

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Defence

Control of Naval Waters Act 1918

Control of Naval Waters (Henderson and Osborne) Proclamation 2018

1. Subsection 3B(2) of the *Control of Naval Waters Act 1918* (the Act) provides that the Governor-General may, by Proclamation, declare specified waters as naval waters for the purposes of the Act. Subsection 3B(1) of the Act provides that only waters within five nautical miles of an installation or within two nautical miles of defence land without an installation may be declared as naval waters. An installation is defined in section 2 of the Act as either a naval establishment, dock, dockyard, slipway, victualling yard, arsenal, wharf or mooring owned or used by the Commonwealth, or any fixed structure, apparatus or equipment used by the Commonwealth for purposes related to the naval defence of the Commonwealth. A number of naval waters throughout Australia have previously been declared in a proclamation made on 14 December 2009.

2. The Act provides for the protection of installations and/or land owned or used by the Commonwealth for purposes related to the defence of the Commonwealth. This may include military facilities used by the Royal Australian Navy and industry facilities that support defence purposes such as naval shipbuilding.

Purpose of the Control of Naval Waters (Henderson and Osborne) Proclamation 2018

3. The *Control of Naval Waters (Henderson and Osborne) Proclamation 2018* (the Proclamation) declares new naval waters in the vicinity of the Henderson Australian Marine Complex shipbuilding facilities in Western Australia and the Osborne Techport Common User Facility shipbuilding facilities in South Australia. The facilities at Henderson and Osborne are essential to the national naval shipbuilding enterprise, which will construct warships and submarines in Australia over coming decades.

4. The declaration of naval waters will provide for the protection and security of the approaches to these important industry facilities. Powers set out in the Act and the *Control of Naval Waters Regulation 2015* will apply to the naval waters, including in relation to entry into naval waters or the foreshore of naval waters, the presence and movement of vessels in naval waters, anchoring of vessels, the laying of moorings, and search and inspection of vessels. The declarations will provide the necessary legal framework for Defence to have an active role in the security of the water approaches to the shipbuilding facilities, complementing existing provisions for security in State legislation and law enforcement capability, and the ports' security arrangements.

Authority for Control of Naval Waters (Henderson and Osborne) Proclamation 2018

5. Both the Henderson Australian Marine Complex shipbuilding facilities and the Osborne Techport Common User Facility shipbuilding facilities are installations for the purposes of the Act, as they are fixed structures used by the Commonwealth for purposes related to the naval defence of the Commonwealth. The entirety of the two specified areas is within 5 nautical miles of the respective installation.

Operation of the Control of Naval Waters (Henderson and Osborne) Proclamation 2018

6. Attachment A provides a provision-by-provision description of the operation of the Proclamation.

Incorporation of other documents by reference

7. The Proclamation uses the term ‘Mean Higher High Water’, defining it as having the same meaning as in the Australian Hydrographic Office Tidal Glossary, as existing at the time of the instrument. Only the Glossary at the time of the proclamation is incorporated (not the Glossary from time to time). The term ‘Mean Higher High Water’ refers to a tidal level: the average of the higher of the two daily high waters (high tides) over a period of time.

8. The Australian Hydrographic Office Tidal Glossary is available on the website of the Australian Hydrographic Office:

<http://www.hydro.gov.au/prodserv/data/tides/tidal-glossary.htm>

Legislative instrument

9. The Proclamation is a legislative instrument for the purposes of the *Legislation Act 2003*. It is exempt from disallowance and sunset, pursuant to item 11 of section 10 and item 17 of section 12 respectively of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

Commencement

10. The Proclamation commences on the day after the instrument is registered.

Consultation

11. The Governments of Western Australia and South Australia have been consulted and have agreed or noted the new naval waters within their jurisdictions.

Regulation Impact Statement

12. The Office of Best Practice Regulation has advised that no Regulation Impact Statement is required (reference OBPR ID 24609).

Compatibility with human rights

13. As the Proclamation is not subject to disallowance, a statement of compatibility with human rights is not required under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. In any case, the Proclamation does not engage any of the applicable rights or freedoms referred to in that Act.

Attachments

A: Provisions in *Control of Naval Waters (Henderson and Osborne) Proclamation 2018*

ATTACHMENT A – PROVISIONS IN *CONTROL OF NAVAL WATERS (HENDERSON AND OSBORNE) PROCLAMATION 2018*

Section 1 – Name

1. Section 1 provides for the Proclamation's name: *Control of Naval Waters (Henderson and Osborne) Proclamation 2018*.

Section 2 – Commencement

2. Section 2 provides for the Proclamation to commence the day after it is registered.

Section 3 – Authority

3. Section 3 provides that the Proclamation is made under section 3B of the *Control of Naval Waters Act 1918*.

Section 4 – Definitions

4. Section 4 defines two terms used in the Proclamation.
 - a. 'Act' means the *Control of Naval Waters Act 1918*.
 - b. 'Mean Higher High Water' has the same meaning as in the Australian Hydrographic Office Tidal Glossary, as existing at the time the instrument commences (as opposed to the Glossary as existing from time to time). The term 'Mean Higher High Water' refers to a tidal level: the average of the higher of the two daily high waters (high tides) over a period of time. The term is used to describe the boundaries of the naval waters specified in the Proclamation. The Australian Hydrographic Office Tidal Glossary is available on the website of the Australian Hydrographic Office:

<http://www.hydro.gov.au/prodserv/data/tides/tidal-glossary.htm>

Section 5 – Declaration of naval waters – Henderson

5. Section 5 declares specified waters in the vicinity of the shipbuilding facilities at Henderson Australian Marine Complex in Western Australia as naval waters for the purposes of the Act. The specified waters are described in a table in section 5 as being those waters within the described area, described using geographic coordinates and the term high water line (meaning the mean higher high water, defined in section 4). Only waters that are within the distance specified in paragraph 3B(1)(a) of the Act from the shipbuilding facilities are declared, ensuring that there is no doubt that the specified waters can be declared under section 3B of the Act. The waters described in the table in section 5 are all within 5 nautical miles (the relevant distance) of the shipbuilding facilities.
6. The map in section 5 'Henderson Australian Marine Complex' further explains the declared naval waters at Henderson.

Section 6 – Declaration of naval waters – Osborne

7. Section 6 declares specified waters in the vicinity of the shipbuilding facilities at the Techport Common User Facility at Osborne in South Australia as naval waters for the purposes

of the Act. The specified waters are described in a table in section 6 as being those waters within the described area, described using geographic coordinates and the term high water line (meaning the mean higher high water, defined in section 4). Only waters that are within the distance specified in paragraph 3B(1)(a) of the Act from the shipbuilding facilities are declared, ensuring that there is no doubt that the specified waters can be declared under section 3B of the Act. The waters described in the table in section 6 are all within 5 nautical miles (the relevant distance) of the shipbuilding facilities.

8. The map in section 6 ‘Osborne Techport Common User Facility’ further explains the declared naval waters at Osborne.