

EXPLANATORY STATEMENT

Issued by the authority of the Minister for the Environment and Water

Environment Protection and Biodiversity Conservation Act 1999

Environment Protection and Biodiversity Conservation (Christmas Island Marine Park Management Plan) Instrument 2025

Legislative authority

The Director of National Parks (Director) is responsible for the management of Commonwealth reserves under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Section 366 of the EPBC Act provides that the Director must prepare management plans for each Commonwealth reserve for which there is not a Board. The *Environment Protection and Biodiversity Conservation (Christmas Island Marine Park Management Plan) Instrument 2025* (Management Plan) was made following the declaration of Christmas Island Marine Park (CIMP) as a Commonwealth Reserve under section 344 of the EPBC Act on 17 March 2022.

Purpose

This is the first Management Plan for CIMP. Its purpose and objectives are to:

- protect and conserve biodiversity and other natural and cultural values;
- provide for ecologically sustainable use that supports positive social and economic outcomes.

Background

The Management Plan was made in accordance with section 368 of the EPBC Act and was approved by the Minister for the Environment and Water in accordance with section 370 of the EPBC Act.

In accordance with section 367 of the EPBC Act, the Management Plan:

- assigns International Union for the Conservation of Nature (IUCN) categories to CIMP and its zones;
- describes how the reserve and its zones will be managed;
- describes how the natural features of the reserve and its zones will be protected and conserved;
- details what activities can and cannot be carried out in the reserve, and which activities are subject to regulation.

More broadly, the Management Plan describes the natural and cultural values of CIMP and the pressures acting upon it. The Plan sets out the objectives, goals, actions and regulatory prescriptions for activities in CIMP, and arrangements for ongoing community consultation

on management via a Community Advisory Committee. The Plan also provides information on how it interacts with legislation and management regimes administered by other agencies (for example, fisheries management arrangements), and relevant international agreements.

Impact and Effect

Regulatory impacts for individuals or businesses have been minimised by the Management Plan. Most existing commercial and other users of CIMP will not need to adjust their operations or apply for an authorisation to comply with marine park rules. Some users – for example, researchers and anyone who may wish to install infrastructure in the marine park – will need to apply for a permit or other authorisation under the Management Plan.

The Office of Impact Analysis (OIA) advised that a detailed analysis was not required under the Australian Government's Policy Impact Analysis Framework (OIA reference: OIA24-07664).

Consultation

Key consultation requirements have been met as follows:

- On 5 July 2023, consistent with subsection 368(2) of the EPBC Act, the Director published a notice on the Federal Register of Legislation, in *The Australian* newspaper and the *West Australian* newspaper, inviting comments on the proposal to prepare draft management plans for CIMP and Cocos (Keeling) Islands Marine Park. Newsletter articles and other communications were also circulated on Christmas Island and Cocos (Keeling) Islands to ensure interested parties were aware of the opportunity to comment.
 - o This public comment period closed on 17 August 2023, which met the minimum 30-day requirement in paragraph 368(2)(d) of the EPBC Act.
 - o 11805 submissions were received. The Director took account of the comments in these submissions when preparing the management plans for both CIMP and Cocos (Keeling) Islands Marine Park in accordance with paragraph 368(1)(b) of the EPBC Act and, although not a statutory requirement, also published a report on this consultation process on the Parks Australia website.
- On 9 August 2024, the Director published a notice under subsection 368(5) of the EPBC Act in the Gazette, in *The Australian* newspaper and the *West Australian* newspaper, inviting comments on draft management plans for CIMP and Cocos (Keeling) Islands Marine Park. Newsletter articles and other communications were also circulated on Christmas Island and Cocos (Keeling) Islands to ensure interested parties were aware of the opportunity to comment.
 - o This public comment period closed on 19 September 2024, which met the minimum 30-day requirement in paragraph 368(5)(e) of the EPBC Act.
 - o 8555 submissions were received. The Director considered the comments in these submissions when preparing the management plans for both the CIMP and Cocos (Keeling) Islands Marine Park in accordance with paragraph 368(1)(e) of the EPBC Act.

- The Director provided the comments received and their views on the comments to the Minister in accordance with subsection 370(2) of the EPBC Act in the form of a report, which was tabled in Parliament.

The Director has taken account of the matters listed in subsection 368(3) of the EPBC Act when preparing the Management Plan, including the report considered by the Minister under section 351 of the EPBC Act before CIMP was proclaimed in 2022.

A range of other consultation was undertaken to inform development of the Management Plan – this includes direct engagement through meetings, email and phone calls with those people and individuals most affected by the Management Plan. A local Community Advisory Committee was also established to provide advice and input on behalf of the Christmas Island community to inform the preparation of the Management Plan. Seven meetings of this Committee were held during 2023 and 2024. These non-statutory consultations built on the consultations undertaken in the lead up to the proclamation of both CIMP and Cocos (Keeling) Islands Marine Park in 2022.

Details/Operation

Subsection 371(1) of the EPBC Act provides that a management plan for a Commonwealth reserve prepared by the Director, and the Board (if any) for the reserve, and approved by the Minister, is a legislative instrument made by the Minister on the day the plan is approved.

The Management Plan is, therefore, a legislative instrument for the purposes of the *Legislation Act 2003* and must be registered on the Federal Register of Legislation.

The Management Plan came into effect the day after it was registered on the Federal Register of Legislation. The Management Plan will cease to have effect under section 373 of the EPBC Act 10 years after it commences. The Management Plan instrument will sunset (be automatically revoked) on 1 April or 1 October 10 years after registration in accordance with section 50 of the *Legislation Act 2003*.

The Management Plans is subject to disallowance under section 42 of the *Legislation Act 2003*.

Documents Incorporated by Reference

The International Convention for the Prevention of Pollution from Ships (the Convention) is incorporated into the Management Plan in accordance with subparagraph 14(1)(b)(i) of the *Legislation Act 2003*. The Convention deals with preventing and minimising the discharge of ship-generated pollution into the sea. Regulations 12.14 and 12.14A of the *Environment Protection and Biodiversity Conservation Regulations 2000* (EPBC Regulations) make it an offence to dump waste from a vessel in a Commonwealth Reserve, unless done in accordance with a management plan or if some other exemption set out in Division 12 of the EPBC Regulations applies.

The Management Plan, at section 4.3.12, provides that waste from the normal operations of vessels to which the Convention applies, may be discharged from those vessels in accordance with the requirements of the Convention.

The Management Plan incorporates the Convention as it is in force on the date of commencement of the Plan, which is the day after it is registered on the Federal Register of Legislation.

The Convention is freely and readily available to persons interested in or affected by the Management Plan from the United Nations Treaty Collection at:
<<https://treaties.un.org/pages/showDetails.aspx?objid=0800000280291139>>.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Environment Protection and Biodiversity Conservation (Christmas Island Marine Park Management Plan) Instrument 2025

The *Environment Protection and Biodiversity Conservation (Christmas Island Marine Park Management Plan) Instrument 2025* (Management Plan) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Context

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and associated regulations prohibit certain activities from occurring in Christmas Island Marine Park (CIMP) unless permitted by a management plan prepared in accordance with section 368 of the EPBC Act. A management plan is, therefore, an enabling document. It allows management, recreational and commercial activities to occur that would otherwise be restricted under the EPBC legislation.

Human rights implications

The Management Plan engages the following human rights:

- the right to self-determination under Article 1 of the International Covenant on Civil and Political Rights (ICCPR);
- the right to freedom of movement under Article 12 of the ICCPR;
- the right to privacy and reputation under Article 17 of the ICCPR;
- the right to enjoy and benefit from culture under Article 15(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The Management Plan impacts these rights to some extent by applying regulatory management to a spatial area used by individuals, businesses and other organisations. However, the objectives of this management are to provide environmental protection and restoration, as well as to support social, cultural and economic opportunities. Individuals and the broader community will benefit from the implementation of the Management Plan.

Right to self-determination

Article 1.1 of the ICCPR provides that all peoples have the right of self-determination.

Although there is no universally accepted agreement on what is required to meet this right, it is generally accepted that it includes allowing people to pursue their economic, cultural and social development. The preparation of the Management Plan promoted this right through consultation and consideration of stakeholder views on their economic, cultural and social aspirations for CIMP. A key objective in designing CIMP was to put the views and aspirations of marine users – especially the community of CIMP – at the forefront of the

process. This objective has been reflected in the Management Plan through several provisions, including a commitment to establish a community advisory committee to provide advice on management of CIMP and support broader community engagement in this.

Right to freedom of movement

Article 12.1 of the ICCPR provides that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose their residence.

In order to achieve the objectives of the Management Plan, it may be necessary to restrict some access and uses that may impact on the values of CIMP, or to restrict access to areas that are dangerous to human health and safety. This may restrict the right to freedom of movement. However, this is not an absolute right and may be subject to permissible limitations where there is a legitimate objective – in this case, the conservation and protection of values into the future, and to ensure the health and safety of visitors to CIMP. Limitations on access and use of the CIMP under the Management Plan are reasonable, necessary and proportionate responses to the potential threats posed to achieving the objectives of the Management Plan.

Right to privacy and reputation

Article 17.1 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with an individual's privacy, family, home or correspondence, nor to unlawful attacks on their honour or reputation. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. For an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR, and be reasonable in the circumstances. The United Nations Human Rights Council (UNHRC) has interpreted the requirement of 'reasonableness' to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

The UNHRC has not defined 'privacy', but it is generally understood to comprise of a freedom from unwanted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy. The collection and sharing of information (public or otherwise) may be considered to engage and offend the right to privacy.

The Management Plan allows the Director of National Parks in some instances to require users of CIMP to provide information about the activities they conduct within CIMP. This potentially includes information about the location or number of people undertaking an activity. The right to privacy is not absolute, and any requests for information are used to ensure compliance with marine park rules and inform management arrangements. The information collected will be handled and managed in accordance with Commonwealth Privacy Legislation.

Right to enjoy and benefit from culture

Article 15(1) of the ICESCR recognises the right of all persons to take part in cultural life, to enjoy the benefits of scientific progress and its applications, and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which they are the author. The United Nations Committee on Economic, Social and Cultural Rights (the Committee) (General Comment 21, 2009) has stated that culture encompasses ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of

production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions.

The Management Plan positively engages the right to enjoy and benefit from culture in the ICESCR by recognising the importance of the cultural values, traditions and knowledge associated with the communities living in close proximity to CIMP, as well as by seeking to involve stakeholders and the community in management programs and actions.

Conclusion

The Management Plan is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* and to the extent that it may limit any human rights, those limitations are reasonable, necessary and proportionate to the legitimate goals of the Management Plan.

The Hon Tanya Plibersek MP
Minister for the Environment and Water