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Victorian Institute of Marine Sciences Act 1974

An Act to establish a Victorian Institute of Marine Sciences and for Purposes connected therewith.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

PART 1—PRELIMINARY

1. Short title and commencement

   (1) This Act may be cited as the Victorian Institute of Marine Sciences Act 1974.

   (2) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.

2. Definitions

   In this Act unless inconsistent with the context or subject-matter—

   "Board" means the Board of the Institute;
"Institute" means the Victorian Institute of Marine Sciences established under this Act;

"Secretary" means the Secretary to the Department of Conservation and Natural Resources;

"Statutes" means the Statutes of the Institute made under this Act.

S. 2 def. of "Secretary" inserted by No. 48/1994 s. 4(b).
PART 2—VICTORIAN INSTITUTE OF MARINE SCIENCES

3. Institute established

(1) For the purposes of this Act there shall be established in Victoria an Institute of Marine Sciences to be known as the "Victorian Institute of Marine Sciences".

(2) The Institute shall be a body corporate by the name of the "Victorian Institute of Marine Sciences" and shall have perpetual succession and a common seal and shall be capable in law of suing and being sued and of taking, purchasing, holding, demising, selling, transferring, conveying, mortgaging, or otherwise disposing of real and personal property for the purposes of and subject to this Act and of doing and suffering all acts matters and things which bodies corporate may by law do and suffer.

(3) Notwithstanding the provisions of sub-section (2) the Institute shall not without the consent of the Governor in Council sell, transfer, convey, mortgage, or otherwise dispose of any real property whatsoever or enter into a lease of any real property for a term of more than twenty-one years.

4. Objects of Institute

(1) The objects of the Institute shall be—

(a) to provide facilities for and foster, carry on and support scientific research and technological development in all branches of learning concerning or touching upon marine sciences, including but without limiting the generality of that expression, the sea, the sea-bed, sea shores, and the resources and
inhabitants thereof and mankind's relationship with and use of the sea;

(b) to advance knowledge of the marine sciences and to advance the practical application of such knowledge to commerce and industry and to any project or undertaking in respect of which that application may be of benefit;

c) to provide facilities for instruction, demonstration, and training in subjects relating to the sea and its resources;

d) to make known when and as the Board considers advisable by printed publication or otherwise any information or advice concerning any matter relating to the purposes of the Institute and, with a view thereto, to acquire, set up, maintain, print, publish, and circulate magazines and journals, circulars, pamphlets, or other literary or scientific works as the Board considers to be in any way beneficial to the Institute or to the public or any section thereof;

e) to provide facilities for research and a library and library facilities and to maintain and from time to time extend such facilities and library;

(f) to conduct or join in conducting such centres for the display and demonstration of marine and maritime exhibits as the Board determines.

(g) to advise the Minister on any matter referred to it by the Minister.
(2) In furtherance of any of the objects of the Institute the Board may carry out any project alone or together with any other person, body, institution, corporation, or authority including the Crown or any instrumentality of the Crown or as a member of any group or corporation formed for the purpose of any such project and whether or not the project is carried out on property owned or occupied by the Institute or elsewhere and may enter into any arrangement or agreement for carrying out any such project.

5. Common seal

(1) The common seal of the Institute shall be kept in such custody as the Board directs and shall not be used except as authorized by resolution of the Board or by the Statutes.

(2) All courts and persons acting judicially shall take judicial notice of the common seal of the Institute affixed to any document and until the contrary is proved shall presume that it was duly affixed thereto.

* * * * * *
PART 3—THE OPERATION OF THE INSTITUTE

6. Function and powers of the Board

(1) The Board is the governing body of the Institute.

(2) The Board may do all things that are necessary or convenient to enable it to govern the Institute.

7. Board is subject to the control of the Minister

(1) In carrying out its functions and powers, the Board is subject to the general direction and control of the Minister.

(2) The Board must give the Minister any information concerning its operations that the Minister asks for and must do so as soon as is practicable after it is asked.

8. Members of the Board

(1) The Board is to have up to 7 members.

(2) The Minister must appoint to the Board—

(a) the Secretary or a person nominated by the Secretary; and

(b) up to 6 other people who, in the Minister's opinion, have skills, experience or knowledge in one or more of the following fields—

(i) marine research or technology; or

(ii) education; or

(iii) business and project management, financial management or marketing.

* * * * * * *
9. Term and conditions of office of Board members

(1) A member of the Board—

(a) holds office for the period specified in his or her instrument of appointment, which must be a period of not more than 4 years;

(b) is to hold office on the terms and conditions determined by the Minister; and

(c) may resign from office by delivering a signed letter of resignation to the Minister; and

(d) may be re-appointed; and

(e) may be removed from office at any time by the Minister.

(2) The office of a member of the Board becomes vacant if the member—

(b) is absent from 3 consecutive meetings of the Board without the permission of—

(i) the Minister, in the case of the Chairperson; or

(ii) the Chairperson, in the case of any other member.

(3) The Public Sector Management Act 1992 (including Part 9) does not apply to a member in respect of the office of member.
10. Chairperson and Deputy Chairperson

(1) From the people appointed under section 8(2)(b), the Minister must appoint a Chairperson and a Deputy Chairperson.

(2) A person appointed as the Chairperson or Deputy Chairperson is to hold that office for 2 years from the date of his or her appointment and may be re-appointed.

(3) A person appointed as a Chairperson or a Deputy Chairperson ceases to hold that office on ceasing to be a member of the Board.

(4) The Minister must fill any vacancy that arises in the office of Chairperson or Deputy Chairperson.

11. Committees

(1) The Board may—

(a) establish any committee it considers necessary and define the constitution and functions of any such committee; and

(b) determine the procedure of a committee; and

(c) change the constitution or function of a committee; and

(d) dissolve a committee.

(2) A person may be a member of a committee even though he or she is not a member of the Board.

(3) The Director is to be a member of each committee.

(4) A member of a committee is entitled to receive any travelling or other expenses determined by the Board.

12. Procedure and meetings of the Board

(1) A matter cannot be decided at a meeting of the Board unless more than half of its members are
(2) The decision on a question of the majority of the members present and voting on the question is the decision of the Board.

(3) Meetings of the Board are to be presided over by—

(a) the Chairperson, if he or she is present; or
(b) the Deputy Chairperson, if the Chairperson is absent; or
(c) a member elected by the members present, if the Chairperson and Deputy Chairperson are absent.

(4) The person presiding at a meeting has both a deliberative vote and a casting vote.

(5) The person presiding at a meeting must ensure that a written record in the form of minutes is made of all the decisions of the meeting.

(6) In all other respects the Board may regulate its own procedure.

13. **Validity of decisions**

An act or decision of the Board is not invalid by reason only of vacancies in the membership of the Board or of defects in the appointment of the Chairperson, the Deputy Chairperson or members of the Board.

14. **Declarations of pecuniary interest**

(1) A member of the Board who has a direct or pecuniary interest in a matter being considered, or about to be considered, by the Board must declare that interest to a meeting of the Board as soon as practicable after he or she becomes aware of the relevant facts.
(2) A member who holds an office or possesses property as a result of which, directly or indirectly, duties or interests may be created that are in conflict with the member's duties as a member must declare that fact to a meeting of the Board as soon as practicable after he or she becomes aware of the potential conflict.

(3) The person presiding at a meeting at which a declaration under this section is made must ensure that details of the declaration are recorded in the minutes of the meeting.

(4) After becoming aware of the existence of a conflict of interest in relation to a matter, a member—

   (a) must not be present during any deliberation of the Board with respect to the matter; and

   (b) must not take part in any decision of the Board with respect to the matter.

15. **Board member's immunity**

   (1) A member of the Board is not personally liable for anything done or omitted to be done in good faith—

       (a) in carrying out a function or power under this Act; or

       (b) in the reasonable belief that the act or omission was in the carrying out of a function or power under this Act.

   (2) Any liability resulting from an act or omission that would, but for sub-section (1), attach to a member of the Board, attaches instead to the Board.

16. **Director**

   (1) There is to be a Director of the Institute who is to be the chief executive officer of the Institute and
who is to be responsible—

(a) for the day to day management of the affairs of the Institute; and

(b) for giving effect to the decisions of the Board.

(2) The Board must appoint a person to be the Director of the Institute whenever the position is vacant.

(3) The Board must consult with the Minister before appointing a Director.

(4) The Director is to hold office for the period and on the terms and conditions approved by the Minister on the recommendation of the Board.

17. Other staff

Subject to the Statutes, the Director may employ staff.

17A. Delegation

(1) The Board may, by resolution, delegate all or any of its powers or functions to any member of the Board, the Director, any member of staff of the Institute, any committee established by the Board that has at least 2 members of the Board on it, the Secretary or any officer of the Department of Conservation and Natural Resources.

(2) The Board may not delegate its power of delegation or its power to make Statutes.

17B. Agreements with the Secretary

(1) With the Minister's approval, the Board and the Secretary may enter into an agreement—

(a) for the provision of services to or for each other; or

(b) for the use of each other's staff.
(2) The Board and the Secretary may do anything necessary to carry out such an agreement.

PART 4—STATUTES

18. Statutes

(1) Subject to this Act the Board may make Statutes for or with respect to all matters concerning the Institute and in particular without affecting the generality of the foregoing for or with respect to—

(a) the conduct, management, and discipline of the Institute;

(b) the number, remuneration, manner of appointment and dismissal of the staff and the officers and servants of the Institute;

(c) the fees to be charged for the provision of any service or the carrying out of any project by the Institute to or for any person or institution;

(d) the manner and time of convening meetings of the Board;

S. 18(1)(d) amended by No. 48/1994 s. 9(g).

S. 18(1)(e) repealed by No. 48/1994 s. 9(h).

(g) the establishment by the Board of hostels for students and the management, control, and closing of any such hostels; and

(h) generally prescribing or providing for any matter or thing authorized or required to be
sections 18(2)

amended by
No. 48/1994
s. 9(g).

sections 19

repealed by
No. 48/1994
s. 9(i).

sections 20

amended by
No. 48/1994
s. 9(j).

prescribed or provided for by this Act or necessary to be prescribed or provided for the good government of the Institute.

(2) Any Statute made by the Board may by the like Statute be revoked or amended.

*  *  *  *  *  *

20. Statutes to be evidence

All Statutes made by the Board pursuant to the provisions of this Act shall be in writing and under the common seal of the Institute and shall be of full force and effect as from the day upon which the common seal is affixed thereto or from such later day as is specified in the Statute and the production of a verified copy of any such Statute under the common seal of the Institute shall be sufficient evidence of the making and authenticity of the Statute in all courts and before all persons acting judicially.
PART 5—FINANCE

21. Application of moneys

(3) All moneys received by or on behalf of the Institute shall be applied by the Council solely for the purposes and in accordance with the objects of the Institute.

22. Investment of moneys not presently required

Any moneys held by the Institute and not presently required for the purposes and objects of the Institute may be invested by the Council from time to time as the Board determines.

22A. Borrowing and investment powers

(1) With the approval of the Treasurer, the Board may borrow money on any terms and conditions that the Treasurer approves.

(2) With the approval of the Treasurer, the Board may invest money in the General Fund in any manner the Treasurer approves.

22B. Treasurer's guarantees

(1) The Treasurer may on behalf of the Government of Victoria guarantee the repayment of any loan (and any associated costs, charges and interest) taken out by the Board.

(2) The Treasurer may impose conditions on any guarantee given under this section.

(3) Any sum required by the Treasurer to fulfil a guarantee given under this section must be paid
out of the Consolidated Fund (which is, by this sub-section, appropriated to the necessary extent).

(4) Any sum received by the Treasurer in respect of any sum paid by the Treasurer under sub-section (3) must be paid into the Consolidated Fund.

22C. Right of Secretary to financial information

(1) The Secretary, and any person authorised by the Secretary, has a right of access at all times to the accounts and other financial records of the Institute.

(2) The Board must give the Secretary any financial information or assistance that it is able to give and that the Secretary asks for, and must do so as soon as is practicable.

23. Investment common funds

(1) The Board may establish one or more investment common funds for the collective investment of any trust and other funds held by or in the custody of the Institute.

(2) The Board may from time to time without liability for breach of trust bring into or withdraw from any such investment common fund the whole or any part of any trust fund or other fund held by or in the custody of the Institute.

(3) The Board shall not bring into any investment common fund the whole or any part of any trust fund—

(a) if the instrument creating the trust expressly directs to the contrary;

(b) unless all the securities in which the capital of the investment common fund is invested are securities in which the trust fund may properly be invested.
(4) The Board shall except in so far as any income is made use of in accordance with this Act for the purposes of the Institute periodically distribute the income of each investment common fund among the funds participating in the common fund having regard to the extent of the participation by each fund in the common fund during the relevant accounting period.

(5) The Board may if it considers it expedient so to do from time to time add some portion of the income to the capital of the common fund or use some part of the income to establish or augment a fund or funds as a provision against capital depreciation or reduction of income.

25. Acquisition of property by Institute

The Institute may acquire by purchase, gift, grant, bequest, or devise any property and agree to and carry out any conditions of any such purchase, gift, grant, bequest, or devise and the Board may create and administer any trust fund or funds in connexion therewith or for any other purpose whatsoever.
s. 26

Heading preceding s. 26 repealed by No. 48/1994 s. 9(i).

S. 26 repealed by No. 48/1994 s. 8(1), 9.
NOTES

1. General Information

2. Table of Amendments

This Version incorporates amendments made to the Victorian Institute of Marine Sciences Act 1974 by Acts and subordinate instruments.

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- **Assent Date:** 25.10.77
- **Commencement Date:** 25.10.77
- **Current State:** All of Act in operation


- **Assent Date:** 15.6.83
- **Commencement Date:** 1.7.83: Government Gazette 22.6.83 p. 1709
- **Current State:** All of Act in operation

Conservation, Forests and Lands Act 1987, No. 41/1987

- **Assent Date:** 19.5.87
- **Commencement Date:** S. 103(Sch. 4 item 71.1) on 1.7.87: Government Gazette 24.6.87 p. 1694
- **Current State:** This information relates only to the provision/s amending the Victorian Institute of Marine Sciences Act 1974

Victorian Institute of Marine Sciences (Amendment) Act 1994, No. 48/1994

- **Assent Date:** 7.6.94
- **Commencement Date:** 1.9.94: s. 2(2)
- **Current State:** All of Act in operation


- **Assent Date:** 14.6.95
- **Commencement Date:** S. 224 on 5.10.95: Government Gazette 28.9.95 p. 2731; Sch. 2 item 46 on 1.1.96: Government Gazette 21.12.95 p. 3571
- **Current State:** This information relates only to the provision/s amending the Victorian Institute of Marine Sciences Act 1974
3. Explanatory Details

1 S. 2 def. of "Board": Section 10 of the Victorian Institute of Marine Sciences (Amendment) Act 1994, No. 48/1994 reads as follows:

10. Transitional and saving provisions

(1) In this section—

"Council" means the Council of the Victorian Institute of Marine Sciences under the Principal Act as in force immediately before the commencement of this section;

"Institute" and "Board" have the meanings they have in the Principal Act.

(2) The members of the Council cease to hold office.

(3) The changes made to the governing body of the Institute by this Act do not affect any other act, matter or thing except as is provided for in the amendments effecting the changes.

(4) Any reference to the Council in any Act, subordinate instrument, certificate of title, agreement or other document as far as it relates to any period after the commencement of this section is to be construed as a reference to the Board, unless the contrary intention appears.

2 Pt 3: See note 1.

3 S. 21(1)(repealed): The repeal of the provisions proposed by section 4(Sch. 2 items 103.1, 103.2) of the Financial Management (Consequential Amendments) Act 1994, No. 31/1994 are not included in this reprint due to their earlier repeal by sections 8(1) and 9(l) of the Victorian Institute of Marine Sciences (Amendment) Act 1994, No. 48/1994.


5 Heading preceding s. 24(repealed): See note 3.

6 S. 24: See note 3.
8. Changes to accounting, auditing and reporting provisions

(2) Despite the repeal of section 24, that section is to continue to apply in respect of all accounts prepared in respect of any period before 30 June 1994.

8 S. 26: See note 3.

9 S. 26(repealed): Section 8(3) of the Victorian Institute of Marine Sciences (Amendment) Act 1994, No. 48/1994 reads as follows:

8. Changes to accounting, auditing and reporting provisions

(3) Despite the repeal of section 26, that section is to continue to apply as if a reference to—

(a) "Council" was a reference to "Board"; and

(b) "the 31st day of March in each year" was a reference to "1 September 1994"; and

(c) "year ended on the 31st day of December then last past" was a reference to "period starting on 1 January 1994 and ending on 30 June 1994".