act.

5—Related operational Acts

For the purposes of this Act, the following are related operational Acts:

- (a) *Aquaculture Act 2001*;
- (b) *Coast Protection Act 1972*;
- (c) *Development Act 1993*;
- (d) *Environment Protection Act 1993*;
- (e) *Fisheries Act 1982*;
- (f) *Harbors and Navigation Act 1993*;
- (g) *Historic Shipwrecks Act 1981*;
- (h) *Mining Act 1971*;
- (i) *National Parks and Wildlife Act 1972*;
- (j) *Native Vegetation Act 1991*;
- (k) *Petroleum Act 2000*;
- (l) any other Act prescribed as a related operational Act by the regulations.

6—Act binds Crown

- (1) This Act binds the Crown in right of this State and also, so far as the legislative power of the State extends, the Crown in all its other capacities, but not so as to impose any criminal liability on the Crown.
- (2) Without limiting or derogating from subsection (1), all agencies and instrumentalities of the Crown must endeavour, as far as practicable, to act consistently with the ADS Management Plan.

Part 2—Objects of Act and statutory objectives

7—Objects

The objects of this Act are—

- (a) to protect the dolphin population of the Port Adelaide River estuary and Barker Inlet; and
- (b) to protect the natural habitat of that population.

8—Objectives

- (1) The following objectives will apply in connection with the operation of this Act:
 - (a) the protection of the dolphin population of the Port Adelaide River estuary and Barker Inlet from direct physical harm is to be maintained and improved;

- (b) the key habitat features in the Port Adelaide River estuary and Barker Inlet that are necessary to sustain the dolphin population are to be maintained, protected and restored;
 - (c) water quality within the Port Adelaide River estuary and Barker Inlet should be improved to a level that sustains the ecological processes, environmental values and productive capacity of the Port Adelaide River estuary and Barker Inlet;
 - (d) the interests of the community are to be taken into account by recognising indigenous and other cultural, and historical, relationships with the Port Adelaide River estuary and Barker Inlet and surrounding areas, and by ensuring appropriate participation in processes associated with the management of the Port Adelaide River estuary and Barker Inlet;
 - (e) public awareness of the importance of a healthy Port Adelaide River estuary and Barker Inlet to the economic, social and cultural prosperities of the local communities, and the community more generally, is to be promoted;
 - (f) the principles of ecological sustainable development in relation to the use and management of the Port Adelaide River estuary and Barker Inlet are to be promoted.
- (2) For the purposes of subsection (1)(f), the following are declared to be principles of ecologically sustainable development:
- (a) that the use, development and protection of the environment should be managed in a way, and at a rate, that will enable people and communities to provide for their economic, social and physical well-being and for their health and safety while—
 - (i) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
 - (ii) safeguarding the life-supporting capacity of air, water, land and ecosystems; and
 - (iii) avoiding, remedying or mitigating any adverse effects of activities on the environment;
 - (b) that proper weight should be given to both long and short term economic, environmental, social and equity considerations in deciding all matters relating to environmental protection, restoration and enhancement;
 - (c) that, if there are threats of serious or irreversible environmental harm, lack of full scientific certainty should not be taken to justify the postponement of decisions or measures to prevent the environmental harm.

9—Administration of Act to achieve objects and objectives

The Minister, the ADS Advisory Board, the ERD Court and other persons or bodies involved in the administration of this Act, and any other person or body required to consider the operation or application of this Act (whether acting under this Act or another Act), must act consistently with, and seek to further, the objects and objectives of this Act.

Part 3—Adelaide Dolphin Sanctuary

Division 1—Sanctuary

10—Establishment of Adelaide Dolphin Sanctuary

- (1) The Adelaide Dolphin Sanctuary is established.
- (2) The Sanctuary consists of the area defined in Schedule 1.
- (3) The Governor may alter the boundaries of the Sanctuary by regulation.
- (4) A regulation made under subsection (3) cannot take effect unless and until it has been laid before both Houses of Parliament and—
 - (a) no motion for disallowance of the regulation is moved within the time for such a motion; or
 - (b) every motion for disallowance of the regulation has been defeated or withdrawn, or has lapsed.

Division 2—Adelaide Dolphin Sanctuary Management Plan

11—ADS Management Plan

- (1) The Minister must, within 12 months after the commencement of this Act, prepare a plan to be called the Adelaide Dolphin Sanctuary Management Plan.
- (2) The Plan must set out—
 - (a) the proposals of the Minister in relation to the management of the Sanctuary; and
 - (b) the priorities that the Minister will pursue in order to achieve the objects and objectives of this Act in relation to the Sanctuary.
- (3) The Minister must review the Plan at least once in every 7 years.
- (4) The Minister may amend the Plan at any time.
- (5) The Minister must, in relation to any proposal to create or amend the Plan—
 - (a) prepare a draft of the proposal; and
 - (b) seek the views of the ADS Advisory Board, all relevant Ministers and prescribed bodies in relation to the proposal; and
 - (c) by public notice, give notice of the place or places at which copies of the draft are available for inspection (without charge) and purchase and invite interested persons to make written representations on the proposal within the period specified in the notice.
- (6) The Minister must make copies of all representations made by members of the public in response to a notice under subsection (5)(c) available for public inspection or purchase (except in the case of a representation that was made in confidence) and for that purpose the Minister must, by public notice, give notice of the place or places at which the copies are available.

- (7) Before adopting the Plan or an amendment to the Plan, the Minister must—
- (a) have regard to any views expressed by the ADS Advisory Board, relevant Ministers and prescribed bodies in relation to the proposal; and
 - (b) consider all representations made by members of the public in response to a notice under subsection (5)(c),
- and the Minister may make such alterations to the draft as the Minister thinks necessary or desirable.
- (8) The Plan, and any amendment to the Plan, have no force or effect until adopted by the Minister.
- (9) The Minister must—
- (a) make reasonable provision for the publication of the Plan; and
 - (b) ensure that copies of the Plan are reasonably available for inspection (without charge) and purchase by the public at a place or places determined by the Minister; and
 - (c) ensure that public notice is given of any amendment to the Plan within a reasonable time after the amendment is made.
- (10) The Plan is an expression of policy and does not in itself affect rights or liabilities (whether of a substantive, procedural or other nature).
- (11) A failure of the Minister to comply with a requirement of this section cannot be taken to affect the validity of the Plan.
- (12) In this section—
- relevant Minister*** means a Minister responsible for the administration of a related operational Act.

Division 3—Adelaide Dolphin Sanctuary Advisory Board

12—Establishment of ADS Advisory Board

- (1) *The Adelaide Dolphin Sanctuary Advisory Board is established.*
- (2) *The Board consists of 11 members appointed by the Governor on the nomination of the Minister.*
- (3) *The membership of the Board must include persons who together have, in the Minister's opinion, knowledge of, and experience in, the following areas:*
- (a) *dolphin conservation and research;*
 - (b) *community education programs management;*
 - (c) *conservation of marine ecosystems;*
 - (d) *fisheries management;*
 - (e) *local government;*
 - (f) *tourism and recreation management;*
 - (g) *industry development and management;*
 - (h) *port and harbor management;*

- (i) *Kaurna culture and heritage from the male perspective;*
- (j) *Kaurna culture and heritage from the female perspective.*
- (4) Before nominating a person or persons for appointment to the Board, the Minister must, by public notice, invite expressions of interest for appointment to the Board within a period specified in the notice and must consider any expressions of interest received in response to the notice.
- (5) *The Minister must not nominate a person for appointment to the Board unless the Minister is of the opinion that the person has a commitment to the protection and enhancement of the Port Adelaide River estuary and Barker Inlet.*
- (6) *At least 2 members of the Board must be women and at least 2 must be men.*

13—Presiding member

The Minister must appoint one of the members of the Board to be the presiding member of the Board.

14—Terms and conditions of membership

- (1) *A member of the Board will be appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.*
- (2) *The Governor may remove a member of the Board from office—*
 - (a) *for breach of, or non-compliance with, a condition of appointment; or*
 - (b) *for misconduct; or*
 - (c) *for failure or incapacity to carry out official duties satisfactorily.*
- (3) *The office of a member of the Board becomes vacant if the member—*
 - (a) *dies; or*
 - (b) *completes a term of office and is not reappointed; or*
 - (c) *resigns by written notice to the Minister; or*
 - (d) *ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the Board; or*
 - (e) *is absent without leave of the presiding member of the Board from 3 consecutive meetings of the Board; or*
 - (f) *is removed from office under subsection (2).*

15—Vacancies or defects in appointment of members

An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

16—Remuneration

A member of the Board is entitled to remuneration, allowances and expenses determined by the Governor.

17—Functions of Board

The function of the Board is to advise the Minister on—

- (a) the preparation of the ADS Management Plan and any amendments to the Plan; and*
- (b) the effectiveness of the ADS Management Plan in achieving the objects and objectives of this Act; and*
- (c) the effectiveness of the implementation program; and*
- (d) the application of money belonging to the ADS Fund; and*
- (e) any matter referred to the Board by the Minister; and*
- (f) any matter connected with the administration of this Act on which the Board believes it should advise the Minister.*

18—Committees

- (1) The Board may, with the approval of the Minister, establish committees.*
- (2) The function of a committee is to advise the Board on any matter referred to the committee by the Board.*
- (3) The membership of a committee will be determined by the Board and may, but need not, consist of, or include, members of the Board.*
- (4) The Board will determine who will be the presiding member of a committee.*
- (5) The procedures to be observed in relation to the conduct of the business of a committee will be—*
 - (a) as determined by the committee;*
 - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the Board.*
- (6) If the Public Sector Management Act 1995 would not, apart from this section, apply to a member of a committee, that Act applies to the member in the same way as to an advisory body member within the meaning of that Act.*

19—Board's procedures

- (1) 6 members constitute a quorum of the Board.*
- (2) A meeting of the Board will be chaired by the presiding member or, in his or her absence, by a member of the Board chosen by the members present at the meeting.*
- (3) A decision carried by a majority of the votes cast by members of the Board at a meeting is a decision of the Board.*
- (4) Each member present at a meeting of the Board has one vote on any question arising for decision and the member presiding at the meeting may exercise a casting vote if the votes are equal.*

- (5) *A conference by telephone or other electronic means between the members of the Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present if—*
- (a) *notice of the conference is given to all members in the manner determined by the Board for the purpose; and*
 - (b) *each participating member is capable of communicating with every other participating member during the conference.*
- (6) *A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if—*
- (a) *notice of the proposed resolution is given to all members of the Board in accordance with procedures determined by the Board; and*
 - (b) *a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, facsimile transmission, electronic mail or other written communication setting out the terms of the resolution.*
- (7) *The Board must have accurate minutes kept of its meetings.*
- (8) *Subject to this Act, the Board may determine its own procedures.*
- (9) *If the Public Sector Management Act 1995 would not, apart from this section, apply to a member of the Board, that Act applies to the member in the same way as to an advisory body member within the meaning of that Act.*

20—Staff, facilities etc

The Minister must make available to the Board such staff, facilities, information and assistance as it may reasonably require for the effective performance of its functions under this Act.

21—Annual report

- (1) *The Board must, on or before 30 September in each year, prepare and deliver to the Minister a report on the operations of the Board during the previous financial year.*
- (2) *The Minister must, within 12 sitting days after receiving a report under this section, cause a copy of the report to be laid before both Houses of Parliament.*

Division 4—Adelaide Dolphin Sanctuary Fund

22—ADS Fund

- (1) There will be a fund kept in a separate account at the Treasury to be called the Adelaide Dolphin Sanctuary Fund.
- (2) The ADS Fund will consist of—
- (a) any money provided by Parliament for the purposes of the fund; and
 - (b) any money provided by the Government of the Commonwealth for the purposes of the fund; and
 - (c) grants, gifts and bequests made to the Minister for payment into the fund; and
 - (d) proceeds from sales by the Minister under section 45; and
 - (e) any income arising from the investment of the fund under subsection (3); and

- (f) all other money that is required or authorised by or under this Act or any other law to be paid into the fund.
- (3) Any money in the ADS Fund that is not for the time being required for the purposes of this Act may be invested by the Minister after consultation with the Treasurer.
- (4) The Minister may apply any part of the ADS Fund—
 - (a) for any purpose to further the objects or objectives of this Act; and
 - (b) in payment of the expenses of administering the fund.
- (5) The Minister must, before applying money belonging to the fund in furtherance of the objects and objectives of this Act, have regard to any advice provided by the ADS Advisory Board in relation to the matter.

23—Accounts

The Minister must cause proper accounts to be kept in relation to the ADS Fund.

24—Audit

The Auditor-General may at any time, and must at least once in each year, audit the accounts of the ADS Fund.

Part 4—Administration

Division 1—Minister

25—Functions and powers of Minister

- (1) The Minister has the following functions under this Act:
 - (a) to prepare and keep under review the ADS Management Plan;
 - (b) to provide advice with respect to the approval of activities proposed to be undertaken within the Sanctuary or that may have a direct impact on the Sanctuary;
 - (c) to consult with relevant persons, bodies or authorities, including indigenous peoples with an association with the Sanctuary, about the goals or outcomes that should be adopted or pursued in order to achieve or advance the objects and objectives of this Act;
 - (d) as far as reasonably practicable and appropriate, to act to integrate the administration of this Act with the administration of other legislation that may affect the Sanctuary;
 - (e) to institute, supervise or promote programs to protect, maintain or improve the Sanctuary;
 - (f) to promote the undertaking of monitoring and research programs to collect data on the state of the Sanctuary and other relevant information, and to assess and apply other information relevant to the Sanctuary obtained from other programs or sources;
 - (g) to promote public awareness of the importance of a healthy Port Adelaide River estuary and Barker Inlet;

- (h) to conduct or promote public education in relation to the protection, improvement or enhancement of the Sanctuary;
 - (i) to keep the state of the Sanctuary under review;
 - (j) to undertake the enforcement of the general duty of care;
 - (k) such other functions as are assigned to the Minister by or under this or any other Act.
- (2) The administration of—
- (a) this Act; and
 - (b) the *Coast Protection Act 1972*,
- must be committed to the same Minister.
- (3) The Minister has the power to do anything necessary, expedient or incidental to—
- (a) performing the functions of the Minister under this Act; or
 - (b) administering this Act; or
 - (c) furthering the objects and objectives of this Act.

26—Annual report

- (1) The Minister must on or before 30 September in each year prepare a report on the operation of this Act for the financial year ending on the preceding 30 June.
- (2) The annual report must include—
- (a) information on the extent to which the objects and objectives of this Act are being achieved; and
 - (b) reports on the following matters for the preceding financial year:
 - (i) the referral of matters to the Minister under any related operational Act; and
 - (ii) the enforcement of the general duty of care; and
 - (iii) action taken by the Minister or authorised officers under Part 6; and
 - (c) a program setting out the Minister's proposals for the implementation of the ADS Management Plan during the current financial year.
- (3) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after the report is prepared.

27—Power of delegation

- (1) Minister may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this Act.
- (2) A delegation under this section—
- (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the Minister to act in any matter; and

- (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

Division 2—Authorised officers

28—Appointment of authorised officers

- (1) The Minister may appoint persons to be authorised officers for the purposes of this Act.
- (2) Each police officer is an authorised officer for the purposes of this Act.
- (3) An appointment under subsection (1) may be made subject to conditions or limitations specified in the instrument of appointment.
- (4) An authorised officer appointed under subsection (1) must be issued with an identity card—
- (a) containing the person's name and a photograph of the person; and
 - (b) stating that the person is an authorised officer for the purposes of this Act; and
 - (c) stating any limitations on the authorised officer's authority.
- (5) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise any powers under this Act, produce for the inspection of the person his or her identity card.
- (6) If a person in possession of an identity card issued to the person under this section ceases to be an authorised officer, the person must forthwith return the identity card to the Minister.

Maximum penalty: \$250.

29—Powers of authorised officers

- (1) An authorised officer may, as may reasonably be required in connection with the administration, operation or enforcement of this Act—
- (a) enter any place;
 - (b) inspect any place, including the stratum lying below the surface of any land, and water on or under any land, and inspect any works, plant or equipment;
 - (c) enter and inspect any vehicle and for that purpose require a vehicle to stop, or to be presented for inspection at a place and time specified by the authorised officer, and board any vessel or craft;
 - (d) give directions with respect to the stopping or movement of a vehicle, plant, equipment or other thing;
 - (e) require a person apparently in charge of a vessel or craft to facilitate any boarding;
 - (f) take measurements, including measurements of the flow of any water on or under any land or relating to any change in any aspect of the environment;

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- (g) place any markers, pegs or other items or equipment in order to assist in environmental testing or monitoring;
 - (h) take samples of any substance or thing from any place (including under any land), or vehicle, for analysis;
 - (i) with the authority of a warrant issued by a magistrate, require any person to produce specified documents or documents of a specified kind, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process;
 - (j) examine, copy or take extracts from a document or information so produced or require a person to provide a copy of any such document or information;
 - (k) take photographs, films, audio, video or other recordings;
 - (l) examine or test any vehicle, plant, equipment, fitting or other thing, or cause or require it to be so examined or tested, or seize it or require its production for such examination or testing;
 - (m) seize and retain anything that the authorised officer reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act;
 - (n) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;
 - (o) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration, operation or enforcement of this Act to answer questions in relation to those matters;
 - (p) give directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration, operation or enforcement of this Act;
 - (q) exercise other prescribed powers.
- (2) An authorised officer must not exercise a power conferred by subsection (1) in respect of residential premises (but such a power may be exercised in respect of any vessel or craft).
- (3) An authorised officer in exercising powers under this section may be accompanied by such assistants as are reasonably required in the circumstances.
- (4) An authorised officer may, on the authority of a warrant issued by a magistrate, use force to enter any place or vehicle.
- (5) A magistrate must not issue a warrant under subsection (4) unless satisfied that there are reasonable grounds to believe—
- (a) that a contravention of this Act has been, is being, or is about to be, committed in or on a place or vehicle; or
 - (b) that something may be found in or on a place or vehicle that has been used in, or constitutes evidence of, a contravention of this Act; or
 - (c) that the circumstances require immediate action.

- (6) An application for the issue of a warrant under this section—
 - (a) may be made either personally or by telephone; and
 - (b) must be made in accordance with any procedures prescribed by the regulations.
- (7) If an authorised officer digs up any land under subsection (1), the authorised officer must, after taking such steps as the authorised officer thinks fit in the exercise of powers under that subsection, insofar as is reasonably practicable, take steps to ensure that the land is restored to such state as is reasonable in the circumstances.
- (8) An authorised officer must, in taking any action under this section, have regard to any request made by any indigenous peoples with an association with the Port Adelaide River estuary and Barker Inlet that the authorised officer (or authorised officers generally) not enter a specified area.
- (9) An authorised officer must, before exercising powers under this section in relation to a person, insofar as is reasonably practicable, provide to the person a copy of an information sheet that sets out information about the source and extent of the authorised officer's powers under this section, and about the action that may be taken against the person if he or she fails to comply with a requirement or direction of an authorised officer under this section.
- (10) For the purposes of subsection (9), an *information sheet* is a document approved by the Minister for the purposes of that subsection.

30—Hindering etc persons engaged in administration of Act

- (1) A person who—
 - (a) without reasonable excuse hinders or obstructs an authorised officer or other person engaged in the administration of this Act; or
 - (b) fails to answer a question put by an authorised officer to the best of his or her knowledge, information or belief; or
 - (c) produces a document or record that he or she knows, or ought to know, is false or misleading in a material particular; or
 - (d) fails without reasonable excuse to comply with a requirement or direction of an authorised officer under this Act; or
 - (e) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
 - (f) falsely represents, by words or conduct, that he or she is an authorised officer,is guilty of an offence.

Maximum penalty:

- (a) in the case of an offence against paragraph (a) or (e)—\$5 000;
 - (b) in any other case—\$10 000.
- (2) A person (other than an authorised officer) who, without the permission of the Minister, removes, destroys or interferes with any marker, peg or other item or equipment placed under section 29(1)(g) is guilty of an offence.

Maximum penalty: \$5 000.

31—Protection from self-incrimination

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

Part 5—General duty of care

32—General duty of care

- (1) A person must take all reasonable measures to prevent or minimise any harm to the Sanctuary through his or her actions or activities.
- (2) For the purposes of subsection (1)—
 - (a) harm includes—
 - (i) a risk of harm, and future harm; and
 - (ii) anything declared by regulation to be harm to the Sanctuary; and
 - (b) harm need not be permanent but must be more than transient or tenuous in nature; and
 - (c) in determining what measures are required to be taken, regard must be had, amongst other things, to—
 - (i) the nature of the harm; and
 - (ii) the sensitivity of the environment that may be affected and the potential impact of the harm environmentally, socially and economically; and
 - (iii) the practicality and financial implications of any alternative action, and the current state of technical and scientific knowledge; and
 - (iv) any degrees of risk that may be involved; and
 - (v) the significance of the Sanctuary to the State and to the environment and economy of the State; and
 - (vi) the extent to which an act or activity may have a cumulative effect on the Sanctuary; and
 - (vii) insofar as is reasonably practicable and relevant, any assessment of potential harm to the Sanctuary as a result of the relevant action or activity undertaken before a statutory authorisation (if any) was granted under a related operational Act, and the extent to which any such harm was intended to be prevented or minimised through the attachment of conditions to a statutory authorisation (if any) under a related operational Act.
- (3) A person will be taken not to be in breach of subsection (1) if the person is acting in circumstances prescribed by the regulations.
- (4) A person who breaches the duty created by subsection (1) is not, on account of the breach alone, guilty of an offence but—
 - (a) compliance with the duty may be enforced by the issuing of a protection order under Part 6; and

- (b) a reparation order or reparation authorisation may be issued under that Part in respect of the breach of the duty.

Part 6—Protection and other orders

Division 1—Orders

33—Protection orders

- (1) The Minister may issue a protection order under this Division for the purpose of securing compliance with the general duty of care.
- (2) A protection order—
 - (a) must be in the form of a written notice served on the person to whom the notice is issued;
 - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person);
 - (c) must state the grounds on which it is made with reasonable particularity;
 - (d) may impose any requirement reasonably required for the purpose for which the order is issued including one or more of the following:
 - (i) a requirement that the person discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from the Minister;
 - (ii) a requirement that the person not carry on a specified activity except at specified times or subject to specified conditions;
 - (iii) a requirement that the person take specified action in a specified way, and within a specified period;
 - (e) must state that the person may, within 14 days, appeal to the ERD Court against the order.
- (3) An authorised officer may, if of the opinion that urgent action is required for the protection of the Sanctuary, issue an emergency protection order imposing requirements of a kind referred to in subsection (2)(d) as reasonably required for the protection of the Sanctuary.
- (4) An emergency protection order may be issued orally but, in that event, the person to whom the order is issued must be advised forthwith of the person's right to appeal to the ERD Court against the order.
- (5) If an emergency protection order is issued orally, the authorised officer who issued it must confirm it in writing at the earliest opportunity (and in any event within 2 business days) by written notice given to the person to whom it applies.
- (6) If an emergency protection order is issued, the order will cease to have effect on the expiration of 72 hours from the time of its issuing unless confirmed by a written protection order issued by the Minister and served on the relevant person.
- (7) The Minister may, by written notice served on a person to whom a protection order has been issued, vary or revoke the order.

- (8) A person to whom a protection order is issued must comply with the order.

Maximum penalty:

- (a) if the order was issued in relation to a domestic activity for the purpose of securing compliance with the general duty of care—\$2 500;
- (b) in any other case—\$120 000.

Expiation fee:

- (a) if the order was issued in relation to a domestic activity for the purpose of securing compliance with the general duty of care—\$250;
- (b) in any other case—\$500.

- (9) A person must not hinder or obstruct a person complying with a protection order.

Maximum penalty: \$10 000.

34—Action on non-compliance with protection order

- (1) If the requirements of a protection order are not complied with, the Minister may take any action required by the order.
- (2) Action to be taken by the Minister under subsection (1) may be taken on the Minister's behalf by an authorised officer or another person authorised by the Minister for the purpose.
- (3) A person taking action under this section may enter any relevant place or vehicle at any reasonable time.
- (4) The reasonable costs and expenses incurred by the Minister in taking action under this section may be recovered by the Minister as a debt from the person who failed to comply with the requirements of the protection order.
- (5) If an amount is recoverable from a person by the Minister under this section—
 - (a) the Minister may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
 - (b) the amount together with any interest charge so payable is until paid a charge in favour of the Minister on any land owned by the person in relation to which the protection order is registered under Division 2.

35—Reparation orders

- (1) If the Minister is satisfied that a person has caused harm to the Sanctuary by contravention of—
 - (a) the general duty of care; or
 - (b) a condition of a statutory authorisation that relates to an activity carried out within the Sanctuary,
 the Minister may issue a reparation order requiring the person—
 - (c) to take specified action within a specified period to make good any resulting damage to the Sanctuary; or

- (d) to make a payment or payments into an approved account to enable action to be taken to address any resulting damage to the Sanctuary,
- or both.
- (2) A reparation order—
- (a) must be in the form of a written notice served on the person to whom it is issued;
 - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person);
 - (c) must state the grounds on which it is made with reasonable particularity;
 - (d) may include requirements for action to be taken to prevent or mitigate further harm to the Sanctuary, or for a plan of action to be prepared to the satisfaction of the Minister;
 - (e) may include requirements for specified tests or monitoring;
 - (f) may include requirements for furnishing to the Minister specified results or reports;
 - (g) may include requirements that the person to whom it is issued appoint or engage a person with specified qualifications to prepare a plan or report or to undertake tests or monitoring required by the order;
 - (h) in the case of an order requiring payment into an approved account, may provide that payments must occur in accordance with a scheme specified by the Minister (either at the time of the making of the order or at a later time when the extent or impact of any action has been assessed or finally determined);
 - (i) must state that the person may, within 14 days, appeal to the ERD Court against the order.
- (3) An authorised officer may, if of the opinion that urgent action is required to prevent or mitigate further harm, issue an emergency reparation order containing requirements of a kind referred to in subsection (2), other than a requirement for payment into an approved account.
- (4) An emergency reparation order may be issued orally, but, in that event, the person to whom it is issued must be advised forthwith of the person's right to appeal to the ERD Court against the order.
- (5) If an emergency reparation order is issued orally, the authorised officer who issued it must confirm it in writing at the earliest opportunity (and in any event within 2 business days) by written notice given to the person to whom it applies.
- (6) If an emergency reparation order is issued, the order will cease to have effect on the expiration of 72 hours from the time of its issuing unless confirmed by a written reparation order issued by the Minister and served on the relevant person.
- (7) The Minister or an authorised officer may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in an emergency or other reparation order a requirement for an act or omission that might otherwise constitute a contravention of this Act and, in that event, a person incurs no criminal liability under this Act for compliance with the requirement.

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- (8) The Minister may, by written notice served on a person to whom a reparation order has been issued, vary or revoke the order.
 - (9) A person to whom a reparation order is issued must comply with the order.
Maximum penalty: \$50 000.

36—Action on non-compliance with a reparation order

- (1) If the requirements of a reparation order are not complied with, the Minister may take any action required by the order.
- (2) Action taken by the Minister under subsection (1) may be taken on the Minister's behalf by an authorised officer or another person authorised by the Minister for the purpose.
- (3) A person taking action under this section may enter any relevant place or vehicle at any reasonable time.
- (4) The reasonable costs and expenses incurred by the Minister in taking action under this section may be recovered by the Minister as a debt from the person who failed to comply with the requirements of the reparation order.
- (5) If an amount is recoverable from a person by the Minister under this section—
 - (a) the Minister may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
 - (b) the amount together with any interest charge so payable is until paid a charge in favour of the Minister on any land owned by the person in relation to which the reparation order is registered under Division 2.

37—Reparation authorisations

- (1) If the Minister is satisfied that a person has caused harm to the Sanctuary by contravention of—
 - (a) the general duty of care; or
 - (b) a condition of a statutory authorisation that relates to an activity carried out within the Sanctuary,the Minister may (whether or not a reparation order has been issued to the person) issue a reparation authorisation under which authorised officers or other persons authorised by the Minister for the purpose may take specified action on the Minister's behalf to make good any resulting damage to the Sanctuary.
- (2) A reparation authorisation—
 - (a) must be in the form of a written notice;
 - (b) must specify the person alleged to have caused the harm (whether by name or a description sufficient to identify the person);
 - (c) must state the grounds on which it is made with reasonable particularity;
 - (d) may include authorisation for action to be taken to prevent or mitigate further harm to the Sanctuary.

- (3) The Minister must, as soon as practicable after issuing a reparation authorisation, serve a copy of the authorisation on the person alleged to have caused the harm.
- (4) The Minister may, by notice in writing, vary or revoke a reparation authorisation and must, as soon as practicable after doing so, serve a copy of the notice on the person alleged to have caused the harm.
- (5) If a person other than an authorised officer is authorised to take action under subsection (1), the following provisions apply:
 - (a) the Minister must issue the person with an instrument of authority;
 - (b) the person may exercise such powers of an authorised officer as are reasonably required for the purpose of taking action under that subsection;
 - (c) the provisions of this Act apply in relation to the exercise of such powers by the person in the same way as in relation to an authorised officer;
 - (d) the person must produce the instrument of authority for the inspection of any person in relation to whom the person intends to exercise powers of an authorised officer.
- (6) A person taking action under a reparation authorisation may enter any relevant place or vehicle at any reasonable time.
- (7) The reasonable costs and expenses incurred by the Minister in taking action under a reparation authorisation may be recovered by the Minister as a debt from the person who caused the relevant harm.
- (8) If an amount is recoverable from a person by the Minister under this section—
 - (a) the Minister may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
 - (b) the amount together with any interest charge so payable is until paid a charge in favour of the Minister on any land owned by the person in relation to which the reparation authorisation is registered under Division 2.

38—Related matters

- (1) The Minister should, so far as is reasonably practicable, consult with any other public authority that may also have power to act with respect to the particular matter before the Minister issues a protection order, reparation order or reparation authorisation under this Division.
- (2) Subsection (1) does not apply—
 - (a) where action is being taken under this Act as a matter of urgency; or
 - (b) in any other circumstance of a prescribed kind.
- (3) A person cannot claim compensation from—
 - (a) the Minister or the Crown; or
 - (b) an authorised officer; or
 - (c) a person acting under the authority of the Minister or an authorised officer,

in respect of a requirement imposed under this Division, or on account of any act or omission undertaken or made in the exercise (or purported exercise) of a power under this Division.

Division 2—Registration of orders and effect of charges

39—Registration

- (1) If—
 - (a) the Minister issues an order or authorisation under Division 1; and
 - (b) the order or authorisation is issued in relation to an activity carried out on land, or requires a person to take action on or in relation to land,the Minister may apply to the Registrar-General for the registration of the order or authorisation in relation to that land.
- (2) An application under this section must—
 - (a) define the land to which it relates; and
 - (b) comply with any requirement imposed by the Registrar-General for the purposes of this section.
- (3) The Registrar-General must on—
 - (a) due application under subsection (2); and
 - (b) lodgement of a copy of the relevant order or authorisation,register the order or authorisation in relation to the land by making such entries in any register book, memorial or other book or record in the Lands Titles Registration Office or in the General Registry Office as the Registrar-General thinks fit.
- (4) An order or authorisation registered under this section is binding on each owner and occupier from time to time of the land.
- (5) The Registrar-General must, on application by the Minister, cancel the registration of an order or authorisation in relation to land and make such endorsements to that effect in the appropriate register book, memorial or other book or record in respect of the land as the Registrar-General thinks fit.
- (6) The Minister may, if the Minister thinks fit, apply to the Registrar-General for cancellation of the registration of an order or authorisation under this section in relation to land, and must do so—
 - (a) on revocation of the order or authorisation; or
 - (b) in relation to—
 - (i) an order—
 - (A) on full compliance with the requirements of the order;
 - (B) if the Minister has taken action under Division 1 to carry out the requirements of the order—on payment to the Minister of any amount recoverable by the Minister under that Division in relation to the action so taken; or

- (ii) an authorisation—on payment to the Minister of any amount recoverable by the Minister under Division 1 in relation to the action taken in pursuance of the authorisation.

40—Effect of charge

A charge imposed on land under Division 1 has priority over—

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

Division 3—Appeals to ERD Court

41—Appeal

- (1) A person to whom a protection order or reparation order has been issued under Division 1 may appeal to the ERD Court against the order or any variation of the order.
- (2) An appeal must be made in a manner and form determined by the Court, setting out the grounds of the appeal.
- (3) Subject to this section, an appeal must be made within 21 days after the order is issued or the variation is made.
- (4) The Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be made within the period fixed by subsection (3).
- (5) Unless otherwise determined by the Court, an appeal must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to that appeal).
- (6) Subject to subsection (7), the institution of an appeal does not affect the operation of the order to which the appeal relates or prevent the taking of action to implement the order.
- (7) The Court may, on application by a party to an appeal, make an order staying or otherwise affecting the operation or implementation of the whole or a part of an order if the Court is satisfied that it is appropriate to do so having regard to—
 - (a) the possible consequences to the Sanctuary and the interests of any persons who may be affected by the appeal; and
 - (b) the need to secure the effectiveness of the hearing and determination of the appeal.
- (8) An order under subsection (7)—
 - (a) may be varied or revoked by the Court by further order;
 - (b) is subject to such conditions as are specified in the order;
 - (c) has effect until—

- (i) the end of the period of operation (if any) specified in the order; or
 - (ii) the decision of the Court on the appeal comes into operation,
- whichever is the earlier.
- (9) The Court must not make an order under subsection (7) unless each party to the appeal has been given a reasonable opportunity to make submissions in relation to the matter.
- (10) The Court may, on hearing an appeal under this section—
- (a) confirm, vary or revoke the order appealed against;
 - (b) order or direct a person or body to take such action as the Court thinks fit, or to refrain (either temporarily or permanently) from such action or activity as the Court thinks fit;
 - (c) make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.

Part 7—Provisions relating to official insignia

42—Interpretation

- (1) In this Part—
- official insignia* means—
- (a) a design declared by the Minister to be a logo for the purposes of this Part; or
 - (b) the name “Adelaide Dolphin Sanctuary”, whether appearing or used in full or in an abbreviated form; or
 - (c) a combination of a logo under paragraph (a) and that name.
- (2) For the purposes of this Part, goods will be taken to be marked with official insignia if the insignia is affixed or annexed to, marked on, or incorporated in or with—
- (a) the goods; or
 - (b) any covering or container in which the goods are wholly or partly enclosed; or
 - (c) anything placed in or attached to any such covering or container; or
 - (d) anything that is attached to the goods or around which the goods are wrapped or wound.

43—Declaration of logo

The Minister may, by notice in the Gazette—

- (a) declare a design to be a logo for the purposes of this Part; or
- (b) vary or revoke a declaration under paragraph (a).

44—Protection of official insignia

- (1) The Crown has a proprietary interest in all official insignia.

- (2) A person must not, without the consent of the Minister, in the course of a trade or business—
- (a) sell goods marked with official insignia; or
 - (b) use official insignia for the purpose of promoting the sale of goods or services or the provision of any benefits.

Maximum penalty: \$20 000.

- (3) A person must not, without the consent of the Minister, assume a name or description that consists of, or includes, official insignia.

Maximum penalty: \$20 000.

- (4) A consent under this section—

- (a) may be given with or without conditions (including conditions requiring payment to the Minister); and
- (b) may be given generally by notice in the Gazette or by notice in writing addressed to an applicant for the consent; and
- (c) may be revoked by the Minister for breach of a condition by notice in writing given personally or by post to a person who has the benefit of the consent.

- (5) The Supreme Court may, on the application of the Minister, grant an injunction to restrain a breach of this section.

- (6) The court by which a person is convicted of an offence against this section may, on the application of the Minister, order the convicted person to pay compensation of an amount fixed by the court to the Minister.

- (7) Subsections (5) and (6) do not derogate from any civil remedy that may be available to the Minister apart from those subsections.

45—Seizure and forfeiture of goods

- (1) If—

- (a) goods apparently intended for a commercial purpose are marked with official insignia; and
- (b) an authorised officer suspects on reasonable grounds that the use of the insignia has not been authorised by the Minister,

the authorised officer may seize those goods.

- (2) If goods have been seized under this section and—

- (a) proceedings are not instituted for an offence against section 44(2) in relation to the goods within 3 months of their seizure; or
- (b) after proceedings have been instituted and completed, the defendant is not convicted,

the person from whom they were seized is entitled to recover—

- (c) the goods or, if they have been destroyed, compensation equal to the market value of the goods at the time of their seizure; and
- (d) compensation for any loss suffered by reason of the seizure of the goods.

- (3) An action for the payment of compensation under subsection (2) may be brought against the Minister in any court of competent jurisdiction.
- (4) The court by which a person is convicted of an offence against section 44(2) may order that goods to which the offence relates be forfeited to the Crown.
- (5) Any goods forfeited to the Crown may be sold or disposed of as the Minister thinks fit and, if sold, the proceeds of sale must be paid into the ADS Fund.

Part 8—Miscellaneous

46—Native title

- (1) Nothing done under this Act will be taken to affect native title in any land or water.
- (2) However, subsection (1) does not apply if the effect is valid under a law of the State or the *Native Title Act 1993* of the Commonwealth.

47—Immunity provision

No act or omission undertaken or made by the Minister or any other person engaged in the administration of this Act, or by another person or body acting under the authority of the Minister, with a view to—

- (a) exercising or performing a power or function under this Act; or
- (b) protecting, restoring or enhancing the Sanctuary, or any aspect of the Sanctuary (including by exercising or performing any power or function under another Act); or
- (c) furthering the objectives of this Act (including by exercising or performing any power or function under another Act),

gives rise to any liability (whether based on a statutory or common law duty to take care or otherwise) against the Minister, person or body, or the Crown.

48—Continuing offence

- (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—
 - (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
 - (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.
- (2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

49—Offences by bodies corporate

- (1) If a body corporate commits an offence against this Act, each member of the governing body, and the manager, of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence where the offender is a natural person.
- (2) A person may be prosecuted and convicted of an offence under this section whether or not the body corporate has been prosecuted or convicted of the offence committed by the body corporate.

50—General defence

It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

51—Criminal jurisdiction of ERD Court

Offences constituted by this Act lie within the criminal jurisdiction of the ERD Court.

52—Confidentiality

- (1) A person engaged or formerly engaged in the administration of this Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—
 - (a) as required or authorised by or under this Act or any other Act or law; or
 - (b) with the consent of the person to whom the information relates; or
 - (c) in connection with the administration of this Act; or
 - (d) to an agency or instrumentality of this State, the Commonwealth or another State or Territory of the Commonwealth for the purposes of the proper performance of its functions.

Maximum penalty: \$5 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
 - (a) the person to whom the information was disclosed; or
 - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$5 000.

53—Service

- (1) A notice, order or other document required to be given or sent to, or served on, a person for the purposes of this Act may—
 - (a) be given to the person personally; or

- (b) be posted in an envelope addressed to the person at the person's last known residential or (in the case of a corporation) registered address; or
 - (c) be left for the person at the person's last known residential or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or
 - (d) be transmitted by facsimile transmission or electronic mail to a facsimile number or electronic mail address (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) Without limiting the effect of subsection (1), a notice, order or other document required to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

54—Evidentiary provision

In proceedings for an offence against this Act, an allegation in the complaint that a person was or was not at a specified time an authorised officer will be accepted as proved in the absence of proof to the contrary.

55—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) create offences punishable by a fine not exceeding \$5 000;
 - (b) fix expiation fees for alleged offences against the regulations;
 - (c) make provision facilitating proof of the commission of offences against the regulations.

Schedule 1—Adelaide Dolphin Sanctuary

1—Adelaide Dolphin Sanctuary

The Port Adelaide River estuary and Barker Inlet including—

- (a) the subjacent land; and
- (b) the waters, rivers, creeks, inlets and drains to medium high water mark; and
- (c) the land within the area bounded as follows:

Commencing at the westernmost corner of allotment 223 (DP 32591), Hundred of Port Adelaide, being a point on the southern breakwater of the Gulf Point Marina; thence westerly along a straight line to a point longitude 138.460767 latitude -34.788718 (Beacon 3180/004); north-westerly along a straight line to a point longitude 138.444455 latitude -34.747508 (Beacon 3210/700); again north-westerly along a straight line to a point longitude 138.407201 latitude -34.655053; easterly along a straight line to the north-western corner of allotment 4 (DP 23558), Hundred of Port Gawler; south-easterly along the south-western boundaries of allotment 4; south-easterly across road to the north-western corner of section 694; south-easterly along the north-eastern boundaries of sections 694 and 693 and across road to the north-western corner of section 692; south-westerly along portion of the north-western boundary of section 692 for 60.0

metres approximately; south-easterly through section 692 and along the landward side of the sea levee bank intersecting sections 692 and 691; south-westerly along the landward side of the sea levee bank intersecting the latter section and continuing generally south-easterly along the landward side of the sea levee bank intersecting section 809, Hundred of Port Gawler, intersecting allotment 5 (FP 3965), Hundreds of Port Gawler and Port Adelaide, continuing generally south-westerly and generally south-easterly along the landward side of the sea levee bank intersecting piece 20 (FP 108216) and section 624, across section 508, and continuing generally south-easterly through sections 629, 509, 510, 512 and 513 to the south-western boundary of section 514; south-easterly along medium high water mark through section 514 and the south-western boundary of the Town of St Kilda to the northern corner of allotment 5 (DP 50216), a point on the south-western boundary of Fooks Terrace, Town of St Kilda; south-easterly along the south-western boundary of Fooks Terrace; north-easterly along the south-eastern boundary of Salt Street; south-easterly along the south-western boundary of Mangrove Street; south-westerly along portion of a north-western boundary of allotment 104 (DP 50216) for 35.60 metres; south-easterly through allotment 104 (DP 50216) and continuing generally south-easterly along the landward side of the sea levee bank intersecting sections 323, 324, 325, 326, 327, 328, and piece 23 (FP 108216) and easterly of piece 91 (FP 207067), piece 23 (FP 108216) and section 330 to the north-eastern boundary of section 587; generally south-easterly along the north-eastern and north-western boundaries of section 587, allotment 3 (FP 2871) and allotment 100 (FP 6430) to the western boundary of Port Wakefield Road; southerly and generally north-westerly along the eastern, south-western and south-eastern boundaries of allotment 100 (FP 6430), allotment 3 (FP 2871) and section 587 to the landward side of the sea levee bank (the easternmost corner of allotment 101 - DP 44233); generally south-westerly and generally south-easterly along south-eastern, north-eastern and eastern boundaries of allotment 101 (DP 44233), continuing generally westerly and generally north-westerly along the landward side of the sea levee bank intersecting piece 1001 (DP 50694) and allotment 2 (DP 18683), and continuing north-westerly and generally westerly along south-western and south-eastern boundaries of allotment 107 (DP 45483) and the southern boundaries of allotment 101 (DP 41796) and allotment 204 (DP 48102); north-westerly along Grand Trunkway Road to the north-eastern corner of allotment 50 (DP 41577) – (medium high water mark); generally westerly along medium high water mark (North Arm) and continuing generally southerly, generally south-westerly and generally southerly along medium high water mark (eastern side of Port Adelaide River) through Port Adelaide Harbor to the northern boundary of the causeway (the northern boundary of Bower Road); westerly along the latter boundary to medium high water mark (western side of Port Adelaide River); generally northerly, generally north-easterly and generally northerly along medium high water mark (Port Adelaide River) to the south-eastern corner of allotment 3 (DP 63481); westerly, generally northerly and easterly along the southern and western boundaries of allotment 3 (DP 63481) and the western, southern and northern boundaries of allotment 2 (DP 63481) to the landward side of the sea levee bank; northerly and north-westerly along the landward side of the sea levee bank and its production north-westerly to the medium high water mark; generally westerly and generally south-westerly along medium high water mark to the north-western corner of section 694, Hundred of Port Adelaide; south-easterly and south-westerly along the north-eastern and south-eastern boundaries of section 694 and production south-westerly to the western corner of piece 3 (FP 218644); south-easterly along the south-western boundaries of piece 3 (FP 218644) to the southern corner of the said piece 3; north-easterly along a south-eastern boundary of piece 3 (FP 218644) to the northern corner of allotment 44 (DP 31099); south-easterly along the north-eastern boundary of allotment 44 (DP 31099) and its production to medium high water mark; south-easterly, generally northerly, generally south-easterly, south-westerly, north-westerly and generally southerly (through Gulf Point Marina) along medium high water mark to the intersection with the production northerly of the western boundary of allotment 73 (DP 38997); southerly along the latter production and boundary; westerly along a southern boundary of allotment 74 (DP 38997) to a north-eastern boundary of allotment 223 (DP 32591); thence south-easterly along the latter boundary and generally

westerly along southern boundaries of allotment 223 (DP 32591) to the point of commencement.

Schedule 2—Related amendments

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Aquaculture Act 2001*

2—Amendment of section 3—Interpretation

- (1) Section 3—after the definition of *AAC* insert:

Adelaide Dolphin Sanctuary has the same meaning as in the *Adelaide Dolphin Sanctuary Act 2005*;

- (2) Section 3—after the definition of *marked-off area* insert:

Minister for the Adelaide Dolphin Sanctuary means the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed;

3—Amendment of section 11—Nature and content of policies

Section 11—after subsection (3a) insert:

- (3b) Insofar as an aquaculture policy applies within the Adelaide Dolphin Sanctuary, the policy must seek to further the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005* and, in particular, should contain prescribed criteria to this effect.

4—Amendment of section 12—Procedures for making policies

Section 12—after subsection (7a) insert:

- (7b) The Minister must not approve a draft policy that will apply within the Adelaide Dolphin Sanctuary without the concurrence of the Minister for the Adelaide Dolphin Sanctuary.
- (7c) If the Minister to whom the administration of this Act is committed and the Minister for the Adelaide Dolphin Sanctuary cannot reach agreement in a case where subsection (7b) applies, the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).

Part 3—Amendment of *Coast Protection Act 1972*

5—Amendment of section 4—Interpretation

Section 4—before the definition of *appointed member* insert:

Adelaide Dolphin Sanctuary has the same meaning as in the *Adelaide Dolphin Sanctuary Act 2005*;

6—Amendment of section 14—General duties of Board

Section 14—after subsection (3) insert:

- (4) The Board must, if or when—
- (a) taking any action under this or any other Act within any part of the Adelaide Dolphin Sanctuary; or
 - (b) taking any action under this or any other Act that is likely to have a direct impact on any part of the Adelaide Dolphin Sanctuary,

take into account, and seek to further, the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005* (insofar as they may be relevant).

7—Amendment of section 20—Management plan

Section 20—after subsection (12) insert:

- (13) In preparing or reviewing a management plan that could affect the Adelaide Dolphin Sanctuary, the Board must consult with and have regard to the views of the Minister.

Part 4—Amendment of *Development Act 1993*

8—Amendment of section 4—Definitions

- (1) Section 4(1)—before the definition of *adjacent land* insert:

Adelaide Dolphin Sanctuary has the same meaning as in the *Adelaide Dolphin Sanctuary Act 2005*;

- (2) Section 4(1)—after the definition of *mining production tenement* insert:

Minister for the Adelaide Dolphin Sanctuary means the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed;

9—Amendment of section 22—The Planning Strategy

Section 22(3a)—delete subsection (3a) and substitute:

- (3a) The Planning Strategy will be taken to include—
- (a) the *Objectives for a Healthy River Murray* under the *River Murray Act 2003* (as in force from time to time); and
 - (b) the objectives of the *Adelaide Dolphin Sanctuary Act 2005*,
- and the appropriate Minister may, as the appropriate Minister thinks fit, make textual alterations to the Planning Strategy to incorporate those objectives into the Planning Strategy.

10—Amendment of section 24—Council or Minister may amend a Development Plan

- (1) Section 24(1)—after paragraph (fa) insert:
- (fb) where the purpose of the amendment is to promote the objects or objectives of the *Adelaide Dolphin Sanctuary Act 2005*—by the Minister;
- (2) Section 24—after subsection (3) insert:
- (4) The Minister must, in relation to the preparation of an amendment by a council or the Minister under subsection (1) that relates to a Development Plan or Development Plans that relate (wholly or in part) to any part of the Adelaide Dolphin Sanctuary, consult with and have regard to the views of the Minister for the Adelaide Dolphin Sanctuary.

11—Amendment of section 34—Determination of relevant authority

Section 34(1)(b)—after subparagraph (vii) insert:

- (viii) the Minister, acting at the request of the Minister for the Adelaide Dolphin Sanctuary, declares, by notice in writing served personally or by post on the proponent, that the Development Assessment Commission should act as the relevant authority in relation to the proposed development in substitution for the council or the regional development assessment panel (as the case may be) because, in the opinion of the Minister making the request, the proposed development may have a significant impact on an aspect of the Adelaide Dolphin Sanctuary,

12—Amendment of section 46A—The Major Developments Panel

Section 46A—after subsection (9) insert:

- (10) If it appears that a major development or project may have a significant impact on any aspect of the Adelaide Dolphin Sanctuary, one of the members of the panel appointed under subsection (1)(d) or (1)(f) must be a person approved by the Minister for the Adelaide Dolphin Sanctuary.

13—Amendment of section 46B—EIS process—Specific provisions

- (1) Section 46B(4)—after paragraph (ca) insert:
- (cb) if the development or project is to be undertaken within, or is likely to have a direct impact on, the Adelaide Dolphin Sanctuary, the extent to which the expected effects of the development or project are consistent with—
 - (i) the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*; and
 - (ii) the general duty of care under that Act;

(2) Section 46B(5)(a)—after subparagraph (ia) insert:

- (ib) must, if the EIS relates to a development or project that is to be undertaken within, or is likely to have a direct impact on, the Adelaide Dolphin Sanctuary, refer the EIS to the Minister for the Adelaide Dolphin Sanctuary; and

14—Amendment of section 46C—PER process—Specific provisions

(1) Section 46C(4)—after paragraph (ca) insert:

- (cb) if the development or project is to be undertaken within, or is likely to have a direct impact on, the Adelaide Dolphin Sanctuary, the extent to which the expected effects of the development or project are consistent with—
 - (i) the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*; and
 - (ii) the general duty of care under that Act;

(2) Section 46C(5)(a)—after subparagraph (ia) insert:

- (ib) must, if the PER relates to a development or project that is to be undertaken within, or is likely to have a direct impact on, the Adelaide Dolphin Sanctuary, refer the PER to the Minister for the Adelaide Dolphin Sanctuary; and

15—Amendment of section 46D—DR process—Specific provisions

(1) Section 46D(4)—after paragraph (ca) insert:

- (cb) if the development is to be undertaken within, or is likely to have a direct impact on, the Adelaide Dolphin Sanctuary, the extent to which the expected effects of the development are consistent with—
 - (i) the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*; and
 - (ii) the general duty of care under that Act;

(2) Section 46D(5)(a)—after subparagraph (ia) insert:

- (ib) must, if the DR relates to a development that is to be undertaken within, or is likely to have a direct impact on, the Adelaide Dolphin Sanctuary, refer the DR to the Minister for the Adelaide Dolphin Sanctuary;

16—Amendment of section 48—Governor to give decision on development

Section 48(5)—after paragraph (da) insert:

- (db) if it appears to the Governor that the development may have an impact on any aspect of the Adelaide Dolphin Sanctuary—
 - (i) the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*; and
 - (ii) the general duty of care under that Act;

Part 5—Amendment of *Environment Protection Act 1993*

17—Insertion of section 10B

After section 10A insert:

10B—Objects of *Adelaide Dolphin Sanctuary Act 2005*

The Minister, the Authority and all other bodies and persons involved in the administration of this Act must, if or when taking any action under this Act within, or in relation to, any part of the Adelaide Dolphin Sanctuary within the meaning of the *Adelaide Dolphin Sanctuary Act 2005*, take into account, and seek to further, the objects and objectives of that Act (insofar as they may be relevant).

Part 6—Amendment of *Fisheries Act 1982*

18—Amendment of section 5—Interpretation

- (1) Section 5(1)—after the definition of *abalone* insert:

Adelaide Dolphin Sanctuary has the same meaning as in the *Adelaide Dolphin Sanctuary Act 2005*;

- (2) Section 5(1)—after the definition of *marine park* insert:

Minister for the Adelaide Dolphin Sanctuary means the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed;

19—Amendment of section 20—Objectives

Section 20—after paragraph (c) insert:

- (d) insofar as this Act applies to the Adelaide Dolphin Sanctuary, seeking to further the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*.

20—Section 31—Research and development

Section 31—after subsection (2) insert:

- (3) Insofar as any proposed research, exploration, experiments, works or operations under subsection (1) relate to the Adelaide Dolphin Sanctuary, the Minister must consult with and have regard to the views of the Minister for the Adelaide Dolphin Sanctuary.

21—Amendment of section 41A—Offence of killing, injuring etc a marine mammal

Section 41A(1), penalty provision—delete the penalty provision and substitute:

Penalty: \$100 000 or imprisonment for 2 years.

22—Amendment of section 43—Temporary prohibition of certain fishing activities

Section 43—after subsection (1a) insert:

- (1b) The Minister must, on the request of the Minister for the Adelaide Dolphin Sanctuary, make a declaration under subsection (1), or vary or revoke such a declaration, in relation to a fishing activity undertaken in respect of the Adelaide Dolphin Sanctuary.

23—Amendment of section 50—Offence to release certain fish into natural waters

Section 50—after subsection (2a) insert:

- (2b) If an application for a permit under this section relates to the Adelaide Dolphin Sanctuary, the Director must, before making his or her decision on the application, consult with and have regard to the views of the Minister for the Adelaide Dolphin Sanctuary.

24—Amendment of section 59—Exemptions

Section 59—After subsection (3a) insert:

- (3b) If a proposed exemption, or variation of an exemption or condition of an exemption, under this section is to apply in respect of the Adelaide Dolphin Sanctuary, the Minister must, before making his or her decision on whether to grant or vary an exemption or condition of an exemption, consult with and have regard to the views of the Minister for the Adelaide Dolphin Sanctuary.

Part 7—Amendment of *Harbors and Navigation Act 1993*

25—Amendment of section 3—Objects of this Act

Section 3—after paragraph (f) insert:

- (g) insofar as this Act applies to the Adelaide Dolphin Sanctuary, to further the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*.

26—Amendment of section 4—Interpretation

Section 4(1)—before the definition of *adjacent land* insert:

Adelaide Dolphin Sanctuary has the same meaning as in the *Adelaide Dolphin Sanctuary Act 2005*;

27—Insertion of Part 2 Division 5

Part 2—after Division 4 insert:

Division 5—Miscellaneous

14A—General duty of Minister, CEO, authorised persons etc

The Minister, the CEO, an authorised person or any other person engaged in the administration of this Act must, if or when—

- (a) taking any action under this Act within any part of the Adelaide Dolphin Sanctuary; or
- (b) taking any action under this Act that is likely to have a direct impact on any part of the Adelaide Dolphin Sanctuary,

take into account, and seek to further, the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005* (insofar as they may be relevant).

28—Amendment of section 26—Licences for aquatic activities

Section 26(2b)—strike out subsection (2b) and substitute:

- (2b) If the licence is to be granted in relation to waters that form part of the Adelaide Dolphin Sanctuary, the CEO must consult with and have regard to the views of the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed.
- (2c) The regulations may exclude specified categories of licence from the operation of subsection (2a) or (2b).

Part 8—Amendment of *Historic Shipwrecks Act 1981*

29—Amendment of section 3—Interpretation

Section 3(1)—before the definition of *the Commonwealth Act* insert:

Adelaide Dolphin Sanctuary has the same meaning as in the *Adelaide Dolphin Sanctuary Act 2005*;

30—Amendment of section 15—Permits for exploration or recovery of shipwrecks and relics

Section 15—after subsection (3b) insert:

- (3c) If an application for a permit relates to an historic shipwreck or historic relic located within the Adelaide Dolphin Sanctuary, the Minister must, in considering the application, seek to further the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*.

- (3d) If an application for a permit relates to an historic shipwreck or historic relic located, or an activity to be undertaken, within the Adelaide Dolphin Sanctuary and is within a class of applications prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of applications for all such permits), the Minister must, before making his or her decision on the application, consult with and have regard to the views of the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed.

Part 9—Amendment of *Mining Act 1971*

31—Amendment of section 6—Interpretation

- (1) Section 6(1)—before the definition of *appropriate court* insert:

Adelaide Dolphin Sanctuary has the same meaning as in the *Adelaide Dolphin Sanctuary Act 2005*;

- (2) Section 6(1)—after the definition of *mining tenement* insert:

Minister for the Adelaide Dolphin Sanctuary means the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed;

32—Substitution of section 10B

Section 10B—delete the section and substitute:

10B—Interaction with other legislation

The Minister must, in acting in the administration of this Act, take into account—

- (a) the objects of the *Natural Resources Management Act 2004*; and
- (b) insofar as they may be relevant—the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*.

33—Amendment of section 28—Grant of exploration licence

Section 28—after subsection (10) insert:

- (11) If an application for an exploration licence relates to an area within or adjacent to the Adelaide Dolphin Sanctuary, the Minister must, before making his or her decision on the application, refer the application to the Minister for the Adelaide Dolphin Sanctuary and consult with that Minister in relation to the matter.
- (12) If an application for an exploration licence is referred to the Minister for the Adelaide Dolphin Sanctuary under subsection (11) and the Minister to whom the administration of this Act is committed and the Minister for the Adelaide Dolphin Sanctuary cannot agree—
- (a) on whether an exploration licence should be granted; or
 - (b) if an exploration licence is granted, on the conditions to which the exploration licence should be subject,

the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).

34—Amendment of section 30A—Term and renewal of licence

Section 30A—after subsection (8) insert:

- (9) If an application for the renewal of an exploration licence relates to an area within or adjacent to the Adelaide Dolphin Sanctuary, the Minister must, before making his or her decision on the application, consult with and have regard to the views of the Minister for the Adelaide Dolphin Sanctuary.

35—Amendment of section 35—Application for lease

Section 35—after subsection (2c) insert:

- (2d) If an application for a mining lease relates to an area within or adjacent to the Adelaide Dolphin Sanctuary, the Minister must, before making his or her decision on the application, refer the application to the Minister for the Adelaide Dolphin Sanctuary and consult with that Minister in relation to the matter.
- (2e) If an application for a mining lease is referred to the Minister for the Adelaide Dolphin Sanctuary under subsection (2d) and the Minister to whom the administration of this Act is committed and the Minister for the Adelaide Dolphin Sanctuary cannot agree—
 - (a) on whether a mining lease should be granted; or
 - (b) if a mining lease is granted, on the conditions to which the mining lease should be subject,

the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).

36—Amendment of section 38—Term and renewal of mining lease

Section 38—after subsection (6) insert:

- (7) If an application for the renewal of a mining lease relates to an area within or adjacent to the Adelaide Dolphin Sanctuary, the Minister must, before making his or her decision on the application, consult with and have regard to the views of the Minister for the Adelaide Dolphin Sanctuary.

37—Amendment of section 41A—Grant of retention lease

Section 41A—after subsection (3c) insert:

- (3d) If an application for a retention lease relates to an area within or adjacent to the Adelaide Dolphin Sanctuary, the Minister must, before making his or her decision on the application, refer the application to the Minister for the Adelaide Dolphin Sanctuary and consult with that Minister in relation to the matter.
- (3e) If an application for a retention lease is referred to the Minister for the Adelaide Dolphin Sanctuary under subsection (3d) and the Minister to whom the administration of this Act is committed and the Minister for the Adelaide Dolphin Sanctuary cannot agree—
 - (a) on whether a retention lease should be granted; or
 - (b) if a retention lease is granted, on the conditions to which the retention lease should be subject,

the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).

38—Amendment of section 41D—Term and renewal of retention lease

Section 41D—after subsection (6) insert:

- (7) If an application for the renewal of a retention lease relates to an area within or adjacent to the Adelaide Dolphin Sanctuary, the Minister must, before making his or her decision on the application, consult with and have regard to the views of the Minister for the Adelaide Dolphin Sanctuary.

39—Amendment of section 52—Grant of miscellaneous purposes licence

Section 52—after subsection (3c) insert:

- (3d) If an application for a miscellaneous purposes licence relates to an area within or adjacent to the Adelaide Dolphin Sanctuary, the Minister must, before making his or her decision on the application, refer the application to the Minister for the Adelaide Dolphin Sanctuary and consult with that Minister in relation to the matter.
- (3e) If an application for a miscellaneous purposes lease is referred to the Minister for the Adelaide Dolphin Sanctuary under subsection (3d) and the Minister to whom the administration of this Act is committed and the Minister for the Adelaide Dolphin Sanctuary cannot agree—
 - (a) on whether a miscellaneous purposes lease should be granted; or
 - (b) if a miscellaneous purposes lease is granted, on the conditions to which the miscellaneous purposes lease should be subject,

the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).

40—Amendment of section 55—Term and renewal of miscellaneous purposes licence

Section 55—after subsection (6) insert:

- (7) If an application for the renewal of a miscellaneous purposes licence relates to an area within or adjacent to the Adelaide Dolphin Sanctuary, the Minister must, before making his or her decision on the application, consult with and have regard to the views of the Minister for the Adelaide Dolphin Sanctuary.

41—Amendment of section 59—Use of declared equipment

Section 59—after subsection (1ac) insert:

- (1ad) If an application for an authorisation to use declared equipment relates to an area within or adjacent to the Adelaide Dolphin Sanctuary, the Director of Mines must, before making his or her decision on the application, refer the application to the Minister for the Adelaide Dolphin Sanctuary and consult with that Minister in relation to the matter.
- (1ae) If an application for an authorisation is referred to the Minister for the Adelaide Dolphin Sanctuary under subsection (1ad) and the Minister to whom the administration of this Act is committed and the Minister for the Adelaide Dolphin Sanctuary cannot agree—
- (a) on whether an authorisation should be granted; or
 - (b) if an authorisation is granted, on the conditions to which the authorisation should be subject,

the Minister to whom the administration of this Act is committed and the Minister for the Adelaide Dolphin Sanctuary must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Director of Mines under this Act).

Part 10—Amendment of *National Parks and Wildlife Act 1972*

42—Amendment of section 5—Interpretation

Section 5—before the definition of *aircraft* insert:

Adelaide Dolphin Sanctuary has the same meaning as in the *Adelaide Dolphin Sanctuary Act 2005*;

43—Amendment of section 37—Objectives of management

Section 37—after its present contents (now to be designated as subsection (1)) insert:

- (2) The Minister, the Chief Executive and the Director must, in managing a reserve that is situated wholly or partly within the Adelaide Dolphin Sanctuary, seek to further the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005* (insofar as they may be relevant).

44—Amendment of section 51—Taking of protected animals etc

Section 51(1), penalty provision—delete "\$30 000" and substitute:

\$100 000

45—Amendment of section 60—Illegal possession of animals etc

Section 60(1), penalty provision—delete "\$30 000" and substitute:

\$100 000

46—Amendment of section 68—Molestation etc of protected animals

Section 68(1), penalty provision—delete "\$30 000" and substitute:

\$100 000

47—Amendment of section 68A—Hunting permits

Section 68A—after subsection (2) insert:

- (3) A permit under this section cannot authorise hunting within the Adelaide Dolphin Sanctuary or the possession by any person, while in that Sanctuary, of a firearm or other device for the purpose of hunting.

48—Amendment of section 69—Permits

Section 69—after subsection (2c) insert:

- (2d) If a permit granted under any provision of this Act relates to an activity that is to be, or may be, undertaken within the Adelaide Dolphin Sanctuary, the permit must be consistent with the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*.
- (2e) If an application for a permit under any provision of this Act relates to an activity that is to be, or may be, undertaken within the Adelaide Dolphin Sanctuary and is within a class of applications prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of applications for all such permits), the Minister must, before making a decision on the application, consult with and have regard to the views of the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed.

Part 11—Amendment of *Native Vegetation Act 1991*

49—Amendment of section 3—Interpretation

- (1) Section 3(1)—before the definition of *biological diversity* insert:

Adelaide Dolphin Sanctuary has the same meaning as in the *Adelaide Dolphin Sanctuary Act 2005*;

- (2) Section 3(1)—after the definition of *member* insert:

Minister for the Adelaide Dolphin Sanctuary means the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed;

50—Amendment of section 15—Delegation of powers and functions

Section 15—after subsection (8) insert:

- (9) Despite a preceding subsection, the Council may only delegate a power to act in relation to any matter within the Adelaide Dolphin Sanctuary with the approval of the Minister for the Adelaide Dolphin Sanctuary.

51—Amendment of section 25—Guidelines for the application of assistance and the management of native vegetation

- (1) Section 25—after subsection (3a) insert:

- (3b) Where the guidelines relate to land within the Adelaide Dolphin Sanctuary, the guidelines must seek to further the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005* (insofar as they may be relevant).

- (2) Section 25(5c)—delete subsection (5c) and substitute:

- (5c) For the purposes of this section, draft guidelines in relation to the application of financial and other assistance will only be taken to relate to an NRM region, pastoral land, the Murray-Darling Basin or the Adelaide Dolphin Sanctuary if the guidelines explicitly state that they do.

52—Amendment of section 29—Provisions relating to consent

Section 29—after subsection (9a) insert:

- (9b) If an application for the Council's consent relates to native vegetation, other than mangroves, within the Adelaide Dolphin Sanctuary and is within a class of applications prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of applications for all such consents), the Council must, before giving its consent, consult with and have regard to the views of the Minister for the Adelaide Dolphin Sanctuary.

- (9c) If an application for the Council's consent relates to mangroves (*Avicennia marina*) within the Adelaide Dolphin Sanctuary, the Council must, before giving its consent—
- (a) consult with the Minister for the Adelaide Dolphin Sanctuary; and
 - (b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is to be granted, then it be subject to conditions specified by the Minister).

53—Amendment of Schedule 1—Principles of native vegetation clearance

Schedule 1, clause 1—after paragraph (l) insert:

- (m) the clearance of vegetation would cause significant harm to the Adelaide Dolphin Sanctuary.

Part 12—Amendment of *Petroleum Act 2000*

54—Amendment of section 4—Interpretation

- (1) Section 4(1)—before the definition of *administrative penalty* insert:

Adelaide Dolphin Sanctuary has the same meaning as in the *Adelaide Dolphin Sanctuary Act 2005*;

- (2) Section 4(1)—after the definition of *mandatory condition* insert:

Minister for the Adelaide Dolphin Sanctuary means the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed;

55—Insertion of section 6A

After section 6 insert:

6A—Special provision relating to Adelaide Dolphin Sanctuary

The Minister must, in acting in the administration of this Act, take into account the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005* (insofar as they may be relevant).

56—Amendment of section 12—General authority to grant licence

Section 12—after its present contents (now to be designated as subsection (1)) insert:

- (2) If an application for the grant of a licence relates to an area within or adjacent to the Adelaide Dolphin Sanctuary, the Minister must, before making his or her decision on the application, refer the application to the Minister for the Adelaide Dolphin Sanctuary and consult with that Minister in relation to the matter.
- (3) If an application for the grant of a licence is referred to the Minister for the Adelaide Dolphin Sanctuary under subsection (2) and the Minister to whom the administration of this Act is committed and the Minister for the Adelaide Dolphin Sanctuary cannot agree—
 - (a) on whether a licence should be granted; or

- (b) if a licence is granted, on the conditions to which the licence should be subject,

the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).

- (4) If an application for the renewal of a licence relates to an area within or adjacent to the Adelaide Dolphin Sanctuary, the Minister must, before making his or her decision on the application, consult with and have regard to the views of the Minister for the Adelaide Dolphin Sanctuary.

57—Insertion of section 103B

After section 103A insert:

103B—Adelaide Dolphin Sanctuary

- (1) If a statement (or revised statement) of environmental objectives applies to any part of the Adelaide Dolphin Sanctuary, the Minister must not approve the statement (or revised statement) without the concurrence of the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed.
- (2) If the Minister to whom the administration of this Act is committed and the Minister for the Adelaide Dolphin Sanctuary cannot reach agreement in a case where subsection (1) applies, the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).

Legislative history

Notes

- In this version provisions that are uncommenced appear in italics.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act

Year	No	Title	Assent	Commencement
2005	5	<i>Adelaide Dolphin Sanctuary Act 2005</i>	14.4.2005	4.6.2005 except Sch 2 (cll 2—20, 22—41, 43, 48—53)—1.7.2005 (<i>Gazette 2.6.2005 p1684</i>) and except ss 12(1)—(3), (5) & (6) and 13—21—uncommenced