

South Australia

Marine Parks Regulations 2023

under the *Marine Parks Act 2007*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Marine Parks Regulations 2023*.

2—Commencement

These regulations come into operation on the day on which they are made.

3—Interpretation

In these regulations—

Act means the *Marine Parks Act 2007*;

fee notice has the same meaning as in the *Legislation (Fees) Act 2019*.

Part 2—General provisions supporting Act

4—Notice of establishment of marine park (section 10(7))

For the purposes of section 10(7) of the Act, the Minister must give notice of the making of a proclamation to establish a marine park by notice in the Gazette, in a newspaper circulating generally within the State and on a website determined by the Minister.

5—Applications for warrants (section 34(6))

- (1) The grounds of an application for a warrant under section 34 of the Act made personally must be verified by affidavit.
- (2) If an application for a warrant is made by telephone—
 - (a) the applicant must inform the magistrate of the applicant's name and identify the position that the applicant holds for the purposes of the Act, and the magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant holds that position; and
 - (b) the applicant must inform the magistrate of the purpose for which the warrant is required and the grounds on which it is sought; and
 - (c) if it appears to the magistrate from the information given by the applicant that there are proper grounds to issue a warrant, the magistrate must inform the applicant of the facts that justify, in the magistrate's opinion, the issue of the warrant, and must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts; and
 - (d) if the applicant gives such an undertaking, the magistrate may then make out and sign a warrant, noting on the warrant the facts that justify, in the magistrate's opinion, the issue of the warrant; and
 - (e) the warrant is taken to have been issued, and comes into force, when signed by the magistrate; and
 - (f) the magistrate must inform the applicant of the terms of the warrant; and
 - (g) the applicant must, as soon as practicable after the issue of the warrant, forward to the magistrate an affidavit verifying the facts referred to in paragraph (c).

6—General duty of care—prescribed circumstances (section 37(3))

For the purposes of section 37(3) of the Act, any circumstance involving the exercise of a statutory power by a public authority in an emergency situation is prescribed.

7—Action on non-compliance with order etc—prescribed rate of interest (sections 39, 41 and 42)

- (1) For the purposes of sections 39(5)(a), 41(5)(a) and 42(8)(a) of the Act, the prescribed rate of interest per annum on an unpaid amount will be the prime bank rate for any financial year for which the amount remains unpaid.
- (2) In this regulation—
prime bank rate for a particular financial year means the corporate loan reference rate applied by the Commonwealth Bank of Australia for corporate lending on the first trading day of the Bank in that financial year.

Part 3—Permits

8—Variation of conditions of permit

- (1) For the purposes of section 19(8)(c)(ii) of the Act, the Minister may vary a condition of a permit on application made by the holder of the permit.
- (2) An application under subregulation (1)—
 - (a) must be made to the Minister in the manner and form determined by the Minister; and
 - (b) must be accompanied by the fee prescribed by fee notice.

9—Transfer of permit

For the purposes of section 19(9) of the Act—

- (a) a permit is for a prescribed activity if it is for an activity referred to in regulation 8(3)(g) to (k) (inclusive) of the *Marine Parks (Zoning) Regulations 2012*; and
- (b) the prescribed conditions to be complied with in respect of the transfer of such a permit are as follows:
 - (i) the permit may only be transferred with the consent of the Minister;
 - (ii) an application for consent to transfer the permit—
 - (A) must be made to the Minister in the manner and form determined by the Minister; and
 - (B) must be accompanied by the fee prescribed by fee notice;
 - (iii) the proposed transferee must, in the opinion of the Minister, be a fit and proper person to hold the permit;
 - (iv) the transfer must not result in a change in—
 - (A) conditions of the permit; or
 - (B) the expiry date of the permit.

10—Minister may require further information

A person who makes an application for a permit, or any application under this Part, must provide the Minister with any information required by the Minister in connection with the determination of the application, verified, if the Minister so requires, by statutory declaration.

11—Defects in applications

- (1) The Minister may request a person who makes an application for a permit, or any application under this Part, to remedy a defect or deficiency in an application or accompanying document or information required by or under the Act or these regulations.
- (2) The Minister may, in relation to such an application, request the applicant—
 - (a) to pay the relevant fee prescribed in connection with the application; or
 - (b) to provide any outstanding information required to be provided under these regulations by the applicant.
- (3) If the applicant to whom a request has been made under this regulation fails to comply with the request within 60 days or such longer period as the Minister may allow, the application lapses.

12—Waiver or refund of permit fees

The Minister may waive a fee payable in relation to an application for a permit, or any application under this Part, if satisfied that—

- (a) the application is made in connection with—
 - (i) a statutory authorisation; or
 - (ii) an authorisation or matter under a law of the Commonwealth; or
- (b) it is otherwise appropriate to do so in a particular case.

13—Issue of duplicate permit

The Minister may, on payment of the fee prescribed by fee notice, issue to the holder of a permit a duplicate of the permit.

14—Expiation of offence

Pursuant to section 63(2)(d) of the Act, the expiation fee fixed for an alleged offence against section 20 of the Act is \$315.

Schedule 1—Repeal and transitional provisions

Part 1—Repeal of *Marine Parks Regulations 2008*

1—Repeal of regulations

The *Marine Parks Regulations 2008* are repealed.

Part 2—Transitional provisions

2—Transitional provisions

- (1) An application for the variation of a condition of a permit under regulation 10 of the repealed regulations made but not determined immediately before the commencement of this clause will be taken to be an application made under regulation 8 of these regulations.
- (2) An application for consent to transfer a permit under regulation 11(b) of the repealed regulations made but not determined immediately before the commencement of this clause will be taken to be an application made under regulation 9(b) of these regulations.
- (3) In this clause—

repealed regulations means the *Marine Parks Regulations 2008*.

Editorial note—

As required by section 10AA(2) of the *Legislative Instruments Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 27 July 2023

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