

South Australia

River Murray Act 2003

An Act to provide for the protection and enhancement of the River Murray and related areas and ecosystems; and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 River Murray Protection Areas
- 5 Interaction with other Acts

Part 2—Objects of Act and statutory objectives

- 6 Objects
- 7 Objectives
- 8 Administration of Act to achieve objects and objectives

Part 3—Administration

Division 1—The Minister

- 9 Functions and powers of the Minister
- 10 Annual report
- 11 Three-yearly reports
- 12 Power of delegation

Division 2—Authorised officers

- 13 Appointment of authorised officers
- 14 Powers of authorised officers
- 15 Hindering etc persons engaged in the administration of this Act
- 16 Protection from self-incrimination

Part 4—Ministerial activities and arrangements associated with the River Murray

Division 1—Minister may undertake works

- 17 Minister may undertake works

Division 2—Management agreements

- 18 Management agreements

Division 3—Entry onto land

19 Entry onto land

Division 4—Compulsory acquisition of land

20 Compulsory acquisition of land

Part 5—Implementation Strategy

21 Implementation Strategy

Part 6—Development of related policies and consideration of activities

22 Development of related policies and consideration of activities

Part 7—General duty of care

23 General duty of care

Part 8—Protection and other orders

Division 1—Orders

24 Protection orders

25 Action on non-compliance with a protection order

26 Reparation orders

27 Action on non-compliance with a reparation order

28 Reparation authorisations

29 Interim restraining orders

30 Related matters

Division 2—Registration of orders and effect of charges

31 Registration

32 Effect of charge

Division 3—Appeals to Court

33 Appeals to Court

Part 9—Miscellaneous

34 Native title

35 Immunity provision

36 False or misleading information

37 Continuing offence

38 Liability of directors

39 Criminal jurisdiction of Court

40 Service

41 Application or adoption of codes or standards

42 Regulations

Schedule—Transitional provisions

23 Transitional provisions

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *River Murray Act 2003*.

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);

animal means any live animal of any species and includes any animal organisms;

approved account means—

- (a) an account designated by the Minister as an approved account for the purposes of this Act, or a specified provision of this Act; or
- (b) the Consolidated Account;

associate—see subsection (2);

authorised officer—see section 13;

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

construct, in relation to any works, includes—

- (a) to establish, build or erect the works;
- (b) to repair the works;
- (c) to make alterations to the works;
- (d) to enlarge or extend the works;

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

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

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

general duty of care means the duty under section 23;

Implementation Strategy means the River Murray Act Implementation Strategy under Part 5;

infrastructure includes—

- (a) pumps, pumping stations, pipes, tanks;
- (b) dams, reservoirs, artificial lakes and wells;

- (c) embankments, walls, channels, drains, drainage holes or other forms of works or earthworks;
- (d) any item or thing used in connection with—
 - (i) testing, monitoring, protecting, enhancing or re-establishing any aspect of the environment; or
 - (ii) any other environmental program or initiative;
- (e) bridges and culverts;
- (f) buildings, structures and facilities;
- (g) other items brought within the ambit of this definition by the regulations;

interim restraining order means an Interim Restraining Order issued under Division 1 of Part 8;

land means, according to the context—

- (a) land as a physical entity, including land covered by water;
- (b) any legal estate or interest in, or right in respect of, land;

management agreement means an agreement under Division 2 of Part 4;

Mining Act means the *Mining Act 1971*, the *Opal Mining Act 1995* or the *Petroleum Act 2000*;

Murray-Darling Basin has the same meaning as in the *Murray-Darling Basin Act 1993*;

natural resources of the River Murray means—

- (a) the River Murray system; and
- (b) soil, ground water and surface water, air, vegetation, animals and ecosystems connected or associated with the River Murray system; and
- (c) cultural heritage and natural heritage, and amenity and geological values, connected or associated with the River Murray system; and
- (d) minerals and other substances, and facilities, that are subject to the operation of a Mining Act and are such that activities undertaken in relation to them may have an impact on the River Murray;

ORMs means the objectives under section 7;

place includes any land, water, premises or structure;

project includes any form of scheme, undertaking or activity;

protection order means a River Murray Protection Order issued under Division 1 of Part 8;

public authority includes a Minister, statutory authority or council;

related operational Act—see section 5(2);

reparation authorisation means an authorisation issued under section 28;

reparation order means a River Murray Reparation Order issued under Division 1 of Part 8;

River Murray means—

- (a) the main stem of the River Murray; and
- (b) the natural resources of the River Murray;

River Murray Protection Area—see section 4;

River Murray system means the River Murray itself, and all anabranches, tributaries, flood plains, wetlands and estuaries that are in any way connected or associated with the river, and related beds, banks and shores;

spouse includes putative spouse (whether or not a declaration of the relationship has been made under the *Family Relationships Act 1975*);

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;

vegetation includes any plant organisms;

vehicle includes any—

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

water resource has the same meaning as in the *Water Resources Act 1997*;

works includes any form of infrastructure.

- (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 five 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 relationship of a prescribed kind exists between them; or
 - (h) 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 Agreement under the *Murray-Darling Basin Act 1993* is a reference to the Murray-Darling Basin Agreement approved under that Act and includes—
- (a) the Schedules to that Agreement; and
 - (b) any amendment of or addition to the Agreement or the Schedules to the Agreement,
- (insofar as the Schedules, amendments or additions have effect under the *Murray-Darling Basin Act 1993*).
- (5) A reference in this Act to the costs of any damage to the River Murray 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.
- (6) For the purposes of this or any other Act, the Minister may, in assessing the costs or extent of any damage to the River Murray, apply any assumptions determined by the Minister to be reasonable in the circumstances.

4—River Murray Protection Areas

- (1) The Governor may, by regulation, designate areas as River Murray Protection Areas for the purposes of this or any other Act.
- (2) The Governor may, in designating areas under subsection (1), designate different areas for different purposes or different Acts (and accordingly areas designated for one purpose or Act may overlap with other areas designated for another purpose or Act).

5—Interaction with other Acts

- (1) 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.
- (2) For the purposes of this Act, the following are related operational Acts:
 - (b) *Aquaculture Act 2001*;
 - (c) *Coast Protection Act 1972*;
 - (d) *Crown Lands Act 1929*;
 - (e) *Development Act 1993*;
 - (f) *Environment Protection Act 1993*;
 - (g) *Fisheries Act 1982*;
 - (h) *Harbors and Navigation Act 1993*;
 - (i) *Heritage Act 1993*;
 - (j) *Historic Shipwrecks Act 1981*;
 - (k) *Irrigation Act 1994*;
 - (l) *Murray-Darling Basin Act 1993*;

- (m) *National Parks and Wildlife Act 1972*;
- (n) *Native Vegetation Act 1991*;
- (o) *Natural Resources Management Act 2004*;
- (p) *South Eastern Water Conservation and Drainage Act 1992*;
- (r) any Mining Act;
- (s) any other Act prescribed as a related operational Act by the regulations.

Part 2—Objects of Act and statutory objectives

6—Objects

- (1) The objects of this Act are—
 - (a) to ensure that all reasonable and practicable measures are taken to protect, restore and enhance the River Murray in recognition of its critical importance to the South Australian community and its unique value from environmental, economic and social perspectives and to give special acknowledgement to the need to ensure that the use and management of the River Murray sustains the physical, economic and social well being of the people of the State and facilitates the economic development of the State; and
 - (b) to provide mechanisms to ensure that any development or activities that may affect the River Murray are undertaken in a way that provides the greatest benefit to, or protection of, the River Murray while at the same time providing for the economic, social and physical well being of the community; and
 - (c) to provide mechanisms so that development and activities that are unacceptable in view of their adverse effects on the River Murray are prevented from proceeding, regulated or brought to an end; and
 - (d) to promote the principles of ecologically sustainable development in relation to the use and management of the River Murray; and
 - (e) to ensure that proper weight is given to the significance and well being of the River Murray when legislative plans and strategies are being developed or implemented; and
 - (f) to respect the interests and aspirations of indigenous peoples with an association with the River Murray and to give due recognition to the ability of those indigenous people to make a significant contribution to the promotion of the principles of ecologically sustainable development in relation to the use and management of the River Murray; and
 - (g) to respect the interests and views of other people within the community with an association with the River Murray and to give due recognition to the ability of those people to make a significant contribution to the promotion of the principles of ecologically sustainable development in relation to the use and management of the River Murray; and
 - (h) otherwise to ensure the future health, and to recognise the importance, of the River Murray.

- (2) For the purposes of this section, the following are declared to be the 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 and to the facilitation of sustainable economic development.

7—Objectives

- (1) The following objectives will apply in connection with the operation of this Act:
- (a) the river health objectives; and
 - (b) the environmental flow objectives; and
 - (c) the water quality objectives; and
 - (d) the human dimension objectives.
- (2) The river health objectives are as follows:
- (a) the key habitat features in the River Murray system are to be maintained, protected and restored in order to enhance ecological processes;
 - (b) the environments constituted by the River Murray system, with particular reference to high-value floodplains and wetlands of national and international importance, are to be protected and restored;
 - (c) the extinction of native species of animal and vegetation associated with the River Murray system is to be prevented;
 - (d) barriers to the migration of native species of animal within the River Murray system are to be avoided or overcome.
- (3) The environmental flow objectives are as follows:
- (a) ecologically significant elements of the natural flow regime of the River Murray system are to be reinstated and maintained;
 - (b) the Murray mouth should be kept open in order to maintain navigation and the passage of fish in the area, and to enhance the health of the River Murray system and estuarine conditions in the Coorong;
 - (c) significant improvements are to be made in the connectivity between and within the environments constituted by the River Murray system.

- (4) The water quality objectives are as follows:
- (a) water quality within the River Murray system should be improved to a level that sustains the ecological processes, environmental values and productive capacity of the system;
 - (b) the impact of salinity on the ecological processes and productive capacity of the River Murray system is to be minimised;
 - (c) nutrient levels within the River Murray system are to be managed so as to prevent or reduce the occurrence of algal blooms, and to minimise other impacts from nutrients on the ecological processes, environmental values and productive capacity of the system;
 - (d) the impact of potential pollutants, such as sediment and pesticides, on the environments constituted by the River Murray system is to be minimised.
- (5) The human dimension objectives are as follows:
- (a) a responsive and adaptable approach to the management of the River Murray system is to be implemented taking into account ecological outcomes, community interests and new information that may become available from time to time;
 - (b) the community's knowledge and understanding of the River Murray system is to be gathered, considered and disseminated in order to promote the health and proper management of the system;
 - (c) the interests of the community are to be taken into account by recognising indigenous and other cultural, and historical, relationships with the River Murray and its surrounding areas, and by ensuring appropriate participation in processes associated with the management of the River Murray system;
 - (d) the importance of a healthy river to the economic, social and cultural prosperity of communities along the length of the river, and the community more generally, is to be recognised.
- (6) The objectives will be collectively known as the *Objectives for a Healthy River Murray* (or *ORMs*).

8—Administration of Act to achieve objects and objectives

The Minister, the 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—

- (a) the objects of this Act; and
- (b) the ORMs.

Part 3—Administration

Division 1—The Minister

9—Functions and powers of the Minister

- (1) The functions of the Minister under this Act are—
- (a) to prepare the Implementation Strategy; and
 - (b) to undertake a role in the development of statutory instruments that are to have application within the Murray-Darling Basin; and
 - (c) to provide advice with respect to the approval of activities proposed to be undertaken within the Murray-Darling Basin that may have an impact on the River Murray; and
 - (d) to consult with relevant persons, bodies or authorities, including indigenous peoples with an association with the River Murray, and with the wider community, about the goals or outcomes that should be adopted or pursued in order to achieve or advance the objects of this Act and the ORMs; and
 - (e) as far as reasonably practicable and appropriate—
 - (i) to act to integrate the administration of this Act with the administration of other legislation that may affect the River Murray; and
 - (ii) to promote the integration or co-ordination of policies, programs, plans and projects developed, administered or undertaken by other persons, bodies or authorities insofar as they are relevant to the protection, improvement or enhancement of the River Murray; and
 - (f) to institute, supervise or promote programs to protect, maintain or improve the River Murray; and
 - (g) to undertake monitoring programs to collect data on the state of the River Murray and other relevant information, and to assess and apply other information relevant to the River Murray obtained from other programs or sources; and
 - (h) to conduct or promote research and public education in relation to the protection, improvement or enhancement of the River Murray; and
 - (i) to keep the state of the River Murray under review; and
 - (j) to keep—
 - (i) the operation of this Act under review; and
 - (ii) the operation of any related operational Act under review, insofar as may be relevant to the River Murray or to securing the objects of this Act; and
 - (k) to consider, as the Minister thinks fit—

- (i) whether it is necessary or desirable to amend any Act (including this Act), or to modify any legislative policies or administrative practices (whether under this or any other Act) in order to advance the objects of this Act and the ORMs; or
 - (ii) whether additional Acts should be prescribed as related operational Acts for the purposes of this Act,and to make recommendations in relation to these matters; and
 - (l) to assess the extent to which the objects of this Act are being considered in the administration of other relevant Acts; and
 - (m) to undertake the enforcement of this Act, especially in relation to the general duty of care; and
 - (n) such other functions assigned to the Minister by or under this or any other Act.
- (2) The Minister—
- (a) must consult with prescribed persons, bodies or authorities when acting in prescribed circumstances; and
 - (b) should, when consulting with indigenous peoples under subsection (1)(d), give special consideration to their particular needs; and
 - (c) should, when consulting with other people, give consideration to any special needs that they may have in the circumstances.
- (3) The administration of—
- (a) this Act; and
 - (b) the *Murray-Darling Basin Act 1993*,
- must be committed to the same Minister.
- (4) The Minister should adopt a leadership role in relation to the management of the Murray-Darling Basin.
- (5) 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 the *Murray-Darling Basin Act 1993*; or
 - (c) furthering the objects of this Act or the ORMs.
- (6) Without limiting the operation of subsection (5), the Minister may—
- (a) enter into any form of contract, agreement or arrangement; and
 - (b) acquire, hold, deal with and dispose of real and personal property or any interest in real or personal property; and
 - (c) carry out projects in relation to the River Murray (including projects that are relevant to the implementation of the *Murray-Darling Basin Act 1993*, the Agreement under that Act, or any resolution of the Ministerial Council under the Agreement under that Act); and
 - (d) provide for the care, control, management, conservation or preservation of any land within the Murray-Darling Basin; and

- (e) act in conjunction with any other person or authority.

10—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 report must include—
 - (a) information on the implementation of this Act (taking into account the provisions of the Implementation Strategy); and
 - (b) information on the extent to which the objects of this Act and the ORMs are being achieved; and
 - (c) reports on the following matters for the relevant 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 an authorised officer under Part 8.
- (3) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 6 sitting days after the report is prepared.

11—Three-yearly reports

- (1) The Minister must, on a three-yearly basis, undertake a review of this Act.
- (2) The review must include—
 - (a) an assessment of the interaction between this Act, the related operational Acts, and any other Act considered relevant by the Minister; and
 - (b) an assessment of the state of the River Murray, especially taking into account the ORMs,and may include other matters determined by the Minister to be relevant to a review of this Act.
- (3) The review must be undertaken so as to coincide with the end of a financial year and the outcome of the review must be reported on as part of the Minister's annual report to Parliament for that financial year.

12—Power of delegation

- (1) The 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 or any related operational 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

13—Appointment of authorised officers

- (1) The Minister may appoint persons to be authorised officers for the purposes of this Act.
- (2) An appointment under subsection (1) may be made subject to conditions or limitations specified in the instrument of appointment.
- (3) 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.
- (4) 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.

14—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, at any reasonable time—
- (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, securing 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;
 - (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 to answer questions;
 - (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) Without limiting subsection (1), an authorised officer may exercise a power under this section for the purpose of determining whether a management agreement is being, or has been, complied with.
- (3) An authorised officer must not exercise a power conferred by subsection (1) or (2) in respect of residential premises (but may be exercised in respect of any vessel or craft).
- (4) An authorised officer in exercising powers under this section may be accompanied by such assistants as are reasonably required in the circumstances.
- (5) An authorised officer may use force to enter any place or vehicle—
- (a) on the authority of a warrant issued by a magistrate; or
 - (b) if the authorised officer believes, on reasonable grounds, that the circumstances require immediate action to be taken.
- (6) A magistrate must not issue a warrant under subsection (5) 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.
- (7) 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.

-
- (8) 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.
- (9) 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 River Murray that the authorised officer (or authorised officers more generally) not enter a specified area.
- (10) 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.
- (11) For the purposes of subsection (10), an *information sheet* is a document approved by the Minister for the purposes of that subsection.

15—Hindering etc persons engaged in the administration of this 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: \$20 000.

- (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 14(1)(g) is guilty of an offence.

Maximum penalty: \$10 000.

- (3) An authorised officer, or a person assisting an authorised officer, who—

- (a) addresses offensive language to any person; or
- (b) without lawful authority hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Maximum penalty: \$10 000.

16—Protection from self-incrimination

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

Part 4—Ministerial activities and arrangements associated with the River Murray

Division 1—Minister may undertake works

17—Minister may undertake works

- (1) For the purposes of—
 - (a) furthering the objects of this Act or the ORMs; or
 - (b) carrying out any project in relation to the River Murray; or
 - (c) performing any function of the Minister under this Act,the Minister may construct, maintain or remove such works, and undertake any work, as the Minister thinks fit.
- (2) Without limiting the operation of subsection (1), the works may include—
 - (a) infrastructure and other devices constructed, established or used for the purposes of—
 - (i) altering or managing the flow of water; or
 - (ii) altering or managing water levels, including altering or managing the level of any ground water, surface water or water within soils, or altering or managing water-quality factors, including salinity, nutrients, turbidity and algae;
 - (b) infrastructure and other devices constructed, established or used for the purposes of—
 - (i) protecting or monitoring any aspect of the natural resources of the River Murray; or
 - (ii) improving, enhancing or re-establishing any aspect of the natural resources of the River Murray; or
 - (iii) implementing any other form of environmental improvement program;
 - (c) works constituting channels, drains, culverts or bridges;
 - (d) works constituting storage or workshop facilities, camps or service facilities.
- (3) Without limiting the operation of subsection (1) or (2), the work undertaken by the Minister may include—
 - (a) establishing, altering or removing any bank or levee;
 - (b) activities associated with environmental testing or evaluation.

Division 2—Management agreements

18—Management agreements

- (1) The Minister may enter into an agreement (a *management agreement*) relating to—
- (a) the conservation or management of water;
 - (b) the preservation, conservation, management, enhancement or re-establishment of any aspect of the natural resources of the River Murray;
 - (c) any other matter associated with furthering the objects of this Act or the ORMs,
- with the owner of any land within the Murray-Darling Basin.
- (2) Without limiting the operation of subsection (1), a management agreement may, with respect to the land to which it relates—
- (a) require specified work or work of a specified kind be carried out on the land, or authorise the performance of work on the land;
 - (b) restrict the nature of any work that may be carried out on the land;
 - (c) prohibit or restrict specified activities or activities of a specified kind on the land;
 - (d) provide for the care, control, management or operation of any infrastructure, plant or equipment;
 - (e) provide for the management of any matter in accordance with a particular management plan (which may then be varied from time to time by agreement between the Minister and the owner of the land);
 - (f) provide for the adoption or implementation of environment protection measures or environment improvement programs;
 - (g) provide for the testing or monitoring of any aspect of the natural resources of the River Murray;
 - (h) provide for financial, technical or other professional advice or assistance to the owner of land with respect to any relevant matter;
 - (i) provide for a remission or exemption in respect of a levy under Division 1 of Part 8 of the *Water Resources Act 1997*;
 - (j) provide for remission of rates or taxes in respect of the land;
 - (k) provide for the Minister to pay to the owner of the land an amount as an incentive to enter into the agreement.
- (3) The Minister should take reasonable steps to consult with the relevant council before entering into a management agreement that provides for the remission of any council rates under subsection (2)(j).
- (4) A term of management agreement under subsection (2)(i) or (j) has effect despite any other Act or law to the contrary.

- (5) The Registrar-General must, on the application of a party to a management agreement, note the agreement against the relevant instrument of title or, in the case of land not under the provisions of the *Real Property Act 1886*, against the land.
- (6) A management agreement has no force or effect under this Act until a note is made under subsection (5).
- (7) Where a note has been entered under subsection (5), the agreement is binding on each owner of the land from time to time whether or not the owner was the person with whom the agreement was made and despite the provisions of the *Real Property Act 1886*, and on any occupier of the land.
- (8) The Registrar-General must, if satisfied on the application of the Minister or the owner of the land that an agreement in relation to which a note has been made under this section has been rescinded or amended, enter a note of the rescission or amendment against the instrument of title, or against the land (but must otherwise ensure that the note is not removed once made).
- (9) Except to the extent that the agreement provides for a remission or exemption under subsection (2)(i) or (j), a management agreement does not affect the obligations of an owner or occupier of land under any other Act.

Division 3—Entry onto land

19—Entry onto land

- (1) For the purposes of—
 - (a) undertaking any work or other activity in connection with—
 - (i) furthering the objects of this Act or the ORMs; or
 - (ii) carrying out any project in relation to the River Murray; or
 - (iii) exercising any power or performing any function of the Minister under this Act; or
 - (b) undertaking an activity in connection with a management agreement,a person authorised by the Minister may—
 - (c) enter or pass over any land that is not vested in the Minister;
 - (d) bring onto any land that is not vested in the Minister any vehicles, plant or equipment;
 - (e) temporarily occupy any land that is not vested in the Minister and carry out work on that land.
- (2) A person must, in exercising a power under subsection (1), insofar as is reasonably practicable—
 - (a) minimise disturbance to any land; and
 - (b) ensure that any land disturbed by the exercise of the power is restored to its previous condition after the completion of any work or activity (unless the Minister and the owner of the relevant land come to some other arrangement); and
 - (c) co-operate with any owner or occupier of the land.

- (3) No compensation is payable with respect to the exercise of a power under this section.
- (4) A person must not, without reasonable excuse, hinder or obstruct a person exercising a power under this section.
Maximum penalty: \$20 000.
- (5) This section does not limit or derogate from the powers of the Minister or an authorised officer under another provision of this Act.

Division 4—Compulsory acquisition of land

20—Compulsory acquisition of land

- (1) The Minister may acquire land under this section where the Minister considers that the acquisition of the land is reasonably necessary to further the objects of this Act or the implementation of the ORMs.
- (2) The *Land Acquisition Act 1969* applies to the acquisition of land in pursuance of this section.
- (3) Nothing in this section affects—
 - (a) the ability of the Minister to acquire land by agreement;
 - (b) the operation of any other section of this Act.

Part 5—Implementation Strategy

21—Implementation Strategy

- (1) The Minister must prepare and maintain a plan to be called the *River Murray Act Implementation Strategy*.
- (2) The Implementation Strategy must—
 - (a) set out the priorities that the Minister will pursue in order to achieve the objects of this Act and to further the implementation of the ORMs; and
 - (b) set out strategies that the Minister intends to adopt to meet those priorities; and
 - (c) take into account the State Natural Resources Management Plan and the Planning Strategy,and may include other matters as the Minister thinks fit.
- (3) The Minister must review the Implementation Strategy at least once in every five years.
- (4) The Minister may amend the Implementation Strategy from time to time.
- (5) The Minister should, in preparing the Implementation Strategy or undertaking a review of the Implementation Strategy, take into account any statutory instrument under a related operational Act that has application within the Murray-Darling Basin and that may be relevant to the operation of this Act, and may take into account such other strategies and policies as the Minister thinks fit.
- (6) The Implementation Strategy may incorporate such documents, policy statements, proposals and other matters as the Minister thinks fit.

- (7) The Minister must—
- (a) make appropriate provision for the publication of the Implementation Strategy (including by publication in the Gazette); and
 - (b) ensure that copies of the Implementation Strategy 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 notice of any amendment to the Implementation Strategy is published in the Gazette within a reasonable time after the amendment is made.
- (8) The Implementation Strategy is an expression of policy and does not affect rights or liabilities (whether of a substantive, procedural or other nature).

Part 6—Development of related policies and consideration of activities

22—Development of related policies and consideration of activities

- (1) This section applies to—
- (a) a statutory instrument that is to have application within the Murray-Darling Basin referred to the Minister (whether for approval, endorsement, concurrence, consultation, comment or other form of consideration or assessment) under or pursuant to—
 - (i) a related operational Act; or
 - (ii) subsection (2); or
 - (b) an application for a statutory authorisation referred to the Minister (whether for approval (or refusal), endorsement, concurrence, consultation, comment or other form of consideration or assessment) under or pursuant to a related operational Act or under or pursuant to a condition imposed by the Minister under this section.
- (2) For the purposes of subsection (1)(a)(ii), the Governor may, by regulation, require that statutory instruments of a prescribed class under an Act, when being considered, prepared, reviewed, amended or varied, be referred to the Minister under this Act at a time, or in a manner, specified by the regulation (and any such regulation will have effect despite any other Act or law).
- (3) A regulation under subsection (2) cannot apply with respect to a Plan Amendment Report under the *Development Act 1993*.
- (4) The Minister must, in acting with respect to a statutory instrument or an application for a statutory authorisation to which this section applies—
- (a) take into account, and seek to further—
 - (i) the objects of this Act; and
 - (ii) the ORMs; and
 - (b) in the case of a statutory instrument—take into account—

- (i) the terms or requirements of the Agreement under the *Murray-Darling Basin Act 1993*; and
 - (ii) any relevant resolution of the Ministerial Council under the Agreement under the *Murray-Darling Basin Act 1993*; and
- (c) in the case of an application for a statutory authorisation—take into account—
 - (i) the extent to which an activity proposed to be undertaken pursuant to the statutory authorisation may affect the River Murray; and
 - (ii) the extent to which any similar activity is being undertaken, or is likely to be undertaken in the foreseeable future, in any other part of the Murray-Darling Basin and, insofar as it is or it may be, the accumulative effects, or anticipated accumulative effects, (if any) of the activity or activities on the River Murray; and
 - (iii) the views, responses or requirements of any other person or body that, in the opinion of the Minister, are relevant to an assessment by the Minister of the statutory authorisation; and
 - (iv) the terms or requirements of the Agreement under the *Murray-Darling Basin Act 1993*; and
 - (v) any policy published by the Minister under subsection (11) (if relevant), or such other policy as the Minister thinks fit,and may take into account such other matters as the Minister thinks fit.
- (5) If the Minister considers that he or she cannot endorse or otherwise agree with a statutory instrument referred to the Minister (on any basis) under or pursuant to this or any other Act, or the Minister considers that an amendment should be made to such a statutory instrument, and the authority responsible for the preparation of the instrument or the Minister responsible for the administration of the Act under which the statutory instrument has been prepared (the *relevant Minister*) does not agree with the position taken by the Minister, the Minister responsible for the administration of this Act or the relevant Minister may 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 both Ministers (and of any other relevant authority) and will have effect despite any other Act or law).
- (6) If the Minister is of the opinion—
 - (a) that an activity proposed to be undertaken pursuant to a statutory authorisation would or could cause harm to the River Murray; but
 - (b) that there is insufficient information available to the Minister to enable the Minister to assess the likelihood of harm, or the extent or impact of harm, to the River Murray; and
 - (c) that it is necessary to carry out further investigations, or to obtain further information, before an application for the statutory authorisation can be dealt with by the Minister,

the Minister may, by notice issued in accordance with the regulations, extend any period specified by or under a related operational Act as the period within which the Minister must (or should) deal with the application or that otherwise relates to the period within which the Minister may (or should) respond (and any such notice will have effect despite the provisions of the related operational Act).

- (7) If the Minister considers that conditions should be imposed with respect to any statutory authorisation granted on an application referred to the Minister, the Minister may direct that the statutory authorisation should not be granted without the imposition of conditions specified by the Minister (and any such direction will have effect despite any other Act or law (but not so as to affect a determination or decision of the Governor under this or any other Act)).
- (8) Without limiting the operation of subsection (7), a condition may include—
- (a) a requirement that the person to whom the statutory authorisation is granted, or who otherwise has the benefit of the statutory authorisation, enter into a bond in such sum and subject to such terms and conditions specified by the Minister, or enter into some other arrangement specified by the Minister (which may include payment of a sum or sums of money into an approved account), to ensure that money is available to address the costs of any damage to the River Murray in the event of a breach of any term or condition of the statutory authorisation;
 - (b) a requirement that a person to whom the statutory authorisation is granted, or who otherwise has the benefit of the statutory authorisation, undertake any steps necessary to off-set or protect against any adverse impact on the River Murray on account of any activity undertaken pursuant to the authorisation, including by the payment of a sum or sums of money into an approved account in accordance with a scheme specified by the Minister;
 - (c) a requirement that the person to whom the statutory authorisation is granted, or who otherwise has the benefit of the statutory authorisation—
 - (i) develop to the satisfaction of the Minister an environment improvement program containing requirements specified by the Minister, and then comply with the requirements of that program to the satisfaction of the Minister; or
 - (ii) participate in a specified environment improvement program (including a program that applies with respect to another part of the River Murray) to the satisfaction of the Minister;
 - (d) a requirement that a person to whom the statutory authorisation is granted, or who otherwise has the benefit of the statutory authorisation, participate in any other form of scheme to protect, restore or otherwise benefit the River Murray specified by the Minister (including a scheme established by the Minister or any other person or body that has effect in relation to another part of the River Murray and including by the payment of a sum or sums of money into an approved account for the purposes of the scheme);
 - (e) a requirement that a person to whom the statutory authorisation is granted, or who otherwise has the benefit of the statutory authorisation, comply with any specified code or standard prepared or published by the Minister or by another person or body specified by the Minister;

- (f) a requirement that if application is made in due course for the renewal or extension of the statutory authorisation, then that application must also be referred to the Minister.
- (9) If an application for the renewal or extension of a statutory authorisation is referred to the Minister, then this section will apply in relation to the application as if it were an application for a new statutory authorisation.
- (10) The Minister may, by notice in writing to another authority or any other person, request that specified information be provided to the Minister to enable the Minister to consider any matter relevant to the Minister's consideration or assessment of a matter referred to the Minister in a case where this section applies (and the other authority or person must not, without reasonable excuse, fail to comply with a request of the Minister under this subsection).
- (11) The Minister may, by notice in the Gazette and in such other manner as the Minister thinks fit, publish policies in connection with the Minister's function in assessing applications for statutory authorisations to which this section applies.
- (12) A policy published by the Minister under subsection (11) may—
 - (a) specify matters that the Minister may take into account in assessing applications for specified classes of statutory authorisations;
 - (b) specify conditions that the Minister may impose with respect to specified classes of statutory authorisations;
 - (c) specify cases or circumstances where the Minister may oppose the granting of specified classes of statutory authorisations;
 - (d) specify such other matters as the Minister thinks fit.
- (13) A policy published by the Minister under subsection (11)—
 - (a) may make different provision according to circumstances specified by the policy; and
 - (b) may be varied by the Minister, by notice published in the Gazette.
- (14) The publication of a policy under subsection (11) does not limit or affect—
 - (a) the development, adoption or application of other policies (which may or may not be published) by the Minister; or
 - (b) the consideration of any other matter by the Minister.
- (15) If the Minister is of the opinion that a particular application for a statutory authorisation falls within a case or circumstance under subsection (12)(c), the Minister may determine to oppose the granting of the statutory authorisation without further consideration of the application and without taking any other step in relation to the application.
- (16) If the Minister—
 - (a) requires the imposition of a condition or conditions specified in a policy under subsection (12)(b); or
 - (b) determines to oppose an application for a statutory authorisation under the terms of a policy under subsection (12)(c),

no appeal will lie against the condition or conditions, or the determination (as the case may be), if the regulations so provide (and this provision will have effect despite any other Act or law).

- (17) If a decision of the Minister, or a condition specified by the Minister, with respect to an application for a statutory authorisation to which this section applies is (either directly or indirectly) the subject of an appeal under a related operational Act, the Minister will be a party to the appeal.
- (18) Despite a preceding subsection, the Minister may, by notice in the Gazette, exempt an application for a statutory authorisation, or applications for a statutory authorisation of a specified class, from the requirement to be referred to the Minister.
- (19) An exemption under subsection (18)—
 - (a) will have effect despite the provisions of any related operational Act; and
 - (b) may have effect subject to such conditions as the Minister thinks fit and specifies by notice in the Gazette.
- (20) The Minister may, at any time, by further notice in the Gazette—
 - (a) vary or revoke an exemption;
 - (b) vary or revoke a condition of an exemption.
- (21) A person must not contravene or fail to comply with a condition of an exemption.
Maximum penalty: \$20 000.

Part 7—General duty of care

23—General duty of care

- (1) A person must take all reasonable measures to prevent or minimise any harm to the River Murray 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 River Murray; 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 River Murray to the State and to the environment and economy of the State; and
 - (vi) insofar as is reasonably practicable and relevant, any assessment of potential harm to the River Murray 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 8; and
 - (b) a reparation order or reparation authorisation may be issued under Part 8 in respect of the breach of the duty.

Part 8—Protection and other orders

Division 1—Orders

24—Protection orders

- (1) The Minister may issue a River Murray Protection Order under this Division for the purpose of securing compliance with—
- (a) the general duty of care; or
 - (b) a condition of—
 - (i) a statutory authorisation that relates to an activity carried out, or to be carried out, within the Murray-Darling Basin, insofar as this is relevant to the River Murray; or
 - (ii) an exemption that operates under this Act; or
 - (c) a management agreement; or
 - (d) any other requirement imposed by or under this Act.
- (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;
 - (iv) a requirement that the person prepare, in accordance with specified requirements and to the satisfaction of the Minister, a plan of action to prevent, minimise or control harm to the River Murray;
 - (v) a requirement that the person comply with such a plan of action to the satisfaction of the Minister;
 - (vi) a requirement that the person enter into a bond in such sum and subject to such terms and conditions specified in the order, or enter into some other arrangement specified in the order (which may include payment of a sum of money into an approved account), to ensure that money is available to address the costs of any damage, or threatened damage, to the River Murray;
 - (vii) a requirement that the person comply with any specified code or standard prepared or published by the Minister or by another specified body;
 - (viii) a requirement that the person undertake specified tests or monitoring;
 - (ix) a requirement that the person furnish to the Minister specified results or reports;
 - (x) a requirement that the person appoint or engage a person with specified qualifications to prepare a plan or report or to undertake tests or monitoring required by the order;
- (e) must state that the person may, within 14 days, appeal to the Court against the order.
- (3) An authorised officer may, if of the opinion that urgent action is required for the protection of the River Murray, issue an emergency protection order imposing requirements of a kind referred to in subsection (2)(d) as reasonably required for the protection of the River Murray.
- (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 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 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 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 protection 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.
- (8) The Minister may, by written notice served on a person to whom a protection order has been issued, vary or revoke the order.
- (9) A person to whom a protection order is issued must comply with the order.

Maximum penalty:

- (a) if the order was issued for the purpose of securing compliance with a requirement imposed by or under this Act or a related operational Act and a penalty is fixed by this Act or the related operational Act for contravention of that requirement—that penalty;
- (b) 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;
- (c) 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 in relation to a domestic activity—\$250;
- (b) in any other case—\$500.

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

Maximum penalty: \$10 000.

25—Action on non-compliance with a 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, a member of the Minister's department, or another person authorised by the Minister for the purpose.
- (3) A person taking action under this section may enter any relevant land 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.

26—Reparation orders

- (1) If the Minister is satisfied that a person has caused harm to the River Murray by contravention of—
- (a) the general duty of care; or
 - (b) a condition of—
 - (i) a statutory authorisation that relates to an activity carried out within the Murray-Darling Basin; or
 - (ii) an exemption that operates under this Act; or
 - (c) a management agreement; or
 - (d) any other requirement imposed by or under this Act,

the Minister may issue a River Murray Reparation Order requiring the person—

- (e) to take specified action within a specified period to make good any resulting damage to the River Murray; or
- (f) to make a payment or payments into an approved account to enable action to be taken to address any resulting damage to the River Murray,

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 River Murray, 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 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 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 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.
- (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: \$120 000.

27—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, a member of the Minister's department, or another person authorised by the Minister for the purpose.
- (3) A person taking action under this section may enter any relevant land 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.

28—Reparation authorisations

- (1) If the Minister is satisfied that a person has caused harm to the River Murray by contravention of—
 - (a) the general duty of care; or
 - (b) a condition of—
 - (i) a statutory authorisation that relates to an activity carried out within the Murray-Darling Basin; or
 - (ii) an exemption that operates under this Act; or
 - (c) a management agreement; or
 - (d) any other requirement imposed by or under this Act,

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 River Murray.
- (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 River Murray.
- (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 land 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.

29—Interim restraining orders

- (1) If the Minister is of the opinion—
 - (a) that an activity may cause, or may be causing, harm to the River Murray; but
 - (b) that there is insufficient information available to the Minister to enable the Minister to assess the likelihood of harm, or the extent or impact of harm, to the River Murray; and
 - (c) that an order under this section is necessary to ensure the protection of the River Murray pending the acquisition and assessment of information by the Minister,

the Minister may issue an Interim Restraining Order under this section requiring a person to discontinue, or not commence, a specified activity.

- (2) An order under this section takes effect on service of notice of the order on the person to whom it is directed and ceases to have effect after a period, not exceeding 28 days, specified in the order unless extended by the Court under Division 3.
- (3) If the Minister specifies a period under subsection (2) that is less than 28 days, the Minister may, by subsequent notice in writing to the person to whom the order was directed, extend the period of order (and may subsequently again extend that period), provided that the total period does not exceed 28 days.
- (4) A notice of an order under subsection (5) must set out the relevant person's right to appeal to the Court against the order.
- (5) The Minister may, by written notice served on the person to whom an order is directed under this section, vary or revoke the order.
- (6) A person must comply with the terms of an order under this section.
Maximum penalty: \$50 000.

30—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 River Murray Protection Order, River Murray 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 by or under this Division, or on account of any act or omission undertaken or made in the exercise of a power under this Division.

Division 2—Registration of orders and effect of charges

31—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 Division 1 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.

32—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 Court

33—Appeals to Court

- (1) A person to whom a protection order, reparation order or interim restraining order has been issued under Division 1 may appeal to the 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 14 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 River Murray 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 9—Miscellaneous

34—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* (Commonwealth).

35—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 River Murray, or any aspect of the River Murray (including by exercising or performing any power or function under another Act); or
- (c) furthering the ORMs (including by exercising or performing any power or function under another Act),

(including by changing the flow of the River Murray, causing the level of any water resource to rise or fall, inundating any place, causing or allowing any water to escape or to be redirected, taking action that may damage any land or property, or adversely affecting the use or enjoyment of any land or property), 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.

36—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty: \$10 000.

37—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.

38—Liability of directors

- (1) If a corporation commits an offence against this Act, each director of the corporation is guilty of an offence and liable to the same penalty as is fixed for the principal offence unless it is proved that the principal offence did not result from failure on the director's part to take reasonable care to prevent the commission of the offence.
- (2) A director of a corporation may be prosecuted and convicted of an offence under this section whether or not the corporation has been prosecuted or convicted of the offence committed by the corporation.

39—Criminal jurisdiction of Court

Offences constituted by this Act lie within the criminal jurisdiction of the Environment, Resources and Development Court.

40—Service

- (1) A notice, order or other document required or authorised by this Act to be given to or served on a person by the Minister or an authorised officer may—
 - (a) be served on the person or an agent of the person personally; or
 - (b) be left for the person at his or her place of residence or business with someone apparently over the age of 16 years; or
 - (c) be posted to the person at his or her last known address; or
 - (d) be transmitted by facsimile transmission or electronic mail to the person's facsimile number or electronic mail address (in which case the document will be taken to have been given or served at the time of transmission); or

- (e) be served on the person by fixing it to, or leaving it on, a vessel or craft that the person is apparently in charge of, or expected to board at some stage, if the person giving or serving the document has reasonable grounds to believe that service in this manner will bring the document to the attention of the person to be served.
- (2) Without limiting the effect of subsection (1), a notice, order or other document required or authorised to be given to or served on a person may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be given to or served on the person in accordance with that Act.

41—Application or adoption of codes or standards

- (1) A provision of this Act that allows for the application or incorporation of a code, standard, policy or other document (whether by or under a condition, order, regulation or otherwise) will be taken to allow the application or incorporation of the code, standard, policy or document as in force at the time of the application or incorporation of the code, standard, policy or other document or as in force from time to time.
- (2) If a code, standard, policy or other document is expressly applied or incorporated by or under the terms or provisions of a condition, order or regulation under this Act, then—
 - (a) the Minister should take steps to ensure that a copy of the code, standard, policy or other document is available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations (but the fact that a copy of a code, standard, policy or other document is not available in the manner envisaged by this paragraph does not render any relevant condition, order or regulation ineffectual or unenforceable); and
 - (b) in any legal proceedings, evidence of the code, standard, policy or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard, policy or other document.

42—Regulations

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) prohibit or restrict the undertaking of a specified activity, or an activity of a specified class, within a River Murray Protection Area, or a specified part of a River Murray Protection Area, specified by the regulations;
 - (b) provide that a person undertaking a specified activity, or an activity of a specified class, or proposing to undertake a specified activity, or an activity of a specified class, within a River Murray Protection Area, or a specified part of a River Murray Protection Area, comply with any prescribed requirement or condition;
 - (c) prohibit, restrict or regulate access to a River Murray Protection Area, or a specified part of a River Murray Protection Area;

-
- (d) provide for the registration of any infrastructure, plant or equipment in a River Murray Protection Area;
 - (e) require the provision of any report, statement, document, specification or other form of information to the Minister or to any other prescribed person or body;
 - (f) exempt classes of persons or activities from the application of this Act or specified provisions of this Act, either unconditionally or subject to conditions;
 - (g) prescribe fees, or provide for the Minister to determine fees, to be paid with respect to a matter under this Act and provide for the recovery of those fees;
 - (h) authorise the release or publication of information of a specified kind obtained in the administration of this Act;
 - (i) prescribe fines not exceeding \$20 000 for contravention of a regulation.
- (3) Without limiting the generality of paragraph (b) of subsection (2), a requirement under that paragraph may include a requirement that a person undertaking an activity—
- (a) enter into a bond in such sum and subject to such terms and conditions required or determined by or under the regulations, or enter into some other prescribed arrangement, to ensure that money is available to address the costs of any damage to the River Murray on account of the activity; or
 - (b) take steps to offset or protect against any adverse impact on the River Murray on account of the activity, including by the payment of a sum or sums of money into an account in accordance with a scheme established by or under the regulations; or
 - (c) develop or comply with environment improvement programs.
- (4) A regulation under subsection (2) cannot apply so as to prevent—
- (a) any operation conducted under a statutory authorisation granted under a Mining Act; or
 - (b) any activity undertaken under an approval granted under the *Development Act 1993* if—
 - (i) the approval is a development approval granted under the *Development Act 1993* after the commencement of this Act; and
 - (ii) the application for the approval of the relevant development was referred to the Minister responsible for the administration of this Act under section 37 of the *Development Act 1993* before the approval was granted.
- (5) Regulations under this Act—
- (a) may be of general application or limited application;
 - (b) may make different provision according to the matters or circumstances to which they are expressed to apply;
 - (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or any other person or body prescribed by the regulations;

- (d) may apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another prescribed body.
- (6) A regulation under this Act may make provisions of a saving or transitional nature consequent on the enactment of this Act or the commencement of specified provisions of this Act or specified regulations (including regulations made under subsection (2)(a), (b) or (c) at any time after the commencement of this Act).
- (7) A provision referred to in subsection (6) may, if the regulations so provide, take effect from a day that is earlier than the day on which the regulation is made but, in such a case, the provision does not operate so as—
 - (a) to affect, in a manner prejudicial to any person (other than the Crown), the rights of that person existing before the date of publication of the regulation; or
 - (b) to impose liabilities on any person (other than the Crown) in respect of anything done or omitted to be done before the date of publication of the regulation.

Schedule—Transitional provisions

23—Transitional provisions

- (1) Each of the following, if in existence on the commencement of this Act, must be reviewed by the relevant authority within five years after the commencement of this Act in order to ensure that proper consideration is given to any relevant object of this Act (unless the instrument is reviewed under its own Act, or the instrument expires, or is due or expected to expire, before the end of that five-year period):
 - (a) any program under section 13(1)(g) or 24(b) of the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986* that applies to any part of the Murray-Darling Basin;
 - (b) any aquaculture policy under the *Aquaculture Act 2001* that applies within the Murray-Darling Basin;
 - (c) a management plan under the *Coast Protection Act 1972* that affects the River Murray;
 - (d) a plan of management under Division 5 of Part 3 of the *National Parks and Wildlife Act 1972* that relates to a reserve located wholly or partly within the Murray-Darling Basin;
 - (e) a guideline under section 25 of the *Native Vegetation Act 1991* that relates to land within the Murray-Darling Basin.

-
- (2) The following applications that relate to a statutory authorisation granted before the commencement of this clause must be referred to the Minister:
- (a) an application for the renewal or extension of a permit under section 45 or 55 of the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986* that relates to an activity that is to be, or may be, undertaken within a River Murray Protection Area 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 the renewal or extension of all such permits);
 - (b) an application for the renewal or extension of a licence under Division 1 of Part 4 of the *Fisheries Act 1982* that is within a class prescribed by the regulations for the purposes of this provision;
 - (c) an application for the renewal or extension of a permit under section 50 of the *Fisheries Act 1982* that is within a class prescribed by the regulations for the purposes of this provision;
 - (d) an application for the renewal or extension of a permit under Part 5 of the *Heritage Act 1993* that relates to an area within a River Murray Protection Area 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 the renewal or extension of all such permits);
 - (e) an application for the renewal or extension of a permit under section 15 of the *Historic Shipwrecks Act 1981* that relates to an area within a River Murray Protection Area 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 the renewal or extension of all such permits);
 - (f) an application for the renewal or extension of a lease, licence or agreement under section 35 of the *National Parks and Wildlife Act 1972* that relates to a reserve located wholly or partly within a River Murray Protection Area 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 the renewal or extension of all such leases, licences or agreements);
 - (g) an application for the renewal or extension of a permit under section 69 of the *National Parks and Wildlife Act 1972* that relates to an activity that is to be, or may be, undertaken within a River Murray Protection Area 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 the renewal or extension of all such permits).
- (3) Where an application for the renewal or extension of a statutory authorisation is referred to the Minister under subclause (2), the statutory authorisation will be taken to have been referred under a related operational Act and to be subject to the operation of section 22 as if it were an application for a new statutory authorisation.
- (4) The first review required by section 11 must be undertaken by the end of the 2004/2005 financial year and the outcome of that review must be reported on as part of the Minister's annual report to Parliament for that financial year.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- 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.

Legislation amended by principal Act

The *River Murray Act 2003* amended the following:

Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986

Aquaculture Act 2001

Coast Protection Act 1972

Crown Lands Act 1929

Development Act 1993

Environment Protection Act 1993

Fisheries Act 1982

Harbors and Navigation Act 1993

Heritage Act 1993

Historic Shipwrecks Act 1981

Irrigation Act 1994

Mining Act 1971

Murray-Darling Basin Act 1993

National Parks and Wildlife Act 1972

Native Vegetation Act 1991

Opal Mining Act 1995

Parliamentary Committees Act 1991

Parliamentary Remuneration Act 1990

Petroleum Act 2000

Soil Conservation and Land Care Act 1989

South Eastern Water Conservation and Drainage Act 1992

Water Resources Act 1997

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2003	35	<i>River Murray Act 2003</i>	31.7.2003	24.11.2003 (<i>Gazette 20.11.2003 p4203</i>) except Sch (cl 23)—31.7.2005 (s 7(5) <i>Acts Interpretation Act 1915</i>)
2004	34	<i>Natural Resources Management Act 2004</i>	5.8.2004	Sch 4 (c11 38—40)—1.7.2005 (<i>Gazette 30.6.2005 p2093</i>)
2005	58	<i>River Murray (Miscellaneous) Amendment Act 2005</i>	17.11.2005	Pt 2 (ss 4—9)—uncommenced

Provisions amended

New entries appear in bold.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	1.7.2005
Pt 1		
s 5		
s 5(2)	(a) deleted by 34/2004 Sch 4 cl 38(1)	1.7.2005
	amended by 34/2004 Sch 4 cl 38(2)	1.7.2005
	(q) deleted by 34/2004 Sch 4 cl 38(3)	1.7.2005
Pt 4		
s 18		
s 18(5)	amended by 34/2004 Sch 4 cl 39	1.7.2005
Pt 5		
s 21		
s 21(2)	amended by 34/2004 Sch 4 cl 40	1.7.2005
Sch		
c11 1—22	<i>deleted under Legislation Revision and Publication Act 2002</i>	1.7.2005

Historical versions

1.7.2005