

Marine/ Coastal Environmental Policy review 2016

The exercise undertaken here is an NRM practitioner's, non-legal background review of the myriad of legislation as it applies to activities undertaken on the coast and within marine waters. It provides a snapshot of the number and complexity of directions provided by policy Australian's or those visiting from overseas need to comply with or should be aware of.

Marine Natural Resource Management (MNRM) is a national organisation playing a non-regulatory role. The vast majority of detail within policy provides precedence to actions that protect the environment and show where those charged with regulatory roles can act and where they cannot. The area of best practice where MNRM sits is underpinned by regulation but goes further into a non- mandatory space where social licence or moral conscience is growing in importance as the reason for individuals or business to regulate behaviour.

Within the scope of the exercise, I have left some perhaps less relevant legislation in and no doubt admitted some unintentionally out. Looking further into a subsection of objects of acts does highlight relevance in the cross-disciplinary field natural resource management plays.

Below are my general observations followed by a list of 229 Environmental protection policy, regulations, code of practice, National Environmental Protection measures and conventions as they apply to each state, territory and Commonwealth both land and waters.

Observations

- The legislation is constantly evolving to meet the demands of current and future needs i.e *Carbon Rights Act 2003* projects forward to future policy directions. However, some legislation seems very dated. The *WA Wildlife Conservation Act 1950* only now in the process of overhaul.
- The Commonwealth can make laws which apply in both State and Commonwealth waters if the law is necessary to implement one or more international treaties. E.g Environmental Protection Biodiversity Conservation Act 1999 (Cth).
- Penalties for breaches of environmental legislation appear to be more severe where the risk to human health is proven. Compared to other civil actions environmental defendants face fairly minimal fines.
- A State law that is inconsistent with a Commonwealth law is invalid to the extent of its legal inconsistency. There are quite often both State and Commonwealth laws applying to the same environment. NRM manages people's actions on the environment so at a national scale Marine NRM staff must work across multiple laws. Having an in-depth understanding of these laws isn't as necessary as say a regulator in the space.
- Legislation in some areas is well defined, but in other areas terminology used invites subjective interpretation particularly where compliance with quantifiable limits is deemed to be a major economic impost. E.g. It is illegal under WA law to apply anti-fouling paint to a vessel less than 25 metres in length or to piers or bouys in an enclosed or semi-enclosed water body. Vessels larger than 25 metres may be painted with antifouling paint as specified in the regulations, but the anti-fouling paint must be formulated to release "minimal harmful compounds".

- Victoria has the Victorian Contingency plan for Marine Pollution which is a whole of government approach to marine oil spills. They are looking at extending that response to other incidences however the involvement of those outside of Government (and legislative responsibility) seems limited.
- Advisory regulations may promote better/ best practices rather than set specific limits/ actions. This appears to limit the effectiveness of the Country to enforce tougher controls. I.e regulations around Ballast management.

Ballast is considered to be clean if it meets Australian Quarantine Inspection Service (AQIS) regulations. These follow the “advisory regulations” of the International Maritime Organisation and include:

- devising ways to minimise uptake of harmful aquatic organisms, pathogens and sediments;
- avoiding unnecessary discharge of ballast water;
- discharging ballast into designated reception facilities;
- exchanging ballast on route, and taking up mid-ocean ballast – which is considered to be ‘cleaner’; and
- disinfecting ballast. Ballast can be discharged in Australian waters (from 3 nautical miles to generally 200 nautical miles). However, the master of an overseas vessel is required to take “reasonable steps” to ensure that the vessel is not carrying any diseases or pests.

- Codes of practice are instruments designed to assist in the compliance with the general environmental duty and therefore fulfil obligations under Acts and associated environment protection policies. They help clarify what is the accepted practise and what shouldn’t be occurring. They do this by closely examining an industry or activity, its various aspects and impacts and through a process of negotiation formulates reasonable and practical outcomes and recommended practices to achieve such outcomes. These are outlined as 'musts' and 'shoulds', which are defined as follows for South Australia:

'must', the use of the word 'must' indicates a requirement in this code, which if ignored, is likely to lead to a breach of the *Environment Protection Water Quality Policy 2003 (SA)*.

'should', the use of the word 'should' indicates a recommended practice.

- The term “environmental law” refers to laws for protecting soil, air, water, the oceans and biodiversity, as well as laws which protect the environment as a whole. Environmental laws can protect areas of land or ocean (such as in national parks), individual species (such as wildlife conservation laws), require environmental impact assessment be done before approvals are granted for an activity, make it an offence to harm the environment, and require people to remediate any environmental damage they cause (such as contaminated sites laws).

State and Commonwealth Marine Boundaries

The Western Australian Government (as an example), has legislative capacity over the first 3 nautical miles from the baseline (usually the low water mark). Relevant West Australian Acts, therefore, have the application up to 3 nautical miles offshore unless a Commonwealth Act states otherwise. Western Australia also retains jurisdiction over internal marine waters such as estuaries, ports, and harbours. The Commonwealth Government can make laws for the following areas:

- Territorial sea – the sea extending from the baseline out to 12 nautical miles (except the first 3 nautical miles).
- Contiguous zone – the sea between 12 – 24 nautical miles from the baseline.
- Exclusive economic zone – the sea out to generally 200 nautical miles from the baseline.

The Commonwealth can also make laws which apply in both State and Commonwealth waters if the law is necessary to implement one or more international treaties. An example of a Commonwealth law which applies in both State and Commonwealth waters (and land) is the Environmental Protection Biodiversity Conservation Act 1999 (Cth). Generally, the sea more than 200 nautical miles from land is called the high seas and is governed by international law and custom.

Who makes environmental law - roles of Commonwealth, State and local government Commonwealth

The Commonwealth Constitution gives specific law-making powers to the Commonwealth Parliament. Although these powers do not specifically include the power to make laws about the “environment” (in fact the environment isn’t even mentioned in the Commonwealth Constitution), the Commonwealth does have powers that may be exercised for the purposes of environmental regulation, including:

- control of interstate and overseas trade and commerce (e.g. granting export licences with conditions that protect the environment); and
- external affairs (e.g. implementation of the World Heritage Convention to protect world heritage areas).

The Commonwealth may also exercise its financial powers to make laws about taxation and expenditure of Commonwealth money in ways which protect the environment. For example, the Commonwealth may make grants to the States on conditions that the money is spent in a certain way, including ways which promote sustainable land management.

The Western Australian Parliament like other states has the power to make laws with respect to “peace, order and good government” of the State. This includes the power to make laws regulating the use of land and natural resources, and therefore also allows the State to make laws to regulate and manage how the use of the land and ocean impacts the environment.

A State law that is inconsistent with a Commonwealth law is invalid to the extent of its legal inconsistency. Legal inconsistency is not just where two laws overlap or deal with the same area, but rather where it is not possible to comply with the two laws at the same time or when the Commonwealth clearly intends to cover the whole area alone. This rarely happens in practice, and so there are quite often both State and Commonwealth laws applying to the same environment or land use.

Local government Local government has the function of providing for the good government of persons within their districts. This includes the authority to make specific local laws that may protect the local environment. Local government also exercises important powers under the Planning and Development Act 2005 (WA) and the Health Act 1911 (WA). Local laws made by local government are inoperative to the extent that they are inconsistent with a written law of the State or Commonwealth, and they can be disallowed by the State government. There are also some provisions in local planning schemes which are common to all schemes (called “model” or “deemed” provisions).

NSW

- Coastal Protection Act 1979
- Crown Lands Act 1989
- Environmental Planning and Assessment Act 1979
- Fisheries Management Act 1994
- Local Government Act 1993
- Local Land Services Act 2013
- Marine Pollution Act 2012
- Marine Safety Act 1998
- Maritime Services Act 1935
- National Parks and Wildlife Act 1974
- Native Title (New South Wales) Act 1994
- Natural Resources Commission Act
- Ports and Maritime Administration Act 1995
- Protection of the Environment Operations Act 1997
- Threatened Species Conservation Act 1995
- Transport Administration Act 1988
- Water Management Act 2000.
- *Marine Estate Management Act 2014*

Objects of above Act

- The objects of this Act are as follows:
 - (a) to provide for the management of the marine estate of New South Wales consistent with the principles of ecologically sustainable development in a manner that:
 - (i) promotes a biologically diverse, healthy and productive marine estate, and
 - (ii) facilitates:
 - economic opportunities for the people of New South Wales, including opportunities for regional communities, and

- the cultural, social and recreational use of the marine estate, and
 - the maintenance of ecosystem integrity, and
 - the use of the marine estate for scientific research and education,
- (b) to promote the co-ordination of the exercise, by public authorities, of functions in relation to the marine estate,
- (c) to provide for the declaration and management of a comprehensive system of marine parks and aquatic reserves.

N.T

- NT Marine Act
- NT Marine Pollution Act
- Environmental Protection (Beverage containers and plastic bags) Act 2014
- Environmental Protection (National Pollutant Inventory) objective 2004
- Environmental Assessment Act 2013

Queensland

- Coastal Protection and Management Act 1995 (Qld)
- Environmental Protection Act 1994 (Qld)
- Fisheries Act 1994 (Qld)
- Marine Parks Act 2004 (Qld)
- Native Title (Queensland) Act 1993 (Qld)
- Nature Conservation Act 1992 (Qld)
- Sustainable Planning Act 2009 (Qld)
- Transport Operations (Marine Pollution) Act 1995 (Qld)
- Transport Operations (Marine Safety) Act 1994 (Qld)
- Workplace Health and Safety Act 1995 (Qld)
- Constitution Act 1867 (Qld)
- Aboriginal Cultural Heritage Act 2003 (Qld)
- Biodiscovery Act 2004 (Qld)
- Biological Control Act 1987 (Qld)
- Clean Energy Act 2008 (Qld)
- Coastal Protection and Management Act 1995 (Qld)
- Electricity Act 1994 (Qld)
- Environmental Protection Act 1994 (Qld)
- Fire and Rescue Services Act 1990 (Qld)
- Fisheries Act 1994 (Qld)
- Forestry Act 1959 (Qld)
- Gene Technology Act 2001 (Qld)
- Geothermal Energy Act 2010 (Qld)
- Greenhouse Gas Storage Act 2009 (Qld)
- Iconic Queensland Places Act 2008 (Qld)
- Integrated Resort Development Act 1987 (Qld)
- Land Act 1994 (Qld)
- Land Protection (Pest & Stock Route Management) Act 2002 (Qld)
- Local Government Act 1993 (Qld)

- Marine Parks Act 2004 (Qld)
- Mineral Resources Act 1989 (Qld)
- Native Title (Queensland) Act 1993 (Qld)
- Nature Conservation Act 1992 (Qld)
- Nuclear Facilities Prohibition Act 2007 (Qld)
- Offshore Minerals Act 1998 (Qld)
- Petroleum and Gas (Production and Safety) Act 2004 (Qld)
- Petroleum (Submerged Lands) Act 1982 (Qld)
- Plant Protection Act 1989 (Qld)
- Public Health Act 2005 (Qld)
- Queensland Heritage Act 1992 (Qld)
- Recreation Areas Management Act 2006 (Qld)
- Soil Conservation Act 1986 (Qld)
- State Development and Public Works Organisation Act 1971 (Qld)
- Sustainable Planning Act 2009 (Qld)
- Transport Infrastructure Act 1994 (Qld)
- Transport Operations (Marine Pollution) Act 1995 (Qld)
- Vegetation Management Act 1999 (Qld)
- Water Act 2000 (Qld)
- Wet Tropics World Heritage Protection and Management Act 1993 (Qld)
- Wild Rivers Act 2005 (Qld)
- Water Supply (Safety and Reliability) Act 2008 (Qld)
- *Great Barrier Reef Marine Park Act 1975*

Objects of above Act

(1) The main object of this Act is to provide for the long-term protection and conservation of the environment, biodiversity and heritage values of the Great Barrier Reef Region.

(2) The other objects of this Act are to do the following, so far as is consistent with the main object:

(a) allow ecologically sustainable use of the Great Barrier Reef Region for purposes including the following:

(i) public enjoyment and appreciation;

ii) public education about and understanding of the Region;

(iii) recreational, economic and cultural activities;

(iv) research in relation to the natural, social, economic and cultural systems and value of the Great Barrier Reef Region;

(b) encourage engagement in the protection and management of the Great Barrier Reef Region by interested persons and groups, including Queensland and local governments, communities, Indigenous persons, business and industry;

(c) assist in meeting Australia's international responsibilities in relation to the environment and protection of world heritage (especially Australia's responsibilities under the World Heritage Convention).

(3) In order to achieve its objects, this Act:

(a) provides for the establishment, control, care and development of the Great Barrier Reef Marine Park; and

(b) establishes the Great Barrier Reef Marine Park Authority; and

(c) provides for zoning plans and plans of management; and

(d) regulates, including by a system of permissions, use of the Great Barrier Reef Marine Park in ways consistent with ecosystem-based management and the principles of ecologically sustainable use; and

(e) facilitates partnership with traditional owners in management of marine resources;

(f) facilitates a collaborative approach to management of the Great Barrier Reef World Heritage area with the Queensland government.

Commonwealth

- *Environment Protection and Biodiversity Conservation Act 1999* came into force on 16 July 2000 and regulates actions that have, will have or are likely to have, a significant impact on matters of national environmental significance.
- *Environment Protection (Sea Dumping) Act 1981* prohibits dumping of waste or other matter from any vessel, aircraft or platform in Australian waters unless a permit has been issued.
- *Historic Shipwrecks Act 1976* prohibits certain activities in relation to historic shipwrecks and relics and requires discoveries to be notified.
- *Native Title Act 1993* provides for a number of important aspects of native title, including the recognition and protection of native title and a mechanism for determining claims to native title.
- *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* is the responsibility of the Department of Infrastructure, Transport, Regional Development and Local Government together with the Australian Maritime Safety Authority.
- *Sea Installations Act 1987* provides for a number of aspects relating to sea installations including requirements that they be operated in a manner that is consistent with protection of the environment.
- *Australian Fisheries Management Act 1991*
- *Australian Heritage Council Act 2003*
- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*
- *Environment Protection and Biodiversity Conservation Regulations 2000*
- *Fisheries Administration Act 1991*
- *Antarctic Marine Living Resources Conservation Act 1981*
- *National Environment Protection Council Act 1994*

International Conventions

A number of international conventions are relevant to the Great Barrier Reef, including:

- Convention for the Protection of the World Cultural and Natural Heritage, 1972 (the World Heritage Convention)
- Convention on Biological Diversity, 1992 (the Biodiversity Convention)
- Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973 (CITES)
- Convention on the Conservation of Migratory Species of Wild Animals, 1979 (the Bonn Convention)
- Convention on Wetlands of International Importance Especially as Waterfowl Habitats, 1971 (the Ramsar Convention)
- International Convention for the Prevention of Pollution from Ships, 1973 (the MARPOL Convention)
- United Nations Convention on the Law of the Sea, 1982 (the Law of the Sea Convention or UNCLOS)
- United Nations Framework Convention on Climate Change, 1992 (the FCCC)
- International Convention on the Control of Harmful Anti-fouling Systems on Ships 2001
- International Convention for the Control and Management of Ships' Ballast Water and Sediments.
- International Whaling Convention GATT
- Protection of the Sea (Prevention of Pollution from Ships) Act 1983 (Cth)
- Protection of the Sea (Civil Liability) Act 1981 (Cth)
- United Nations Framework Convention on Climate Change
- Vienna Convention for the Protection of the Ozone Layer
- World Heritage Convention

WA

- Carbon Rights Act 2003
- Contaminated Sites Act 2003
- Contaminated Sites Regulations 2006
- Environmental Protection Act 1986
- Clean Air (Determination of Air Impurities in Gases Discharged to the Atmosphere) Regulations 1983
- Environmental Protection Regulations 1987
- Environmental Protection (Clearing of Native Vegetation) Regulations 2004
- Environmental Protection (Controlled Waste) Regulations 2004
- Environmental Protection (NEPM-NPI) Regulations 1998
- Environmental Protection (NEPM-UPM) Regulations 2013
- Environmental Protection (Packaged Fertiliser) Regulations 2010
- Environmental Protection (Rural Landfill) Regulations 2002
- Environmental Protection (Unauthorised Discharges) Regulations 2004
- Environmental Protection (Landfill) Levy Act 1998
- Fish Resources Management Act 1994 (WA)
- Litter Act 1979
- Litter Regulations 1981
- National Environment Protection Council (Western Australia) Act 1996

- Waste Avoidance and Resource Recovery Act 2007
- Waste Avoidance and Resource Recovery Regulations 2008
- Waste Avoidance and Resource Recovery Levy Act 2007
- Waste Avoidance and Resource Recovery Levy Regulations 2008
- Wildlife Conservation Act 1950

SA

- Aquaculture Act 2001
- Environment Protection Act 1993 (SA) or the Aquaculture Act 2001 (SA) subsection policy
- Aquaculture Cost Recovery Revocation Policy 2011
- Aquaculture Revocation Policy 2010
- Aquaculture (Zones—Anxious Bay) Policy 2007
- Aquaculture (Zones—Arno Bay) Policy 2011
- Aquaculture (Zones—Cape D'Estrees) Policy 2006
- Aquaculture (Zones—Coffin Bay) Policy 2008
- Aquaculture (Zones—Eastern Spencer Gulf) Policy 2005
- Aquaculture (Zones—Fitzgerald Bay) Policy 2008
- Aquaculture (Zones—Lacepede Bay) Policy 2012
- Aquaculture (Zones—Lower Eyre Peninsula) Policy 2013
- Aquaculture (Zones—Port Neill) Policy 2008
- Aquaculture (Zones—Smoky Bay) Policy 2007
- Aquaculture (Zones—Streaky Bay) Policy 2011
- Aquaculture (Zones—Tumby Bay) Policy 2015
- Environment Protection (Air Quality) Policy 1994
- Environment Protection (Burning) Policy 1994
- Environment Protection (Motor Vehicle Fuel Quality) Policy 2002
- Environment Protection (Movement of Controlled Waste) Policy 2014
- Environment Protection (National Pollutant Inventory) Policy 2008
- Environment Protection (Noise) Policy 2007
- Environment Protection (Solid Fuel Heaters) Policy 2015
- Environment Protection (Used Packaging Materials) Policy 2012
- Environment Protection (Waste to Resources) Policy 2010
- Environment Protection (Water Quality) Policy 2015
- Environment Protection Regulations 2009
- Marine Parks Act 2007
- Fisheries (Southern Zone Rock Lobster Fishery Rationalisation) Act Repeal Act 2001
- Fisheries Management Act 2007
- Native Vegetation Act 1991
- National Parks and Wildlife Act 1972
- Natural Resources Management Act 2004
- Code of practice for the environmental management of the South Australian abalone aquaculture industry
- Code of practice for the environmental management of the South Australian oyster farming industry
- Code of practice for materials handling on wharves
- Code of practice for milking shed effluent

- Code of practice for vessel and facility management (marine and inland waters)
- Code of practice for wastewater overflow management
- Wastewater incident notification and communication protocol
- Stormwater Pollution Prevention codes of practice:

Victoria

- State Environment Protection Policy (Waters of Victoria)
- State Environment Protection Policy (Groundwaters of Victoria)
- Waste Management Policy (Ships' Ballast Water)
- Environment Protection (Ships' Ballast Water) Regulations 2006
- Pollution of Waters by Oils and Noxious Substances Act 1986
- Pollution of Waters by Oil and Noxious Substances Regulations 2012
- Environment Protection (Scheduled Premises and Exemptions) Regulations 2007.
- State Environment protection Policy (Groundwaters of Victoria).
- State Environment Protection Policy (Groundwaters of Victoria)
- Industrial Waste Management Policy (Waste Acid Sulphate Soils)
- Environment Protection Act 1970
- Aboriginal Heritage Act 2006
- Archaeological and Aboriginal Relics Preservation Act 1972
- Catchment and Land Protection Act 1994
- Coastal Management Act 1995
- Conservation Forests and Lands Act 1987
- Constitutional Powers (Coastal Waters) Act 1980
- Crown Land (Reserves) Act 1978
- Environment Effects Act 1978
- Environment Protection Act 1970
- Fisheries Act 1995
- Flora and Fauna Guarantee Act 1988
- Gas Pipelines Access (Victoria) Act 1998
- Heritage Act 1995
- Heritage Rivers Act 1992
- Land Act 1958
- Land Conservation (Vehicle Control) Act 1972
- Land Titles Validation Act 1994
- Marine Act 1988
- Mineral Resources Development Act 1990
- National Environment Protection Council (Victoria) Act 1995
- National Parks Act 1975
- Petroleum Act 1998
- Planning and Environment Act 1987
- Pollution of Waters by Oil and Noxious Substances Act 1986 (POWBONS)
- Victorian Environmental Assessment Council Act 2001
- Victorian Petroleum (Submerged Lands) Act 1982
- Wildlife Act 1975

- Environment Protection Act 1970

The *Environment Protection Act 1970* was at its inception only the second Act in the world to deal with the whole of the environment in a systematic and integrated way. The Act is outcome oriented, with a basic philosophy of preventing pollution and environmental damage by setting environmental quality objectives and establishing programs to meet them. Over the years the Act has evolved to keep pace with the world's best practice in environment protection regulation and to meet the needs of the community.

Key aims of the Act include sustainable use and holistic management of the environment, ensuring consultative processes are adopted so that community input is a key driver of environment protection goals and programs and encouraging a co-operative approach to environment protection.

Tasmania

- Environmental Management and Pollution Control Act 1994 (EMPCA)
EMPCA is part of the Tasmanian Resource Management and Planning System, and provides the legislative framework for environmental management and pollution control in the State.
- Litter Act 2007
The Litter Act 2007 is Tasmania's key litter legislation. The Act introduced new types of littering laws into Tasmania and provides a legal basis for the Litter Hotline.
- Plastic Shopping Bags Ban Act 2013
The Plastic Shopping Bags Ban Act 2013 prohibits retailers in Tasmania from supplying lightweight bags to shoppers.
- Pollution of Waters by Oil and Noxious Substances Act 1987
The Act establishes the framework for dealing with discharges of oil and the like from vessels, and gives effect in Tasmania to the international MARPOL convention on marine pollution.
- National Environment Protection Council (Tasmania) Act 1995
An Act that mirrors corresponding legislation in the other Australian jurisdictions to establish the National Environment Protection Council, and provides a framework for the development of national environmental standards in Australia.
- Living Marine Resources Management Act 1995
Generally regulates and protects the living marine environment.
- Environmental Management & Pollution Control Act 1994
Regulates pollution and emission controls in the marine environment.
- Marine Farming Planning Act 1995
Regulates planning and management for marine farming.
- National Parks & Reserves Management Act 2002
For declaration and management of Marine Protected Areas (marine reserves).
- Nature Conservation Act 2002
Manages and protects some marine species.
- Threatened Species Protection Act 1995
Protects threatened marine species.
- State Coastal Policy 1996

Has important implications for developments within the coastal zone.

- State Policy on Water Quality Management 1997
Has important implications for monitoring of water bodies and regulation of point source and diffuse emissions.
- Inland Fisheries Act 1995
Regulates recreational and commercial fishing in inland waters.

